

WRIT PETITION NO. 8864 OF 2018

Rajendra Shyamrao Sable and others ... Petitioners

Versus

State of Maharashtra and others ... Respondents

Mr. S. P. Salgar, Advocate h/f Mr. S. S. Gangakhedkar, Advocate for the petitioners

Mr. S. N. Morampalle, AGP for respondent Nos. 1 to 3

Mr. C. K. Shinde, Advocate for respondent No.4

CORAM : R. G. AVACHAT, J.

RESERVED ON : 05th FEBRUARY, 2021
PRONOUNCED ON : 19th JULY, 2021

ORDER :-

The challenge in this writ petition is to the order dated 27.04.2017, passed by the Additional Commissioner, Tribal Development, Amravati Division, Amravati (Respondent No.2), dismissing the appeal preferred by the petitioners herein.

2. This petition has been filed for the following main reliefs:-

- “B) By issuing Writ of Certiorari and or any other appropriate Writ or order in the like nature, thereby quash and set aside impugned Judgment and Order passed by Respondent No.2-Additional Tribal Commissioner, Tribal Development, Amravati Division, Amravati to the extent of petitioners, dismissing their appeal bearing No.___/2008 dated 27/04/2017 and further allow the appeal to the extent of petitioners by setting aside oral termination of petitioners by reinstating them on their respective posts with salaries, backwages and continuity of service.*
- C) By issuing Writ of Mandamus or any other appropriate Writ or order in the like nature thereby direct the Respondent No.4-Management to pay backwages and arrears of salaries to the petitioners from the date of their appointment and more particularly year 1996 onwards till 06/08/2008 when the concerned school is brought on grant-in-aid basis.*
- D) By issuing an order of injunction thereby restrain the Respondent No.4 – Management and their subordinate from filling up posts whereon the petitioners were working in Adivasi Ashram School, Jamdari, Tq. Bhokar, Dist. Nanded, pending hearing and final disposal of the instant petition.”*

3. The facts leading to this petition are :-

Respondent No.4 is an educational institution. It would run tribal Ashram school at Jamdari, taluka Bhokar, district Nanded. The petitioners were serving with the said Ashram school until their oral termination. The petitioners had been appointed after following

due procedure. The said Ashram school runs classes from 1st to 7th standard. It is a basic Ashram school. For the period from 1987 to 1994, the school had no grant-in-aid. The school was granted grant-in-aid in September 1994. The grant-in-aid was continued up-till August-1996. On 05.08.1996, the grant-in-aid was withdrawn. The State Government, vide its resolution dated 06.08.2008, has brought both the Ashram schools, run by the respondent No.4 institution, on grant-in-aid basis from the academic year 2008-2009.

4. It is also the case of the petitioners that they have rendered unblemished service on their respective posts. Respondent No.4 institution has not paid salary to the petitioners since the academic year 1996. The petitioners had, therefore, approached various Government authorities. They had also preferred Writ Petition Nos.2324 of 2006 and 2361 of 2006, seeking direction to the Government and respondent No.4, as well, to disburse their salary. Since the management of respondent No.4 had orally assured to consider the claim of the petitioners, the petitions were withdrawn. The petitioners have, however, not been paid their salary. They continued to work without salary. The services of the petitioners came to be abruptly terminated on 04.08.2005. The

petitioners, therefore, preferred common Appeal No.75 of 2008. The respondent No.2 did not pass any order on the appeal preferred by the petitioners. Respondent No.4, meanwhile, initiated the process for filling up the posts. The petitioners, therefore, preferred Writ Petition No.5757 of 2008, seeking directions to respondent No.2 to decide the appeal within a time frame. Relief of injunction was also prayed for, restraining respondent No.4 from filling up the vacancies occurred due to oral termination of the petitioners. The Division Bench of this Court, granted ad-interim relief, thereby the educational institution was restrained from taking interviews of the candidates. Respondent No.2 vide his order dated 29.01.2009, dismissed the appeal holding him to have no jurisdiction to entertain the same. However, on merits of the matter, the respondent No.2 observed that the petitioners were duly appointed on clear and permanent vacant posts. The petitioners did have requisite qualification, except training qualification. As per the policy of the department, the training qualification can be acquired within a stipulated time. The petitioners rendered their services for a considerable period.

The petitioners challenged the order dated 29.01.2009, passed by the respondent No.2 by filing Writ Petition Nos.1359 of

2009 and 1360 of 2009. Both the writ petitions were allowed, setting aside the impugned order. The appeals were remitted back to the respondent No.2 for decision in accordance with law. The respondent No.2, decided the appeal on 02.03.2010. He observed that the appellants therein, including the petitioners, did not have requisite qualification, since they had not done D. Ed. The recruitment was made without observing the roster. As regards Class-IV posts, the respondent No.2 has observed that the Project Officer, Kinwat, has the authority to grant approval. It is, therefore, for him to decide the issue of appointment of Class-IV employees. The petitioners, therefore, again preferred Writ Petition Nos. 2570 of 2010 and 2571 of 2010, challenging the order dated 02.03.2010 passed by the respondent No.2. The learned Single Judge of this Court, vide order dated 27.07.2016, partly allowed the writ petitions, remitting back the Appeals No.75 of 2008 and 76 of 2008 to respondent No.2 for rehearing. The respondent No.2, in-turn, vide order dated 27.04.2017, dismissed the appeals, observing that the appointments of the petitioners were not in accordance with the rules and following the due recruitment process. The petitioners have, therefore, preferred this writ petition challenging the order passed by respondent No.2.

5. Heard learned Advocates for the parties. Perused the impugned order and the documents relied on.

6. Shri S. P. Salgar, learned Advocate for the petitioners, would submit that the respondent No.2 while deciding the Appeal (No.75 of 2008), vide order dated 29.01.2009, had observed that the petitioners have been duly appointed on clear and permanent vacant posts. Although the petitioners did not have training qualification, the same could have been acquired within a time frame. The appeal was dismissed only on the ground of want of jurisdiction. The said order was set aside vide order dated 29.07.2009 passed in Writ Petitions No.1359 of 2009 and 1360 of 2009, with a direction to the respondent No.2, to decide the appeals afresh. The respondent No.2, decided the appeal vide order dated 02.03.2010. The said order was again challenged in the writ petition, which was partly allowed on 27.01.2016 with a direction to respondent No.2 to decide the appeals afresh. The very person i.e. Shri G. P. Garad, was the Additional Commissioner, Tribal Development, Amravati Division, Amravati. It was he, who had passed the earlier two orders. The very person has decided the appeal(s) on 27.04.2017, observing the

appointment of the petitioners to have not been in accordance with law and rules. The learned Advocate for the petitioners would mean to say that the very authority who has first decided in favour of the petitioners on factual matrix and dismissed their appeal on the ground of jurisdiction, turned around and gave a very contrary finding. According to the learned Advocate, the same is not permissible in law.

The orders of appointment of the petitioners were brought to my notice. The order granting approval to their appointment has also been relied on. According to the learned Advocate, if the approval of the school run at Jamdari, has been withdrawn by the State of Maharashtra in Tribal Development Department, the petitioners could be held to be surplus employees, entitled for accommodation in some other school(s). According to the learned Advocate, when the authority concerned first observed that the appointments of the petitioners to have been in accordance with law, their oral termination is liable to be set aside with an order of reinstatement and back wages. He, therefore, urged for allowing the writ petition.

7. Shri S. N. Morampalle, learned AGP representing the respondent Nos. 1 to 3, supported the impugned order.

8. Shri C. K. Shinde, learned Advocate for respondent No.4 would, on the other hand, submit that the appeals had not been preferred within limitation. The appointment orders, showing the petitioners to have been appointed permanently, have been forged one. Respondent No.4 has filled up the vacancies occurred due to termination of the petitioners. Those appointed persons are not parties to this writ petition. He would further submit that approval of the school at Jamdari, has been withdrawn. The petitioners have already been paid their salary. Learned Advocate, therefore, urged for dismissal of the writ petition.

9. Respondent No.4 – educational institution started Ashram school at Jamdari, in 1987. It was a basic Ashram school running classes from 1st to 7th standard. The school did not have grant-in-aid until 05.09.1994. It is on 06.09.1994, the Ashram school was brought on grant-in-aid. The school continued to receive grant-in-aid until August, 1996. The particulars of the appointment of the petitioners are as under:-

Sr. No.	Name of employees	Post	Date of birth	Qualification	Date of Appointment
1.	Sable R. S.	Primary Teacher	18/10/68	B.A. B.Ed.	16/06/1994
2.	B. D. Waghmare	Primary Teacher	14/01/65	M. Com. B.P Ed.	16/06/1994
3.	A. M. Solanke	Primary Teacher	-----	-----	01/07/1996
4.	G. L. Alkawad	Superintendent	-----	-----	30/06/1996
5.	A. D. Gurulwad	Primary Teacher	-----	-----	30/06/1996

10. The petitioners contended to have not been paid their salary from the academic year 1996. The petitioners had, therefore, preferred writ petition, being Writ Petition Nos.2324 of 2006 and 2361 of 2006. The said writ petitions were withdrawn on the ground that the management of respondent school was considering the payment of dues. It is, however, surprising and even unpalatable to accept that the petitioners continued to work without salary until they were orally terminated in 2005. The approval to the appointment of the petitioners was temporary for the academic year 1996-1997. It is on 06.08.2008, the State Government sanctioned grant-in-aid to both the schools run by respondent No.4 at village Jamdari and Bhurbhusi. It appears that only with a view to take advantage of the order sanctioning grant-in-aid to the schools, the petitioners preferred the appeals (Appeal Nos.75 of 2008 and 76 of

2008) on 03.04.2008 against the orders of their oral termination. The petitioners have, thus, challenged their oral termination after the period of little over three years. It is true that when respondent No.4 had advertised for filling up the vacancies, the petitioners preferred Writ Petition No.5757 of 2008 and obtained ad-interim relief, restraining respondent No.4 from interviewing the candidates. The petitioners have, however, failed to show what has happened thereafter. It has been specifically averred in affidavit-in-reply that the said writ petition was withdrawn. It has also been averred in the affidavit that the respondent No.4 filled up the vacancies, that had occurred due to oral termination of the petitioners and the incumbents who have been appointed in place of the petitioners are not parties to the present petition. The petitioners have not been in service for little over 16 years. There is *prima-facie* nothing to indicate that during this period, the petitioners or any one of them has acquired training qualification (D.Ed.). It is true that the Additional Tribal Commissioner (Respondent No.2), gave self contrary findings, first holding the appointment of the petitioners to have been in consonance with law and rules and then contrary thereto. It, however, cannot be observed that the very person cannot come to a contrary finding after re-look of the entire matter. In the

impugned order, all the Government Resolutions/orders have been quoted, in breach of which, the appointments of the petitioners are said to have been made. True, the details of those Government Resolutions and circulars have not been placed before this Court by any of the parties to this petition. Respondent No.2, however, categorically observed that the petitioners have not acquired training qualification (D.Ed.). Till date, none of the petitioners appears to have passed D.Ed. For over 16 years, they have not been in service. They preferred the appeal against their oral termination after over three years. Respondent No.4 has stated on affidavit to have filled up the vacancies occurred due to oral termination of the petitioners. Those appointed persons are not parties to this petition. Merely making the statement in the petition and relying on the order of respondent No.2, it cannot be observed that the petitioners have made out a case of having been duly appointed against clear, vacant and permanent posts by observing the roster.

11. For all these reasons, I am not inclined to interfere with the impugned order. The writ petition, therefore, fails. The same is thus, dismissed.

[R. G. AVACHAT, J.]