

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1482 OF 2006

Shri Krishna Vasant Mandale
Aged : 40 Years, Occ. : Service,
R/o Kasegaon, Tal. Walva,
District : Sangli

... Petitioner.
(Orig. Appellant)

V/s.

- 1] Kasegaon Education Society,
Kasegaon, Tal. Walva,
District : Sangli.
- 2] The Dy. Director,
Vocational Education & Training
Pune Region, Having Office at Ghole Road,
Pune – 5.
- 3] The Joint Secretary,
Kasegaon Education Society,
Kasegaon, Tal. Walva,
District : Sangli.
- 4] The Head Master,
Modern High School,
Rajaram Nagar, Sakhrale,
Tal. Walva, District : Sangli.
- 5] Miss Shubhada Madhavrao Herlekar,
Aged : 36 Years, Occ. : Service,
As Instructor, Modern High School,
Rajaram Nagar, Tal. Walva,
District : Sangli.

... Respondents.
(Nos.1 to 5 Orig.
Respondents.)

Mr. N. V. Bandiwadekar a/w Mr. Vinayak R. Kumbhar, Mr. Ashutosh B. Patil for the Petitioner.

Smt. V. S. Nimbalkar, AGP for State.

Mr. V. K. Bodhare for Respondent No.5.

**CORAM : A. S. GADKARI, J.
RESERVED ON : 18th OCTOBER 2019.
PRONOUNCED ON : 13th MARCH 2020.**

JUDGMENT :

1. By the present petition under Article 227 of the Constitution of India, the petitioner has impugned the Judgment and Order dated 30th December 2005 passed in Appeal No. 77 of 1997 by the learned Presiding Officer, School Tribunal, Kolhapur Region, Kolhapur, dismissing the said Appeal and confirming Order dated 15th April 1997 passed by the respondent No.1-Kasegaon Education Society, thereby cancelled the petitioner's appointment as Full Time Teacher (FTT) from 1st September 1995 and to continue his appointment as Instructor in the said institution.

2. Heard Mr. Bandiwadekar, learned counsel for the petitioner, Smt. Nimbalkar, learned AGP for Respondent-State and Mr. Bodhare, learned counsel for the respondent No.5. Perused the record annexed to the petition.

3. The record reveals that:

(i) The petitioner belongs to Ramoshi caste which is recognized as V.J.N.T., a reserved category. The petitioner has passed Diploma in Electrical Engineering. The petitioner came to be appointed as an Instructor in respondent No.4 - School on 17th August 1992 for a period of three years i.e. upto 31st August 1995. The respondent No.4-School is a Government recognized and fully aided school run by the respondent No.1-Trust. The said School is having Technical Wing for 'Minimum Competence Vocational Courses' (MCVC) which are being conducted therein. The respondent No.2

i.e. Deputy Director of Vocational Education and Training, Pune Region, granted approval to the appointment of petitioner as an Instructor in the subject of Maintenance and Repairs of Electrical Domestic Appliances (M.R.E.D.A.) in the pay scale of Rs. 1400-2600.

(ii) The respondent No.5 was appointed as Full Time Teacher in the subject of Maintenance and Repairs of Electrical Domestic Appliances on 17th August 1992 in the respondent No.4-School. The said post was reserved for backward class candidates and therefore the respondent No.5 who belongs to open category, was appointed purely on temporary basis for the said academic year. The respondent No.2 granted approval to the appointment of respondent No.5 for respective academic years by its Orders dated 24th February 1993, 15th February 1994 and 23rd January 1995. The said appointment was as a 'special case' and by relaxing the condition of experience. The said approval was granted in the respective academic years and against the reserved category vacancy. The letters of appointment clearly mentions that, the appointment of respondent No.5 was from other than reserved category and as per the roster it was in the place of a reserved category. It was also stated that, the backlog of filling up vacancies from the reserved category could not be filled in for want of candidates and therefore the respondent No.5 was appointed therein by relaxing the condition of experience as a special case.

It is thus clear that, the respondent No.5 accepted fresh appointment every year and at the end of which, her services stood

automatically terminated. In the new academic year, the respondent no.5 was given fresh appointment without any benefit of service rendered in the preceding year. The respondent No.5 never made any complaint or expressed her grievance about the same.

(iii) The record further reveals that, on 15th March 1995, the Secretary of respondent No.3 informed the respondent No.4 to terminate the services of all the temporary employees i.e. teachers, non-teaching staff at the end of academic year 1994-1995. The respondent No.4 in view thereof informed the respondent No.5 by its letter dated 15th March 1995 that, tenure of her appointment would be ending at the end of academic year 1995 and accordingly on 30th April 1995 the services of respondent No.5 in the post of Full Time Teacher stood terminated. The respondent No.5 did not challenge the said Order of termination and accepted the same without any protest.

(iv) That, in response to the letter dated 14th June 1994 addressed by the respondent No.3 to respondent No.2, the respondent No.2 by his letter dated 23rd May 1995 informed the respondent No.3 that, an approval was granted to the proforma Advertisement forwarded by respondent No.3 in order to make appointment of candidates in various posts mentioned in the said Advertisement. By the said letter dated 23rd May 1995, the respondent No.3 was also directed to call the names of eligible candidates from different Government Agencies. The said posts were to be filled in for the 'Minimum Competence Vocational Courses' (MCVC). Accordingly, the respondent No.3

published an advertisement in newspaper 'Daily Sakal' on 29th June 1995, inviting applications for various posts, including the post of Full Time Teacher in the subject of Maintenance and Repairs of Electrical Domestic Appliances (M.R.E.D.A.).

It is to be noted here that, at the end of the said advertisement a specific note was published by the respondent No.1 that the backlog of 'reserve category' of SC, ST, DTNT and OBC was to be filled in. The applications of the candidates from 'reserve category' mentioned therein will only be taken into consideration. The respondent No.3 in view of the directions given by the respondent No.2 also sent requisitions to the Government Agencies.

(v) In response to the said advertisement dated 29th June 1995 the petitioner applied for the said post which was for reserve category candidate, thought, the respondent No.5 belongs to Open Category and was not even entitled to apply for the said post. That, on 24th August 1995 interview of in all 12 candidates including the petitioner and respondent No.5 was held by the Committee of six members of the respondent No.1-Institution. On the basis of the performance the candidates, who had appeared for the said interview, were awarded marks. The petitioner secured highest marks (20/25) and was placed at Sr. No.1 in the select list. The respondent No.5 secured 19/25 marks and was placed at Sr. No.2 in the said list.

(vi) The record further reveals that, on 26th August 1995, the respondent No.3 issued the Order of appointment to the petitioner as Full

Time Teacher in Maintenance and Repairs of Electrical Domestic Appliances Department with effect from 1st September 1995 in the pay scale of 2,000-3200/-. The petitioner accordingly joined in service on the said post on 1st September 1995.

That, on 26th August 1995, the respondent No.5 was appointed as Instructor in the post which fell vacant due to petitioner's appointment as Full Time Teacher. It is to be noted here that, the appointment of respondent No.5 was made from 1st September 1995 for a period of two years on the post reserved for ladies. The respondent No.5 accepted the said appointment without any complaint or grievance and joined services on 1st September 1995.

(vii) That, on 19th March 1996, the respondent No.3 informed the respondent No.4 to issue one month notice to the temporary employees whose tenure was to end at the end of academic year 1995-96. Accordingly, on 25th March 1996, the respondent No.4 issued Order terminating the service of respondent No.5 as Instructor from the end of academic year 1995-96. The record further indicates that, the respondent No.5 did not challenge the said Order.

(viii) That, on 9th April 1996, the respondent No.5 made application with the respondent No.3 and requested him to continue her in service in the academic year 1996-97 as Full Time Teacher Instructor. That, by an Order dated 27th May 1996, the respondent No.3 informed the respondent No.5 that, she has been given continuation in the service in the academic year

1996-97 subject to approval by the Education Officer, Zilla Parishad, Sangli and/or the respondent No.2 herein. The respondent No.5 accordingly accepted the said appointment without any grievance and seeking any other benefits of the past service.

(ix) On 26th November 1996, the respondent No.4 submitted the proposal, seeking approval to appointment of petitioner as Full Time Teacher and that of respondent No.5 as Instructor from 1st September 1995 to the respondent No.2.

(x) The record further indicates that, in the meantime the respondent No.5 had made a complaint with the respondent No.2 that, since the respondent No.5 was previously working as Full Time Teacher, she should have been appointed in that post itself and petitioner should not have been given the appointment as Full Time Teacher from 1st September 1995.

That on 4th March 1997, the respondent No.2 informed the respondent No.3 that, the respondent No.5 has been appointed as Full Time Teacher and the petitioner as Instructor from 1st September 1995. However, copy of the said Order was not furnished to the petitioner. On the basis of the said Order dated 4th March 1997 passed by respondent No.2, the respondent No.3 issued Order dated 15th April 1997 cancelling the petitioner's appointment as Full Time Teacher with effect from 1st September 1995 and directed to continue his appointment as Instructor.

(xi) Being aggrieved by the said Order dated 15th April 1997, the petitioner preferred an Appeal No.77 of 1997 on 17th April 1997 before the

School Tribunal, Kolhapur Region, Kolhapur against the respondent Nos.1 to 5. The petitioner also filed an application for stay and to continue him as a Full Time Teacher. The School Tribunal by its Order of even date stayed the termination and reduction in the rank of the petitioner. The Tribunal further directed the respondents not to act upon the said Order dated 15th April 1997 and the petitioner be allowed to continue as Full Time Teacher (Lecturer) till further Order. After service of Notice from the Tribunal, the respondent No.5 appeared in the matter and filed her written statement to oppose the Appeal. The other respondents also filed their respective written statements in opposition of the Appeal. After hearing the respective parties and perusing the record, the learned Presiding Officer of School Tribunal, Kolhapur Region, Kolhapur by its Order dated 13th December 2005 dismissed the said Appeal and vacated stay granted by Order dated 17th April 1997.

Petitioner filed the present Petition on 6th February 2006 impugning the said Order dated 13th December 2005 passed by the School Tribunal, Kolhapur. After receipt of the notice of present petition, the respondents appeared and filed their affidavits-in-reply. By an Order dated 9th November 2006 this Court issued Rule in the present petition and granted interim relief.

4. Mr. Bandiwadekar, learned counsel for the petitioner submitted that, the School Tribunal in the impugned Order though has elaborately recorded the submissions of all the parties, in its concluding para by giving cryptic reasons, has dismissed the said Appeal. He

submitted that, the impugned Order consist only of reproduction of pleadings and arguments advanced by the respective parties. He further submitted that, the respondent No.5 was appointed on a post which was allocated for reserve category candidate, though the respondent No.5 being a candidate from open category could not have at all been appointed on the said post. He submitted that, the Advertisement issued by respondent No.3 was very clear and applications to fill backlog from the reserve categories were called for by the said advertisement. That, the respondent No.5 though was not at all eligible for filling up the form, had applied for it and was appointed on the post of Instructor as a special case and not otherwise. He submitted that, the respondent No.5 participated in the selection process after issuance of advertisement by respondent No.3 without any protest or demur and therefore the principle of estoppel squarely applies to the respondent No.5. He submitted that, the impugned Order therefore may be set aside, by allowing the Petition.

5. Mr. Bodhare, learned counsel appearing for the respondent No.5 while opposing the petition submitted that, by an Order of Appointment dated 17th August 1992 the petitioner was appointed as an Instructor purely on temporary basis for a period from 17th August 1992 to 30th April 1993 and the said appointment was conditional and subject to approval and sanction of the Education Officer, Deputy Director of Technical Education, Pune. He submitted that, petitioner was appointed on the post reserved for Schedule Tribe category, though the petitioner belongs from VJNT category and

therefore his appointment on probation was not permissible under the law. He submitted that, the respondent Nos.3 and 4 – Management has admitted the fact of not maintaining the roster correctly in its evidence. He submitted that, the respondent No.5 had lodged a complaint with the respondent No.2 on 22nd March 1996 and in pursuance thereof, the respondent No.2 had conducted enquiry and thereafter the Order of reversal of petitioner from the post of Full Time Teacher into Instructor was passed by the respondent No.3. That, the enquiry conducted by respondent No.2 and his directions to the respondent No.3 by his communication dated 4th March 1997 is well within the parameters of law and can not be faulted upon. He submitted that, the Education Department of which the respondent No.2 was the Deputy Director is having powers to relax conditions as per his approval itself and therefore there is no illegality committed by the respondent No.2 while directing the respondent No.3 to revert the petitioner to the post of Instructor as per his communication dated 4th March 1997. He submitted that, though as per Advertisement the applications were called for Full Time Teacher, the respondent No.5 came to be appointed as Instructor though she did not apply for the same. He therefore, prayed that, taking into consideration the aforesaid aspects, the Trial Court has rightly dismissed the Appeal preferred by the petitioner. He therefore prayed that, present Petition therefore be dismissed.

6. The chronology of events mentioned in para No.3 above are as emerged from record and admitted facts.

Perusal of record would clearly indicate that, in furtherance of directions issued by the respondent No.3, the respondent No.4 had terminated services of temporary employees at the end of academic year 1994-95 by its letter dated 15th March 1995 since there was backlog of reservation with the Management. The said fact was informed by the respondent No.4 to the respondent No.5 and accordingly in view thereof, on 30th April 1995 the services of respondent No.5 from the post of Full Time Teacher stood terminated. The respondent No.5 did not challenge the said Order of termination and has accepted the same without any protest or demur. In pursuance of Advertisement published by the respondent No.3 on 29th June 1995 in marathi newspaper 'Daily Sakal', thereby inviting applications for various posts including the post of Full Time Teacher in the subject of Maintenance and Repairs of Electrical Domestic Appliances, the respondent No.5 who belongs to open category had applied for the said post.

It is to be noted here that, in the said Advertisement dated 29th June 1995 a specific note was published by the respondent No.1 that, there is backlog of reserve category of SC, ST, DTNT and OBC the said posts were to be filled in and the applications of the candidates from reserve category mentioned therein will only be taken into consideration. The respondent No.5 was not even entitled to apply for the said post in pursuance of the said advertisement, applied for it and in due course of time she was appointed as Instructor in the said Institution for the said Course. The respondent No.5 has accepted her appointment as an Instructor to the said post without any

protest.

7. In this background, the respondent No.5 was not at all justified in lodging a complaint with the respondent No.2 with a grievance that, she be appointed on the post of Full Time Teacher. It appears from record that, in pursuance of the complaint filed by the respondent No.5, dated 22nd March 1996, the respondent No.2 under the grab of inquiry created a farce of conducting it and by its communication dated 4th March 1997 directed the respondent No.3 to pass impugned Order dated 15th April 1997 thereby reverting the petitioner to the post of Instructor. It appears that, the respondent No.2 without taking into consideration the aforesaid aspects and admitted fact on record, has passed the said Order which according to me is not tenable in the eyes of law.

After termination of the said services of the respondent No.5 by respondent No.3 by its Order dated 15th March 1995 and further her participation in the selection process in furtherance of Advertisement dated 26th June 1995 estopps her from claiming her original appointment through backdoor entry via the respondent No.2. As noted earlier, the respondent No.2 by allegedly conducting enquiry in furtherance of the complaint of respondent No.5 dated 22nd March 1996 has addressed the said communication dated 4th March 1997 which is not tenable in the eyes of law and the same ought not have been acted upon by the respondent Nos.3 and 4. As noted earlier, the principle of estoppel clearly applies to the respondent No.5 and she can not claim the post of Full Time Teacher by adopting

erroneous procedure through the respondent No.2.

8. The record indicates that, the School Tribunal Kolhapur, has committed error in properly appreciating the aforestated facts and therefore the impugned Orders deserves to be set aside and is accordingly set aside.

9. In view of the above, the petitioner succeeds.

Rule is made absolute in terms of prayer clauses (b) and (c).

(A. S. GADKARI, J.)