

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

WRIT PETITION NO.4635 OF 2022

Ravindra Kaur d/o Diwan Singh,
(Maiden name) now married
to Jaswantsingh Gill, aged 49 years,
Occ. Physical Training Instructor in
Saraswati Vidyalaya, Paras,
Tal. Balapur, Dist. Akola

... Petitioner

-vs-

1. The Commissioner Backward Cell,
Commissionerate, Amravati Division, Amravati

2. The Head Mistress, Saraswati Vidyalaya,
Paras, Tq. Balapur, District Akola

3. Saraswati Vidyalaya Shikshan
Prasarak Mandal, through its
President, Paras, Taluka Balapur
District Akola

... Respondents

Shri R. S. Parsodkar, Advocate for petitioner.

Shri A. A. Madiwale, Assistant Government Pleader for respondent No.1.

Shri Rugved B. Dhore, Advocate for respondent Nos.2 and 3.

CORAM : A. S. CHANDURKAR AND ANIL L. PANSARE, JJ.

DATE : December 13, 2022

Judgment : (Per : A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

The petitioner claims to belong to 'Walmiki' Scheduled Tribe. It is her case that in response to an advertisement published by the Management-respondent No.3 she came to be appointed on 07/09/1996 on the post of Physical Training Teacher on probation. Her services were accordingly

approved by the order dated 19/05/1997 with effect from 07/09/1996 until further orders. In the 100 point roster she was shown on a post from the Open category though she belonged to the Scheduled Tribe. The said roster was duly approved by Commissioner Backward Cell on 21/09/2006. Similarly in the subsequent roster, her name was again shown against the Open category and this roster was also approved by the Education Officer (Secondary) as well as the Backward Class Cell on 27/06/2014. Her name was also included in the seniority list prepared by the Management. By the communication dated 07/07/2017 the Research Officer, District Caste Scrutiny Committee, Akola issued a communication to the Headmistress of respondent No.2-School stating therein that though the petitioner was belonging to the Scheduled Tribe category, copy of the roster had not been forwarded and hence the request for issuance of validity certificate in favour of the petitioner came to be returned. Thereafter on 15/06/2022 the Headmistress of respondent No.2-School issued another communication to the petitioner calling upon her to furnish a validity certificate within a period of one month failing which her services were liable to be terminated. Since the petitioner failed to submit the validity certificate, her services came to be terminated by the order dated 30/07/2022 with effect from 31/07/2022. It is in this backdrop that the petitioner has filed the present writ petition raising a challenge to the order of termination and has sought a declaration that since her appointment was in the Open category, furnishing of validity

certificate could not be insisted upon.

2. Shri R. S. Parsodkar, learned counsel for the petitioner submitted that in terms of the roster that was duly approved by the Backward Class Cell and certified by the Education Officer (Secondary) initially on 21/09/2006 and thereafter on 27/06/2014, there was no reason whatsoever to assume that the petitioner was holding a post that was reserved for the candidate from the Scheduled Tribe category. The petitioner was always shown as occupying an unreserved post in the roster. Though her tribe certificate had been forwarded for verification, the same was returned to the School on the ground that the proposal was not accompanied by copy of the roster. The petitioner was not at fault at any point of time and therefore the insistence to produce validity certificate on short notice was unjustified. It was further submitted that the petitioner having served for a considerable period of time, she had acquired the status of a confirmed employee and her services could not be terminated without following the due procedure. The learned counsel relied upon the decision of this Court in Writ Petition No.87/2020 (*Gokul Babarao Kale vs. The Commissioner (Backward Cell), Commissionerate, Amravati Division, Amravati and ors. with connected writ petition*) decided on 24/06/2022 and submitted that the order of termination was liable to be set aside. He prays that other consequential reliefs be also granted to the petitioner.

3. Shri A. A. Madiwale, learned Assistant Government Pleader for respondent No.1 referred to the affidavit in reply filed on behalf of the respondent No.1-Assistant Commissioner, Backward Class Cell. According to him though the petitioner's appointment appears to have been made in the Open category, it would not mean that the petitioner was not required to furnish validity certificate.

Shri R. B. Dhore, learned counsel for the respondent Nos.2 and 3 at the outset submitted that the petitioner ought to invoke an alternate remedy by filing appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the Act of 1977) and hence the writ petition was not liable to be entertained. He further submitted that initially a notice had been issued to the petitioner to furnish validity certificate after which the show cause notices were also given on 12/07/2022 and 22/07/2022. Thereafter the services of the petitioner came to be terminated for failure to furnish validity certificate. No illegality was thus committed by the said respondent and the writ petition was liable to be dismissed.

4. We have heard the learned counsel for the parties and we have perused the documents on record. It can be seen from the record that the petitioner was appointed on the post of Physical Training Teacher on 07/09/1996. Her services came to be approved on 19/05/1997. The 100

point roster as certified on 21/09/2006 and 27/06/2014 clearly indicates that the petitioner was shown occupying an unreserved post. These documents have been countersigned by the Education Officer (Secondary) as well as by the Backward Class Cell. From these documents it can be gathered that the petitioner was occupying a post that was not shown to be reserved. Though the petitioner's tribe certificate was referred for verification, the proceedings were returned to the School on the ground that the copy of the roster duly certified by the Backward Class Cell had not been forwarded. This would indicate that the petitioner was not to be blamed for the return of the proceedings by the Scrutiny Committee. The aforesaid communication was addressed to the Headmistress of the respondent No.2-School.

5. It is true that notices were issued by the Headmistress on 15/06/2022 and 22/07/2022 to the petitioner to furnish the validity certificate. For failure to do so her services have been terminated by the order dated 30/07/2022. In this regard it is necessary to refer to the provisions of the Act of 1977. On completion of the period of probation an employee attains the status of a confirmed employee. The services of a permanent employee cannot be terminated without following the prescribed procedure in view of the provisions of Section 4(6). It is clear from the aforesaid provisions that if the services of a permanent employee are to be put to an end, the procedure

prescribed in that regard has to be complied with. The rights of such permanent employee cannot be taken away by issuing a simple notice and dispensing with his/her services. It is not in dispute that the procedure prescribed for terminating the services of a permanent employee has not been undertaken by the respondent Nos.2 and 3 before the petitioner's services were terminated. We therefore find that the petitioner's services have been terminated in a manner contrary to the provisions of Section 4(6) of the Act of 1977. The order of termination dated 30/07/2022 is therefore liable to be set aside. In absence of any dispute on this factual position, in the facts of the case we do not find it expedient to relegate the petitioner to avail the alternate remedy.

6. The aspect whether the petitioner occupies a post that is shown to be reserved for a candidate from Scheduled Tribe category has to be considered in a proper manner by the respondent No.1 with the assistance of respondent Nos.2 and 3. It is seen from the record and as referred to herein above that the 100 point roster had been verified on two occasions by the competent authority on 21/06/2006 and 27/06/2014. If the appointment of the petitioner is intended to be shown on a post that is reserved, it would be necessary for the respondent No.1 to arrive at such conclusion after granting opportunity to the petitioner as well as respondent Nos.2 and 3 to put forth their stand. The same has however not been done.

7. In view of aforesaid, the following order is passed :

- (i) The order of termination dated 30/07/2022 is quashed and set aside. It is directed that the petitioner shall be re-instated in service with continuity in service alongwith back-wages.
- (ii) It would be open for the Management-respondent Nos.2 and 3 to proceed against the petitioner in accordance with the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 if it proposes to take any action against the petitioner.
- (iii) The respondent No.1 shall examine the records of the respondent Nos.2 and 3 and after hearing the petitioner as well as the respondent Nos.2 and 3 arrive at a decision as to whether the petitioner occupies a post that has been reserved for any candidate from the reserved category. If it is found that the petitioner occupies a reserved post, the respondent Nos.2 and 3 shall take further steps to enable adjudication of the petitioner's claim that she belongs to the Scheduled Tribe category. Subject to such adjudication, the petitioner would be entitled to continue in service as before.

Rule is made absolute in aforesaid terms with no order as to costs.

(Anil L. Pansare, J.)

(A. S. Chandurkar, J.)

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