

AGK

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

WRIT PETITION NO.8223 OF 2004

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Sanjay Vaman Chavan,
Age 35 years, A/p: Shiposhi,
Taluka Lanja, District: Ratnagiri

... Petitioner

V/s.

- 1. The President,**
Shiposhi Shikshan Prasarak Mandal
A/p.: Shiposhi, Taluka Lanja,
District: Ratnagiri
- 2. The Secretary,**
Shiposhi Shikshan Prasarak Mandal
A/p.: Shiposhi, Taluka Lanja,
District: Ratnagiri
- 3. The Chairman,** School Committee
Shiposhi Shikshan Prasarak Mandal
A/p.: Shiposhi, Taluka Lanja,
District: Ratnagiri
- 4. The Head Master,**
Nya. V.V. Athalye Vidyamandir & Jr.
College, Shiposhi, Taluka Lanja,
District: Ratnagiri
- 5. The Education Officer**
(Secondary), Zilla Parishad,
Ratnagiri.
- 6. The State of Maharashtra,**
through the Additional Government
Pleader, High Court, Bombay.
- 7. The learned Presiding Officer,**
School Tribunal, Kolhapur.

... Respondents

Mr. Nitin A. Kulkarni for the petitioner.

Ms. Lata Desai, Senior Advocate with Dr. Pallavi Divekar & Mr. Siddhant Varunkar i/by Dr. Pallavi Divekar for respondent No.2.

Mr. S.D. Rayrikar, AGP for respondent Nos.5 and 6/State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 23, 2024

ORAL JUDGMENT:

- 1. Rule.** The matter is already shown on the final hearing board as per the order dated 27 June 2013.
- 2.** The petitioner (Junior Clerk) is challenging the order of the School Tribunal dismissing the appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the said Act" for short) seeking relief of reinstatement with back wages.
- 3.** According to the petitioner, he was appointed to the post of Junior Clerk in respondent No.4/School. According to him, his father was Chairman of the Student's Aid Committee and Founder of respondent No.1/society who died on 12 September 1987. The petitioner was in need of service and was qualified for the post of Junior Clerk. He applied to the respondent No.1/Society for his appointment on compassionate grounds. The respondent/Management accordingly passed a resolution on 21 August 1991

and issued an appointment order on 1 October 1991. The petitioner was initially appointed for the period from 1 October 1991 to 30 April 1992. The petitioner was thereafter appointed on probation for two years by appointment order dated 8 April 1992. According to the petitioner, his appointment was on permanent and vacant post. However, relying on communication issued by the Education Officer dated 22 September 1992, the Management terminated the services of the petitioner on 26 September 1992.

4. Initially, the petitioner challenged termination by way of Writ Petition No.4181 of 1992. However, he withdrew the writ petition and filed an appeal under Section 9 of the said Act.

5. Respondent No.1/Management contested the appeal by pointing out that the petitioner's father died on 12 September 1987. The petitioner submitted his applications on 15 August 1991 and 21 September 1991 and was, therefore, not eligible for appointment on compassionate grounds. The Management appointed the petitioner to the post of Junior Clerk with effect from 1 October 1991 till 30 April 1992, subject to the approval of the Education Officer. The Education Officer rejected approval on various grounds mentioned in the order. It is also contended that the due procedure required to be followed under Section 5(1) of the said Act was not followed while appointing the petitioner. According to the Management, the post of Senior Clerk was occupied by an open category candidate and, therefore, the post of Junior Clerk was reserved for a candidate belonging to the SC category as per the 100-point roster.

6. The Education Officer filed a reply stating that the Resolution passed by the Management was for the appointment of the petitioner on a compassionate basis. However, in the appointment order, the petitioner was appointed against the post reserved for a candidate belonging to the SC category. The approval for the petitioner's appointment was initially refused and, therefore, the petitioner is not entitled to the relief.

7. The School Tribunal after granting the opportunity of hearing to both sides dismissed the appeal on the following four grounds: (i) due procedure as required under Section 5(1) of the said Act by issuing advertisement was not followed before the appointment of the petitioner; (ii) the appointment order dated 1 October 1991 indicates that the petitioner was appointed against a post reserved for candidate belonging to SC category; (iii) the Education Officer refused approval to the post of the petitioner by order dated 19 April 1991 as per Rule 9(9)(b) of the Rules; and (iv) the Education Officer by a communication dated 16 November 1991 had informed the Management about three surplus Clerks who were required to be absorbed. The School Tribunal based on aforesaid grounds rejected the appeal. Hence, the petitioner has filed a present writ petition.

8. Learned advocate for the petitioner invited my attention to the impugned order, resolution, appointment orders dated 1 October 1991 and 8 April 1992 and order refusing approval dated 26 September 1992 to urge that the reasons mentioned in the termination order have not been held to be improper by the School Tribunal. The School Tribunal could not have dismissed the appeal

on the grounds that is not mentioned in the termination order. He submitted that the roster placed before the School Tribunal indicates that the post of Junior Clerk was reserved for open-category candidates. He submitted that initially the approval was granted to the petitioner. Hence, the School Tribunal was not justified in dismissing the appeal.

9. Per contra, learned Senior Advocate on behalf of the Management/respondent No.1 invited my attention to the case pleaded by the petitioner to the effect that the father of the petitioner was a Founder Member and Chairman of the Sports Committee in the school. He died in the year 1987. The petitioner applied in the year 1991 and, therefore, he was not eligible for appointment on a compassionate basis. She submitted that the original Resolution of the appointment of the petitioner was subsequently modified to insert the expression "compassionate appointment". There is a discrepancy in the Resolution and the order of appointment. The initial appointment of the petitioner was sent for approval to the Education Officer which was rejected by giving reasons which are mentioned by the School Tribunal.

Relying on the judgment in **A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Parilanai Sangam & Ors.** reported in (2012) 6 SCC 430, she submitted that the petitioner is invoking extraordinary constitutional jurisdiction and, therefore, his conduct dis-entitles him from seeking any relief as the petitioner has failed to disclose material facts and documents. She, therefore, submitted that the writ petition is liable to be dismissed.

10. Learned AGP invited my attention to the reply filed by the Education Officer to urge that the approval was rejected by the Education Officer since the appointment of the petitioner was not in accordance with law and, therefore, the Management has rightly terminated the services and the School Tribunal's order does not require interference.

11. Having heard Advocates for the parties, in my opinion, the judgment and order of the School Tribunal does not suffer from any legal infirmity.

12. As stated earlier, the School Tribunal has dismissed the appeal by assigning four reasons, which are stated in aforesaid paragraph No.6. The first reason assigned by the School Tribunal is the absence of due procedure by the Management. In this context, it needs to be noted that according to the petitioner, his appointment was on a compassionate basis. Once it is the petitioner's positive case that his appointment was on a compassionate basis, he cannot expect to treat him as a regular candidate. It is not in dispute that the petitioner's father was not an employee of the respondent No.1/Trust. Moreover, the petitioner's father expired in the year 1987 and he applied for appointment only in the year 1991. Therefore, he could not have been appointed on a compassionate basis. The Resolution placed on record indicates that the petitioner was appointed on a compassionate basis. However, the order of appointment placed on record indicates that the petitioner was appointed against the candidate belonging to the backward class. The net result of the discussion is that the petitioner was ineligible to be appointed on a

compassionate basis. Even if he is treated as an open category candidate, undisputedly no procedure for appointment such as advertisement and interview was followed before the petitioner's appointment and, therefore, the findings of the School Tribunal that the petitioner's appointment was without following due process of law need not be interfered with.

13. The next ground for dismissal of the appeal is that the appointment of the petitioner is against the post reserved for candidates belonging to the backward class. To consider the validity of the said ground, the reply filed by the respondent needs to be considered about the documents on record. The order of refusal to approve the petitioner's appointment dated 16 November 1991 refers to the proposal of the Management dated 19 October 1991. In the proposal, the institution stated that the institution had carried forward the backlog of reservations and, therefore, relying on Rule 9(9)(b) of the 1981 Rules, the Education Officer refused to approve the petitioner's appointment. Though the learned Advocate for the petitioner submitted that as per the roster, the point of Junior Clerk is reserved for candidates belonging to the open category, in my opinion, the other grounds assigned by the School Tribunal for dismissal of the appeal are sufficient for refusing to interfere with the order of the School Tribunal.

14. The next ground for dismissal of the appeal is the availability of surplus candidates and its communication by the Education Officer to the Management which were required to be absorbed. In that regard, there is no dispute on the said fact. However,

according to the petitioner, in the absence of such ground being mentioned in the order of termination, the School Tribunal could not have dismissed the petitioner's appeal. In my opinion, the order dated 16 November 1991 refusing to approve the petitioner's appointment on the ground of failure to absorb three surplus candidates required as per Circular dated 3 April 1991 the findings recorded by the School Tribunal need not be interfered with.

15. On over consideration of the facts of the case, it is evident that once the petitioner claims to be appointed on a compassionate basis and fails to prove due procedure and eligibility, no legal infirmity in the School Tribunal's order is found. The view taken by the School Tribunal is a possible view. Therefore, no interference in the writ jurisdiction is called for.

16. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)