

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

WRIT PETITION NO. 6855 OF 2019

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| 1) Mahuli Jahagir Shikshan Prasarak Sanstha, through its President Ajay Narayanrao nagone, Aged 53 years, R/o Mahuli Jahagir, Tq. & Dist. Amravati | } | .. Petitioner |
| 2) Bhartiya Vidyalaya, through its Head Mistress Mrs.Nandini Sudhir Nahatkar, Aged 56 years, R/o Mahuli Jahagir, Tq. & Dist. Amravati | } | |

Versus

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| 1) Sachin Sahebrao Khannade, Aged 29 years, Occu. Terminated employee, R/o Ganpati Mandir, Nandgaon Khandeshwar, Tq. Nandgaon Khandeshwar, Distt. Amravati. | } | .. Respondents |
| 2) The Education Officer (Secondary), Zilla Parishad, Amravati, Distt. Amravati. | } | |

Mr. S. M. Vaishnav, Advocate for petitioners.

Mr. Ram Karode, with Mr. Chaitanya Barve,
Advocate for respondent No.1.

Mr. H. D. Dubey, A.G.P. for respondent No.2.

CORAM : MANISH PITALE, J.

DATE : 30/03/2022

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the rival parties.

(2) By this writ petition, the petitioner management has challenged judgment and order dated 07/08/2019, passed by the School Tribunal, Amravati, whereby an appeal filed by the respondent No.1 challenging his termination of service by order dated 27/09/2014, was allowed; the order of termination of service was aside and the petitioners were directed to reinstate the respondent No.1 with a further direction to pay 50% back-wages. It was also recorded that the respondent No.1 will be entitled to all the service benefits by treating him to be in continuous service from the date of termination of service.

(3) On 14/10/2019, while issuing notice in the present writ petition, this Court granted ad-interim stay to the impugned order, which has continued to operate during the pendency of the present writ petition.

(4) The facts in brief leading to filing of the present writ petition are that on 07/11/2008, the respondent No.1 was appointed as Shikshan Sevak by the petitioner No.1 for a period of three years. It is an undisputed position that the respondent No.1 was untrained Shikshan Sevak at the relevant time. It is for this reason that by order dated 12/01/2009, the respondent Education Officer granted approval to the aforesaid appointment of the respondent No.1 as Shikshan Sevak for a period of three years as untrained Shikshan Sevak.

(5) As per Government Resolution dated 13/10/2000, the appointment of an untrained Shikshan Sevak could be made subject to such a Shikshan Sevak acquiring the necessary qualification or training within the aforesaid period of three years. In terms of the said Government Resolution, such an untrained Shikshan Sevak was supposed to submit an undertaking that he/she would acquire the necessary qualification within the period of three years of appointment.

(6) On 06/11/2011, the services of the respondent No.1 stood terminated for the reason that he failed to acquire the necessary qualification in terms of the aforesaid Government Resolution. This

was challenged before the School Tribunal by filing Appeal No. 61 of 2011. In the said appeal, the parties entered into a compromise and a joint pursis was filed, stating that the respondent No.1 would be allowed to complete educational training in the ensuing academic session and that he will not claim any salary or back-wages till the Education Department granted aid to the 5th Standard. On the basis of the said joint pursis filed by the parties, the appeal was disposed of before the Lok-Adalat. Accordingly, the respondent Education Officer extended the period of approval from 07/11/2011 to 06/11/2012.

(7) It is an admitted position that despite the aforesaid developments, the respondent No.1 failed to acquire the necessary qualification. As a consequence, on 27/09/2014, the service of the respondent No.1 was terminated. In the order terminating the services of respondent No.1, it was recorded that the respondent No.1 had failed to acquire the necessary qualification and further, that in the academic session 2013-14, Standard 5th was closed down and in the academic session 2014-15, Standard 6th was also closed down.

(8) The respondent No.1, instead of filing an appeal before the Tribunal to challenge the said order, in the first instance

approached this Court by filing Writ Petition No.7107 of 2014, to challenge the order of termination of service. The said writ petition was withdrawn with liberty to file appeal before the School Tribunal. Consequently, the respondent No.1 filed Appeal No.48 of 2016, before the School Tribunal challenging the order of termination of service dated 27/09/2014.

(9) It is an admitted position that due to dispute within the Management of petitioner No.1, reply/written statement was not filed before the Tribunal and hence, the appeal proceeded ex-parte. On the basis of the material available before the Tribunal, the impugned judgment and order was passed, rendering findings in favour of respondent No.1. It was held that the respondent No.1 was appointed in terms of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as 'M.E.P.S.Act'). It was further held that the order of termination of service was illegal and accordingly the appeal was partly allowed. The order of termination of service was set aside and the respondent No.1 was directed to be reinstated with 50% back-wages.

(10) Mr.S.M.Vaishnav, learned counsel appearing for the

petitioners submitted that the impugned judgment and order passed by the Tribunal is unsustainable for the reason that the appointment of the respondent No.1 could never be said to be in terms of the Section 5 of the M.E.P.S. Act. Much emphasis was placed on the requirement under the said provision that a permanent vacancy ought to be filled by appointment of a person duly qualified for such vacancy. It was submitted that the admitted position on facts in the present case would show that when the initial order of appointment dated 07/11/2008 was issued by the petitioner No.1, the respondent No.1 was admittedly not qualified. Despite expiry of the period of three years from the date of the appointment as an untrained Shikshan Sevak, the respondent No.1 failed to acquire the qualification and therefore, the Tribunal could not have rendered findings in favour of respondent No.1.

(11) It was further submitted that Government Resolution dated 13/10/2000, was absolutely clear and the respondent No.1 having failed to abide by the requirements under the said Government Resolution, it could never be said, either that the order of termination of service was bad or that the appointment of respondent No.1 was in terms of Section 5 of the M.E.P.S. Act.

(12) By relying upon judgments of this Court in the cases of *Smita d/o Manohar Ramteke (Ku.) vs. State of Maharashtra 2016(4) Mh.L.J. 158* and *Narendra Keshao Rao Meshram vs. Presiding Officer, School Tribunal, 2014(3)Mh.L.J 881*, the learned counsel for the petitioners submitted that the impugned judgment and order passed by the School Tribunal was unsustainable and that it deserved to be quashed and set aside.

(13) On the other hand Mr. Karode, learned counsel for the contesting respondent No.1, invited attention of this Court to the Government Resolutions dated 24/05/2007, 02/11/2010, 27/07/2012 and 09/02/2016, to contend that under the aforesaid Government Resolutions the State as a matter of policy had granted repeated extension of time to persons like the respondent No.1 to acquire necessary qualification. It was submitted that the School Tribunal did notice the fact that the respondent No.1 was required to acquire the qualification and it is for this reason that the Tribunal emphasized upon the fact that eventually on 01/09/2017, the respondent No.1 acquired the qualification and that therefore, his appointment had become lawful as contemplated under Section 5 of the M.E.P.S. Act. It

was submitted that since the respondent No.1 was admittedly a person belonging to the backward class, the benefit of the relevant Government Resolutions was correctly granted by the Tribunal, while holding in favour of respondent No.1.

(14) The learned counsel for respondent No.1 submitted that the impugned order of termination of service was passed on the direction issued by the Education Officer, which was impermissible. In this regard, the learned counsel relied upon the judgment of this Court in the case of *Santosh Baliram Dalvi vs. Smt. Bharti Ganpati Jadhav* 2007(3) *Mh.L.J.* 647.

(15) Heard learned counsel for the rival parties and perused the material on record.

(16) In the present case, it is undisputed that the Tribunal proceeded ex-parte, for the reason that the petitioner failed to file any reply/written statement to oppose the appeal filed on behalf of respondent No.1. Even if there was absence of pleadings on behalf of the petitioners, it cannot be disputed that the respondent No.1 was required to demonstrate before the Tribunal that his appointment was

in terms of Section 5 of the M.E.P.S. Act and that the order of termination of service dated 27/09/2014, was illegal and unsustainable. The Tribunal was expected to conduct enquiry by taking into consideration the relevant material available on record.

(17) In the present case, it is an admitted fact that when the respondent No.1 was appointed on 07/11/2008, he was untrained and it is precisely for this reason that the respondent No.2 Education Officer granted approval to the appointment of respondent No.1 for a period of three years, only as an untrained Shikshan Sevak.

(18) The relevant clause of the annexure to the Government Resolution dated 13/10/2000, shows that when such an untrained person was appointed as Shikshan Sevak for a period of three years he/she was mandatorily required to acquire the necessary qualification within the period of three years by his or her effort and costs. It was specifically laid down therein that if such a person failed to acquire the necessary qualification, then he/she will neither be absorbed, nor have a right for reappointment in the said post. The record shows that the respondent No.1 failed to acquire the necessary qualification within the aforesaid period of three years from the date of

his appointment i.e. from 07/11/2008. It is for this reason that his services stood terminated on 06/11/2011.

(19) But the parties chose to enter into a compromise when the aforesaid order of termination of service was challenged before the School Tribunal. The matter was settled before the Lok-Adalat and one of the terms of the settlement was that the respondent No.1 would be permitted to acquire the necessary qualification during the said academic session. It is for this reason that the respondent No.2 Education Officer granted further approval to the service of respondent No.1 for a period between 07/11/2011 to 06/11/2012. The Lok Adalat had passed order on 04/03/2012 on the basis of the aforesaid terms of compromise. It is also an admitted position that even during this period, the respondent No.1 failed to acquire the necessary qualification.

(20) In this backdrop on 27/09/2014, the petitioners issued the order of termination of service, specifically recording that the respondent No.1 had failed to acquire necessary qualification in the stipulated period of time and that standards 5th and 6th had been closed down.

(21) The Tribunal in the impugned judgment and order has recorded that eventually on 01/09/2017, the respondent No.1 acquired the necessary qualification. The Tribunal was clearly conscious of the requirement that the respondent No.1 ought to have acquired the prescribed qualification and that he was appointed only as an untrained Shikshan Sevak by order dated 07/11/2008. It was also recorded that in the absence of acquiring such qualification within the period of three years, the services of the respondent No.1 would be deemed to be terminated. Yet, the Tribunal proceeded to emphasize upon the respondent No.1 having eventually acquired the qualification on 01/09/2017, to hold that even if at the time of appointment, the respondent No.1 was untrained and he admittedly failed to acquire the qualification in the stipulated period of time, by acquiring the qualification subsequently the process of the recruitment had become lawful.

(22) This Court is unable to agree with the reasoning of the Tribunal as it runs counter to the entire scheme contemplated under the Government Resolution dated 13/10/2000 and the consistent position that an untrained person when appointed as a

Shikshan Sevak would have to acquire the necessary qualification within the period of three years of appointment. In fact, in the earlier round of litigation between the parties, the petitioners had agreed for settlement terms, which strictly speaking were in the teeth of the aforesaid scheme. Having been given a further window of opportunity, the respondent No.1 failed to acquire the qualification even in the academic session 2011-12. In this backdrop, it cannot be said that the petitioners were unjustified in issuing the order of termination of service dated 27/09/2014. The order of termination of service specifically records the failure on the part of the respondent No.1 to acquire the necessary qualification, apart from the fact that standards 5th and 6th had been closed down.

(23) The respondent No.1 was also not justified in contending that the order of termination of service was issued only on the directions of respondent No.2 Education Officer. A perusal of the relevant document i.e. the communication issued by the Education Officer would show that it is only a reiteration of the scheme of Shikshan Sevak contemplated under the said Government Resolution. It cannot be said that the order of termination of service was issued

only on the direction of the Education Officer and that there was no material on record justifying such order of termination of service. Therefore, reliance placed by the learned counsel appearing for the respondent No.1 on the judgment of this Court in the case of ***Santosh Dalvi*** (supra), can be of no avail.

(24) Insofar as the Government Resolutions dated 24/05/2007, 02/11/2010, 27/07/2012 and 09/02/2016, upon which the learned counsel appearing for respondent No.1 has placed much reliance, suffice it to say that the said Government Resolutions reflect a policy of the State to grant extensions for acquiring necessary qualification, but the said Government Resolutions nowhere provide that such extension would mean that the services of those untrained Shikshan Sevaks appointed for specific period of three years, subject to the condition of acquiring necessary qualification within the period of three years, could not be terminated for having failed to acquire such qualifications. Therefore, the reliance placed on the Government Resolutions is wholly misplaced.

(25) In this regard reliance placed by the learned counsel appearing on behalf of the petitioners on judgments of this Court in

the case of *Smita vs. State of Maharashtra* (supra) and *Narendra vs. School Tribunal* is justified. It is specifically held in the aforesaid judgments that for an appointment to be held as valid under Section 5 of the M.E.P.S. Act, it has to be shown by the employee that the appointment was made in a permanent vacancy and the person appointed was a duly qualified person and in the prescribed manner. It was held by this Court that as per the scheme contemplated for Shikshan Sevaks in terms of the relevant Government Resolutions, even the candidates belonging to the backward class were mandatorily required to acquire the necessary qualification within the stipulated period of time and failure to acquire such a qualification would make them liable for termination of their services.

(26) In the present case, when the order of termination of service dated 27/09/2014 was issued, the respondent No.1 had failed to acquire the qualification even beyond the mandatory period of three years as stipulated in the Government Resolution and therefore, it cannot be said that such order of termination of service was rendered illegal, merely because the respondent No.1 eventually acquired the qualification on 01/09/2017. The first requirement

demonstrating that the appointment was made as per Section 5 of the M.E.P.S. Act was not at all satisfied by the respondent No.1 in the present case and therefore, the School Tribunal was not justified in allowing the appeal and granting the order of reinstatement with 50% back-wages.

(27) An attempt was made by the learned counsel appearing for the respondent No.1 to claim that the case of the respondent No.1 could be referred to respondent No.2 Education Officer for examining whether respondent No.1 could be declared surplus and absorbed, since he has now acquired the necessary qualification. The said contention cannot be accepted, because the material on record shows that when the service of the respondent No.1 was terminated by order dated 27/09/2014, he had not acquired the necessary qualification and continued to be an untrained candidate. In such a situation, there was no question of the respondent No.1 being declared surplus and then being absorbed elsewhere. Therefore, the aforesaid contention is found to be unsustainable, in the facts and circumstances of the present case.

(28) In view of the above, the writ petition is allowed.

The impugned judgment and order passed by Tribunal is quashed and set aside and the appeal filed by the respondent No.1 stands dismissed. No order as to costs.

(29) Rule made absolute in above terms.

[MANISH PITALE J.]

KOLHE/P.A.