

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11554 OF 2022

Janabai Nivrutti Saune
Age : 31 years, Occu. Service
R/at : At Post – Vadhu Bk.,
Taluka – Shirur,
District-Pune 412216

...Petitioner

Versus

1. Dharmveer Shambhuraje
Shikshan Prasarak Mandal,
Vadhu Budruk,
Through it's President / Secretary
at Post Vadhu Budruk,
Taluka Shirur, District Pune-412216
2. Head Master
Sharadchandraji Pawar Madhyamik Vidyalaya
at Post Vadhu Budruk,
Taluka Shirur, District Pune-412216
3. The Education Officer (Secondary)
Pune Zilla Parishad, Pune
Somwar Peth, Pune-411 011.
4. The Deputy Director of Education
Department of Education (Secondary)
Yashwantrao Chavan Bhawan (Old Building)
Pune Zilla Parishad,
Somwar Peth, Pune-411001.

Mr. Rahul S. Kadam for the Petitioner.

Mr. Kuldeep U. Nikam, a/w. Om N. Latpate for Respondent Nos.1 & 2.

Mr. P. P. Pujari, AGP for Respondent Nos. 3 & 4.

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 22 AUGUST 2023.

PRONOUNCED ON : 25 AUGUST 2023.

JUDGMENT:

1. **Rule.**

2. Rule is made returnable forthwith. With the consent of parties, petition is taken up for final hearing.

3. Petitioner is aggrieved by the judgment and order dated 06 January 2022 passed by the Presiding Officer, School Tribunal, Pune (**Tribunal**). Petitioner had challenged order dated 01 February 2020 terminating her service w.e.f. 06 February 2020 in her Appeal No.14 of 2020 before the Tribunal. The Tribunal has proceeded to allow the appeal holding that Petitioner's termination was against the provisions of law. However instead of granting reinstatement, the Tribunal has directed the management to pay 6 months' salary to her in lieu of compensation as per Section 11 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act 1977 in addition to costs of

Rs.10,000/-. Petitioner is aggrieved by the judgment and order of the Tribunal to the extent of denial of relief of reinstatement in service.

4. Briefly stated, facts of the case are that Petitioner holds educational qualification as H.S.C., D.Ed. She belongs to Special Backward Class (S.B.C.) category. An advertisement was issued by the respondent management for filling up the post of Assistant Teacher on 29 February 2012. Petitioner applied in pursuance of the advertisement and came to be selected and appointed on the post of Assistant Teacher vide order dated 01 January 2013.

5. Shortly after appointment of Petitioner, two more Assistant Teachers Vede Shahaji Baban and Bhandare Sharad Subhash were appointed as Assistant Teachers on 01 March 2013. The Education Officer (Secondary), Zilla Parishad, Pune granted approval to petitioner's appointment vide order dated 17 July 2014. By the same order, approval was also granted to appointment of other two teachers Vede Shahaji Baban and Bhandare Sharad Subhash.

6. Petitioner's services were terminated on 08 August 2017 on account of cancellation of approval by the Education Officer vide letter dated 01 August 2017. She challenged the termination order by filing appeal No.06 of 2018 before the Tribunal. The appeal was partly allowed setting aside the termination order and directing respondent management to reinstate her in service. Petitioner was accordingly reinstated in service.

7. It appears that a letter was issued to Petitioner on 15 November 2019 giving her an intimation that she was rendered surplus in accordance with sanctioned strength approved for the year 2015-16 to 2018-19. Accordingly, termination order dated 01 August 2020 was issued to Petitioner terminating her service with effect from 06 February 2020 on the ground that one post of Assistant Teacher for 5th Standard was reduced in the approved sanctioned strength of the school for the year 2015-16 to 2018-19 and the post held by the Petitioner against S.B.C. reservation was rendered surplus.

8. Petitioner challenged the termination order dated 01 November 2020 before the Tribunal by filing appeal No.14 of 2020. Respondent management filed reply resisting the appeal. The Tribunal by its judgment and order dated 06 January 2022 proceeded to partly allow the appeal holding that termination of Petitioner was illegal. However, it refused to grant relief of reinstatement, but granted compensation in the form of 6 months' salary in addition to costs of Rs.10,000/-. Petitioner is aggrieved by the judgment and order dated 06 January 2022 to the extent of denial of relief of reinstatement and has accordingly filed the present petition.

9. Mr. Kadam, the learned counsel appearing for Petitioner would submit that the Respondent management did not follow the principle of 'last come first go' while terminating Petitioner's services. He would invite my attention to the approval dated 14 July 2014 to

demonstrate that petitioner is senior to Vede Shahaji Baban and Bhandare Sharad Subhash and that if there was indeed any abolition of any post, the juniormost teacher viz. Bhandare Sharad Subhash ought to have been terminated. He would further submit that this point was specifically raised in paragraph No.12 of the appeal, but has not been decided by the Tribunal.

10. Mr. Kadam would place reliance on Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Services) Rules, 1981 (**Rules of 1981**) in support of his contention that for effecting retrenchment on account of abolition of posts, principle of seniority is required to be followed in addition to obtaining prior approval of the Education Officer. He would also place reliance on Rule 27(e) in support of his contention that members of Backward Class already in service cannot be terminated even though they are liable to be retrenched as per principle of seniority. He would also invite my attention to the reservation roster, under which the Respondent management has appointed teachers from open category in excess of the sanctioned strength. That therefore if at all there was any need for retrenchment on account of surplus staff, Respondent management ought to have terminated services of Bhandare Sharad Subhash, who was appointed in General Category in excess of the sanctioned strength. Lastly, Mr. Kadam would submit that Petitioner has not been paid salary since the year 2013 and despite there being a specific prayer demanding salary from 2013 in the appeal, the Tribunal has not adjudicated the said prayer. He would

therefore pray for setting aside the impugned judgment and order of the Tribunal.

11. *Per contra* Mr. Nikam, the learned counsel appearing for Respondent Nos.1 and 2 would oppose the petition and support the order passed by the Tribunal. He would submit that till the academic year 2013-14, there were total 04 posts of undergraduate teachers for standard 1st to 5th, out of which two were aided and two were unaided. That during the academic year 2014-15 one post was reduced and only three posts were sanctioned, out of which two were aided and one was unaided. The same position continued till the academic years 2014-15 and 2015-16. That though post held by Petitioner was not sanctioned from the academic year 2014-15 onwards, Respondent management continued her services till the year 2020. That her services were required to be terminated in the year 2020 as the post occupied by her remained surplus for four to five years before her termination.

12. Mr. Nikam would further submit that the order dated 14 July 2014 relied upon by Petitioner does not reflect seniority position of Assistant Teachers. He would distinguish between case of Petitioner and other two Assistant Teachers Vede Shahaji Baban and Bhandare Sharad Subhash by pointing out that they are Graduate Teachers drawing higher pay scale. He would submit that Petitioner being Undergraduate Teacher, was the junior most and has rightly been terminated. That therefore there is no violation of Rule 26 as alleged by the Petitioner. So

far as the reliance of the Petitioner on Rule 27 is concerned, Mr. Nikam would point out that the special provision under Rule 27(e) is subject to the caveat of the strength of Backward Class teacher falling within the permissible percentage of reservation. He would submit that as per the reservation roster, no post is sanctioned for S.B.C. category and Petitioner was erroneously continued in absence of any reservation for S.B.C. category. So far as non-payment of salary from the year 2013 is concerned he would submit that Respondent management has paid salary to Petitioner from time to time. He would pray for dismissal of the petition.

13. Rival contentions of the parties now fall for my consideration.

14. The Tribunal has already held the termination order to be bad in law on account of failure to give prior notice to the Petitioner or failure to pay salary in lieu of such notice. The Respondent-Management has not challenged the order of the Tribunal. Thus, the illegality in termination order, to the extent of failure to give notice, is admitted by the Respondent-Management.

15. Petitioner is aggrieved by denial of relief of reinstatement by the Tribunal despite finding termination order to be illegal. It is Petitioner's case that she was not the junior most employee who could be terminated on account of abolition of post. Additionally, it is Petitioner's case that since she belongs to Backward Class, her service could not have been terminated even if retrenchment was necessitated on account of

abolition of posts. It is on these grounds that Petitioner has claimed the relief of reinstatement in the present petition. I accordingly proceed to examine the said contentions raised by the Petitioner.

16. So far as the issue of seniority is concerned, it must be observed that Petitioner has not placed on record any seniority list. Petitioner admittedly is a Undergraduate Teacher holding educational qualifications of H.S.C. D.Ed. She has erroneously treated communication dated 14 July 2014 of the Education Officer as the seniority list of Assistant Teachers. By that communication, Education Officer had granted approval to the appointment of the Petitioner. By no stretch of imagination, said communication can be treated as seniority list of Assistant Teachers. Therefore merely because names of Vede Shahaji Baban and Bhandare Sharad Subhash are included at serial Nos.4 and 5 against reflection of Petitioner's name at serial No.3 in that communication, it cannot and does not mean that Petitioner becomes senior to the said two teachers. Vede Shahaji Baban and Bhandare Sharad Subhash possess higher educational qualifications of B.Sc. and B. Ed. and are thus appointed as Graduate Teachers. While Petitioner was teaching students in class 1st to 5th, appointment of the said two teachers is for teaching students in higher grades. In addition to educational dissimilarity, the communication dated 14 July 2014 indicates that while Petitioner was placed in pay band of Rs.5200-20200, the said two teachers were granted higher pay band of Rs.9300-34800. Thus, there can be no comparison between Petitioner and the said two teachers. On

account of her prior appointment on 08 January 2013, petitioner cannot contend that she is senior over said two teachers appointed on 01 March 2013. Petitioner has accordingly failed to prove that she is senior over the said two teachers.

17. Petitioner has relied on provisions of Rule 26 of the Rules of 1981. Sub-Rule 1 and 2 of Rule 26 provides thus-

“26. Retrenchment on account of abolition of posts

(1) A permanent employee may be retrenched from service by the Management after giving him 3 months' notice, on any of the following grounds, namely:

- (i) reduction of establishment owing to reduction in the number of classes or divisions;
- (ii) fall in the number of pupils resulting in reduction of establishments;
- (iii) change in the curriculum affecting the number of certain category of employees;
- (iv) closure of a course of studies;
- (v) any other *bona fide* reason of similar nature.

2) The retrenchment from service under sub-rule (1) shall be subject to the following conditions, namely:-

- (i) The principle of seniority shall ordinarily be observed;
- (ii) Prior approval of the Education Officer in the case of Primary and Secondary Schools or, of the Deputy Director in the case of Higher Secondary Schools and Junior Colleges of Education shall be obtained by the Management in each case of retrenchment including such cases in which the principle of seniority as proposed to be departed from and a senior member of the staff is proposed to be retrenched when a junior member should have been retrenched, stating the special reasons therefor;
- (iii) The employees from aided schools, whose services are proposed to be retrenched shall be absorbed by the Education Officer in the case of Primary and Secondary Schools or by the Deputy Director in the case of Higher Secondary Schools and

Junior Colleges of Education. The order of absorption of such employees shall be issued by registered post acknowledgment due letter, and till they are absorbed, the Management shall not be permitted to effect retrenchment on account of any reasons mentioned in sub-rule (1).”

18. True it is that under clause (i) of Sub-Rule 2 of Rule 26, retrenchment from service is subject to the principle of seniority. However, in the present case Petitioner is unable to prove that she is not the junior most Undergraduate Teacher in the school. The Respondent-Management has taken a specific stand that she is the junior most Undergraduate Teacher. So far as clause (ii) of Sub-Rule 2 of Rule 26 is concerned, since there is no departure from the principle of seniority, the question of seeking prior approval of the Education Officer does not arise. Therefore, reliance of Petitioner on provisions of Rule 26 is of little assistance to her case.

19. Petitioner has also contended that her appointment is against reserved post in S.B.C. category and that therefore she is not liable to be terminated. Petitioner herself has relied upon reservation roster which show that ‘Nil’ posts of Assistant Teachers are reserved for S.B.C. category. The Respondent-Management has stated in the termination order that one post of Assistant Teacher in S.B.C. category is required to be abolished as per the approved strength. I find this assertion in the termination to be factually correct.

20. Petitioner has placed reliance on provisions of Rule 27 (e) which reads thus (e)-

“27. Principles of Termination of Service in the event of retrenchment.

(a)...

(b)...

(c)...

(d)...

(e) When any retrenchment is to be effected, members of Backward Classes already in service shall not be retrenched though liable to retrenchment according to their seniority, if their strength in the school does not exceed the percentage of reservation prescribed in sub-rule (7) of Rule 9. In their place, an equal number of other Non-Backward Class members of the staff shall be rendered subject, however, to the condition that, as between the permanent and temporary employee, the temporary employee shall be retrenched irrespective of the fact that he belongs to the Backward Class.”

21. By relying on clause (e) of Rule 27, it is sought to be contended by Petitioner that since she belongs to reserved category, she is not liable to be terminated even if her post was to be abolished. However this direction is subject to a caveat that the strength allotted to reserved category does not exceed the percentage of reservation prescribed. From the reservation roster it is apparent that no post is reserved for S.B.C. category. Thus, occupation of post by Petitioner exceeds percentage of reservation and therefore she cannot be permitted to rely upon clause (e) of Rule 27.

22. The last contention of the Petitioner is about non consideration of prayer for award of salary since year 2013. Perusal of the

order of the Tribunal indicates that this prayer of the Petitioner is not specifically dealt with. However I find that the main grievance of the Petitioner in her appeal was about her termination. She was never aggrieved by the nonpayment or insufficient payment of salary as she did not institute any independent proceedings claiming salary prior to her termination. The claim for payment of salary since the year 2013 was otherwise time barred in appeal filed in the year 2020. I therefore do not find any reason to remand the appeal for decision of prayer for payment of salary since the year 2013.

23. Resultantly, I find that no error is committed by the Tribunal in denying the relief of reinstatement of Petitioner. For technical violation of non-issuance of notice, the Tribunal has already awarded salary of six months to Petitioner by way of compensation. The Tribunal has further awarded costs of Rs.10,000/- in favour of Petitioner. In my view no case is made out for interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India in the order of the Tribunal.

24. The order of the Tribunal is thus unexceptionable. Writ Petition, being devoid of merits, is dismissed without any order as to costs.

25. Rule is discharged.

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SANDEEP V. MARNE, J.