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

WRIT PETITION NO.212/2018

Sarika Subhashsingh Chauhan

..Versus..

The State of Maharashtra and others

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

Mr. S.P. Bhandarkar, Advocate for the petitioner.
Mr. S.M. Ukey, Additional Government Pleader for respondent Nos.1, 2 and 5.
Mr. P.S. Patil, Advocate for respondent Nos.3 and 4.

CORAM : DIPANKAR DATTA, C.J. &
V.M. DESHPANDE, J.
DATE : JULY 27, 2021

1. The respondent No.4 / school appointed the petitioner as a teacher sometime in the year 2001. Such appointment, according to the management of the school, was preceded by permission obtained from the Education Officer to fill up the vacant post. It is further claimed by the management of the school that the petitioner was appointed on a vacancy which was reserved for Nomadic Tribe (N.T.) category candidates, pursuant to an advertisement issued by it inviting applications from the eligible candidates.

2. On the contrary, it is the claim of the petitioner that her name was sponsored by the employment exchange pursuant to a requisition received by the Employment Officer

from the management of the school. It is also her claim that she was not appointed on a vacancy earmarked for N.T. category candidates; she was appointed on an unreserved vacant post.

3. After the petitioner's appointment her service was approved by the competent authority. Since approval of her service, the petitioner has been continuing as a teacher in the school.

4. On or about 17th November, 2017, a show cause notice was issued to the petitioner calling upon her to submit caste validity certificate, failing which her services would stand terminated.

5. The petitioner replied to the show cause notice by contending that since she was appointed on an unreserved vacant post, question of production of caste validity certificate does not arise. It was also contended in the reply that since the petitioner's name was sponsored by the employment exchange and that she had not responded to any advertisement issued by the school, it was for the school to establish that the petitioner had secured employment based on any caste certificate. This reply of the petitioner was sent in the form of a legal notice dated 25th November, 2017. Such legal notice was responded to by the

management of the school by a return legal notice dated 18th December, 2017. Significantly, in the notice dated 18th December, 2107, the management of the school did not dispute by reference to relevant documents that the petitioner's claim of her name being sponsored by the employment exchange is incorrect. Additionally, no reference was made by the management of the school to the advertisement pursuant to which she had offered her candidature for appointment for the post of teacher in the school.

6. Close on the heels of such notice dated 18th December, 2017, a termination order was issued by the Secretary of the school dated 25th December, 2017.

7. The termination order dated 25th December, 2017 is the subject matter of challenge in this writ petition.

8. We have read the impugned order of termination. It appears to be a printed order with blank portions filled up by hand. The termination order records that the petitioner had not submitted the caste validity certificate and, therefore, she was not entitled to be continued in service. Pertinently, the order of termination also did not deal with the contention raised by the petitioner in her advocate's legal notice dated 25th November, 2017.

9. Defending the order of termination, Mr Patil, learned Advocate appearing for the management of the school has referred to the reply affidavit dated 26th July, 2021. According to him, resolutions of the management of the school would reveal that the petitioner was appointed on a reserved post and not on an unreserved post as wrongfully claimed by her. However, such affidavit does not refer to any documentary evidence that could be of worth to support the contention of the management of the school that the petitioner was appointed on a post reserved for N.T. candidates. At one paragraph of such affidavit it is pleaded that posts in respect of N.T. (A) and (D) were advertised, whereas in another paragraph, it is pleaded that the petitioner was appointed in a post reserved for N.T. (B). In course of hearing, we had called upon Mr. Patil to place before us the permission granted by the Education Officer to fill up the post. A plea is taken that because of an accident caused by fire, the relevant records are not available. We then called upon Mr. Patil to place before us any certificate that the petitioner might have filed at the time of her recruitment in service claiming that she belongs to N.T. category. No such certificate could be produced as, according to Mr. Patil, the same is misplaced. Next, we called upon Mr. Patil to explain why the contentions raised by the petitioner in her advocate's notice dated 25th November, 2017 were not

dealt with in the legal notice dated 18th December, 2017 as well as in the termination order dated 25th December, 2017. Once again, there has been no explanation from the side of the management of the school.

10. In our considered opinion, the best evidence whereby the petitioner's claim could not have been demolished by the management, has not been produced. The management of the school had initiated adverse action against the petitioner without being in a position to draw support from the relevant documents to show that the petitioner was appointed on a reserved post. In the above view of the matter, we are of the further considered opinion that the management of the school proceeded against the petitioner without the jurisdictional fact of the petitioner having secured appointment on a reserved post being established. Once such jurisdictional fact is not established, we are afraid, the management of the school could not have proceeded to terminate the services of the petitioner on the ground that she had failed to produce the caste validity certificate. Thus, there is no question of the petitioner satisfying the management that employment secured by her was by wrongful means.

11. For the foregoing reasons, we find the action of the management of the school to be indefensible. Accordingly,

the order of termination stands set aside with the result that the petitioner shall be entitled to be reinstated in service forthwith. The petitioner shall be entitled to continuity in service as well as other service benefits. We, however, do not grant any back-wages to the petitioner in view of the affidavit sworn by her on 5th January, 2018 to the effect that her occupation is service.

12. With the aforesaid directions, this writ petition stands disposed of. There shall be no orders as to costs.

(V.M. DESHPANDE, J.) (CHIEF JUSTICE)

Tambaskar.