IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5904 OF 2020

1. The President/Secretory,
Mauli Bahuuddeshiya Shikshan Prasarak,
Mandal, Kandari, Tal. Paranda,
Dist. Osmanabad.
Through
Sulochana w/o Balasaheb Padaghan,
Age : 35 years, Occu: Household,
R/o. Kandari, Tal. Paranda,
Dist: Osmanabad

2. The Headmaster,
Bhairavnath Madhyamik Vidyalaya,
Kandari, Tal. Paranda, Dist. Osmanabad.
Sunil S/o Sudam Padhaghan,
Age: 50, Occu: Service,
R/o. Kandari, Tal. Paranda,
Dist: Osmanabad. … Petitioners

Versus

1. Sudhir S/o Madhav Thavare,
Age: 30, Occu: Nil,
R/o. Kaudgaon,
Tal. Paranda, Dist: Osmanabad.

2. Education Officer (Secondary),
Zilla Parishad Osmanabad,
Dist. Osmanabad.

3. Reshma Omprakash Chobe,
Age: Major, Occu: Service,
C/o Bhairavanath Madhymik Vidyalaya
Kandari, Tal. Paranda,
Dist. Osmanabad. … Respondents

…

Advocate for Petitioner : Mr. S. B. Choudhari
AGP for Respondent No.2 – State : Mr. P. G. Borade
Advocate for Respondent No.1 : Mr. S. R. Barlinge
Advocate for Respondent No.3 : Mr. S. S. Jadhavar

…

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 24th NOVEMBER, 2021
PRONOUNCED ON : 10th DECEMBER, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. By this petition the management challenges judgment and order dated 04-02-2020 passed by the School Tribunal, Pune Region, Solapur in Appeal No.47/2016, thereby allowing the appeal filed by respondent No.1 – teacher and setting aside the oral order of otherwise termination dated 30-09-2015 and directing the reinstatement of respondent No.1 – teacher with full back wages and continuity in service along with all consequential benefits.

3. For the sake of convenience the parties hereinafter are referred as ‘management’ and ‘respondent No.1 – teacher’.

4. The management is running two schools, one is petitioner No.1 school at Sonari and second school is at Pad Pimpalgaon. The management after taking permission from respondent No.2 on 15-08-2013 published an advertisement (Exhibit-A) for appointment of Assistant Teachers for 5th to 7th Standard. In the said advertisement one

post was shown reserved for ST category, one post was reserved for O.B.C. category and two posts were reserved for open category. Pursuant to the interviews three teachers, two from open category and one from O.B.C. category, were selected and appointed.

5. One post of S.T. category remained vacant. Respondent No.1 applied to the management on 22-08-2013 and was appointed for the probation period of two years on the post reserved for N.T.(C.) category, by appointment order dated 22-08-2013 (Exhibit-C).

6. Respondent No.1 – teacher filed Appeal No.47/2016 before the School Tribunal challenging his oral termination dated 30-09-2015, contending that, pursuant to the advertisement published in the local newspaper and being duly qualified, he was duly selected and appointed on clear and vacant post reserved for N.T.(C.) category, to which he belongs, by the School Committee of the management. There was backlog of three posts of V.J.N.T. category. He has successfully completed the probation period on 30-09-2015. He was restrained by the headmaster from teaching and conducting classes and was asked not to come to the school from the next day. He, therefore, claimed that his services were orally terminated.

7. The management resisted the appeal by filing written

statement. The tribunal allowed the appeal filed by respondent No.1 – teacher. Hence, the present writ petition is filed by the management challenging the order of the tribunal.

8. Heard the learned advocate for petitioners – management and the learned advocate for respondent No.1 – teacher, learned Assistant Government Pleader for respondent No.2 – State and the learned advocate for respondent No.3.

9. The learned advocate for management assailed the impugned order contending that respondent No.1 – teacher was not appointed by following due procedure prescribed in Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. According to him, there was no clear permanent vacant post when respondent No.1 was appointed. On the request application made by respondent No.1, he came to be appointed. He, therefore, submitted that the tribunal has ignored this aspect and has not recorded any findings as to whether the appointment of respondent No.1 was after following prescribed procedure in the act and Rules. He further submitted that respondent No.1 has never applied for the post of Assistant Teacher pursuant to the advertisement dated 15-08-2013. According to him, the post reserved for S.T. category was advertised and

the same was lying vacant. Even in the inspection report of the Education Department respondent No.1 – teacher was never shown as an employee of the management. According to him, in absence of clear vacant post available, respondent No.1 could not have been appointed, that too without following due procedure of law. He further submitted that the tribunal has recorded perverse findings which are unsustainable. He, therefore, submitted that the impugned decision of the tribunal is liable to be quashed and set aside. In support of his submissions he relied on the following decisions:-

1) **Priyadarshini Education Trust & Others Vs. Ratis (Rafia) Bano d/o Abdul Rasheed & Others, 2007(6) ALL MR 238.**

2) **Sonwane Arjun Patil Bua Vs. Adarsh Shikshan Sanstha, 2017 (1) ALL MR 566.**

3) **Vilas Laxman Gavai Vs. Dnyandeo Uttamrao Dhandar & Others, 2018(3) ALL MR 725.**

10. The learned advocate for respondent No.1 – teacher, on the other hand, supported the impugned decision of the tribunal. He urged that the appointment order of respondent No.1 itself shows that he was appointed for a probation period of two years. This itself shows that there was clear and permanent vacant post available with the management. He was appointed on the post reserved for N.T.(C.) category. According to him, the appointment order issued to respondent

No.1 bears the signature of the Secretory of the management. Respondent No.1 was assigned Election Duty of Gram Panchayat Elections in the year 2015 which supports the contention of respondent No.1 that he was working on a permanent clear vacant post. By relying on the decision in case of **Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta and Others,** reported in **AIR 1999 SC 983**, he submitted that the oral termination of respondent No.1 was unsustainable and it has rightly been set aside by the tribunal. According to him, there is no substance in the writ petition and the petition deserves to be dismissed.

11. The learned Assistant Government Pleader appearing for respondent No.2, by placing reliance on the affidavit-in-reply filed by respondent No.2, submitted that no permanent vacant post of N.T.(C.) category was available with the management, when respondent No.1 was appointed.

12. The learned advocate for respondent No.3 – another Assistant Teacher, adopted the arguments of the petitioner contending that the impugned order passed by the tribunal is unsustainable and the same is liable to be quashed and set aside.

13. Heard learned advocate for the respective parties and the

learned Assistant Government Pleader at length. Perused the record.

14. It is a matter of record that advertisement (Exhibit-A) was issued by the management on 15-08-2013. In the said advertisement one post for S.T. category, one post for O.B.C. category and two posts for open category were advertised. Pursuant to the said advertisement select list of three candidates (Exhibit-B) (which includes respondent No.3) was prepared. The name of respondent No.1 does not appear in the said select list.

15. In the appointment order (Exhibit-C) issued to respondent No.1 it is mentioned that the said order is being issued in pursuance of the application dated 22-08-2013 of respondent No.1. He was given appointment on the post reserved for N.T.(C.) category, for a probation period of two years. It is, therefore, clear that respondent No.1 was not selected by following procedure prescribed under the M.E.P.S. Rules. In case of **Priyadarshini Education Trust & Others** (supra), the Division Bench of this Court held:-

> "In order to claim benefit of deemed permanency a teacher must be duly selected, he must be appointed in clear permanent vacancy, his appointment must not be for fixed/limited period, and preferably it ought to indicate that the appointment is on probation."

16. In the case in hand, admittedly, the petitioner applied for

the appointment on the post of Assistant Teacher on 22-08-2013 and on the same day he was appointed on the post reserved for N.T.(C.) category for probation period of two years. As per the advertisement (Exhibit-A), one post for S.T. category was advertised. It is clear from the select list (Exhibit-B) that no candidate from S.T. category was selected during the selection process. Thus, at that point of time, when the appointment order was issued to respondent No.1, post reserved for S.T. category was vacant. There is nothing on record to show that post reserved for N.T.(C.) category was vacant at that point of time.

Respondent No.2 – Education Officer has filed an affidavit contending that no sanctioned post was vacant when respondent No.1 was appointed. The Education Officer did not give approval to the appointment of respondent No.1. As per the roster, at that time there was backlog of one post of S.T. category. It is further stated that pursuant to the advertisement (Exhibit-A) three assistant teachers were appointed, 1 – Smt. Chobe Reshma Omprakash (respondent No.3 from open category), 2 – Smt. Borate Urmila Macchindra (O.B.C. category) and 3 – Shri. Deshmukh Samadhan Vikram (Open category), with effect from 22-08-2013. All these three assistant teachers are granted approval by the office of Education Officer. The affidavit further states that though as per the verified roster, there is backlog of one S.T. category,

there is no vacant post for filling reservation of the said category with the management. It is further stated that respondent No.1 belongs to N.T.(C.) category and as per the entry taken in the roster register one post of V.J.N.T. category is sanctioned, on which Shri Giri Baliram Balasaheb from that category is appointed from 05-08-2003 as Assistant Teacher. The appointment of respondent No.1, therefore, has to be treated from open category.

17. In view of the above averments of the Education Officer, it is clear that respondent No.1 was given a back door entry, and there was no clear permanent vacant post available, when respondent No.1 was appointed. In case of **Vilas Laxman Gavai** (supra) the learned Single Judge of this Court has held:-

> "Appointment under Section 5 cannot be made privately or through back door. The service of such appointee cannot be protected by the tribunal on the premise that the management is not entitled to take benefits of it's own wrong. The teacher had no right to the post and therefore, this Court dismissed the order of the tribunal reinstating the teacher."

This ruling supports the case of the petitioner.

18. Though the management relied upon inspection report of the Education Department wherein the name of respondent No.1 is not reflected, the tribunal has erroneously proceeded to observe that, the

said inspection report dated 16-09-2014 which shows eight sanctioned posts and the names of teachers working on the said posts, cannot be a sole basis to dispute the appointment of respondent No.1. The finding of the tribunal that respondent No.1 has proved that he was appointed by following due procedure of law is erroneous and the same is contrary to the record.

19. For the aforestated reasons, the impugned order passed by the tribunal is unsustainable and the same is liable to be quashed and set aside. Hence the following order:-

ORDER

(I) Writ petition is allowed in terms of prayer clause 'B'.

(II) The impugned order dated 04-02-2020 passed by the School Tribunal, Pune Region, Solapur in Appeal No.47/2016 is hereby quashed and set aside. The Appeal No.47/2016 is dismissed.

(III) Rule is made absolute in the above terms with no order as to costs.

(NITIN B. SURYAWANSHI, J.)

SVH