

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 357/2020

Lokaseva Shikshan Sanstha Sirsi

..VS..

The Presiding Officer, School Tribunal & ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.D. Khamborkar, Advocate for the petitioner
Shri H.D. Dubey, AGP for the respondent nos. 1 and 4
Shri A.D. Mohgaonkar, Advocate for the respondent no. 2

CORAM : N.B. SURYAWANSHI, J.

ORDER RESERVED ON : 20/02/2020

ORDER PRONOUNCED ON : 16/03/2020

1] This petition challenges the order passed below application (Exh. 3) by the learned School Tribunal in Appeal S.T.N. No. 80/2019.

2] The respondent no. 2 was appointed as Assistant Teacher with the respondent no. 3 – School. His caste claim belonging to ‘Halba’ caste came to be rejected by the Caste Scrutiny Committee and headmaster of the respondent no. 3 was authorized to take action under Sections 10 (1) (2) and 11 (1) (2) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000. In pursuance of the said order, vide order dated 14/08/2019, the services of the respondent no. 2 were terminated by placing reliance on the Scrutiny Committee’s order stating that the appointment of the respondent no. 2

was on the post reserved for ST category. The respondent no. 2, therefore, filed appeal challenging the termination order wherein application (Exh. 3) was filed for stay of the impugned order. The learned Tribunal, after hearing both the sides, was pleased to grant stay in favour of the respondent no. 2. Hence, the present petition.

3] Heard learned advocate for the petitioner, learned AGP for the respondent nos. 1 and 4 and learned advocate for the respondent no. 2. Perused the record with the able assistance of learned advocates for the respective parties.

4] Learned advocate for the petitioner submits that the learned Tribunal has committed an error in staying the impugned termination order by which infact a final relief is granted in favour of the respondent no. 2. It is submitted that the petitioner was justified in issuing the termination order in view of the order passed by the Scrutiny Committee, thereby invalidating the caste claim of the respondent no. 2 and as the headmaster was directed to initiate action since the respondent no. 2 was appointed on the post reserved for ST category, the petitioner had no option but to terminate the services of the respondent no. 2. It is submitted that the learned Tribunal ought to have expedited the hearing of the appeal and should not have granted interim relief as no case was made out by the respondent no. 2 to grant interim relief.

5] Per contra, learned advocate for the respondent no. 2 would contend that the appointment of the respondent no. 2 was not on the post reserved for ST category, but it was on the post reserved for Open category. He further submits

that the respondent no. 2 has completed 32 years of uninterrupted service and is to reach the age of superannuation in the near future and without conducting an enquiry, his services were illegally terminated. He therefore, supports the impugned order and contends that the learned Tribunal was justified in staying the illegal termination order. He, therefore, urged that the petition being devoid of any substance may be dismissed.

6] There is no dispute that the respondent no. 2 has completed 32 years of service, he is a permanent employee and he cannot be removed from service without conducting departmental enquiry. It is not the case of the petitioner that the service of the respondent no. 2 is not satisfactory. The petitioner has failed to prove that the appointment of the respondent no. 2 was on the post reserved for ST category. The learned Tribunal, on the contrary, has observed that on perusal of Document No. 7 at page 14 of the appeal, it appears that name of the respondent no. 2 is shown at Serial No. 11 of the employees appointed on the post reserved for Open category and the said list is signed by the Executive President of the respondent – management, who served the termination order to the respondent no. 2.

7] Taking into consideration the rival contentions of the parties, the learned Tribunal was justified in coming to the conclusion that arguable case is made out by the respondent no. 2 regarding his appointment on unreserved post, which cannot be decided at that juncture, while deciding the interim injunction application. The learned Tribunal further recorded that prima-facie case is made out by the

respondent no. 2 as he has rendered 32 years of service as a permanent employee and prima-facie his appointment seems to be on the post reserved for Open category.

8] In the light of aforesaid observations, there is no merit in the petition. I do not find that the learned Tribunal has committed any error in granting interim relief in favour of the respondent no. 2. No case is made out by the petitioner for interference with the impugned order passed by the learned Tribunal, in the extraordinary writ jurisdiction of this Court. Hence, the following order:-

ORDER

- (a) The writ petition is **dismissed**.
- (b) There shall be no order as to costs.

JUDGE

ANSARI