

(2016) 04 BOM CK 0211

BOMBAY HIGH COURT

Case No: Writ Petition No. 10070 of 2011 along with Civil Application No. 804 of 2016.

Namdeo Sukdeo
Saptale

APPELLANT

Vs

Chairman, Kai
Ramchandra Patil
Shikshan Sanstha,
Kunikonur and Others

RESPONDENT

Date of Decision: April 5, 2016

Acts Referred:

- Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 - Rule 2(1)(k), 28, 6

Citation: (2016) 3 ALLMR 828 : (2016) 3 MhLJ 827

Hon'ble Judges: R.D. Dhanuka, J.

Bench: Single Bench

Advocate: S.G. Deshmukh i/b. Abhijeet Kandarkar, Advocates, for the Appellant; Ramdas Shelke, Advocate and Vaishali Nimbalkar, A.G.P, for the Respondent

Final Decision: Disposed Off

Judgement

R.D. Dhanuka, J. - By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has impugned the order and judgment dated 17th October, 2011 passed by the school tribunal thereby dismissing the appeal filed by the petitioner impugning the order of termination dated 25th June, 2008 terminating his services passed by the respondent nos. 1 and 2. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. The respondent no. 1 had established an aided school by name Shri Hudebaba High School, Kunikonur, Tal. Jat, Dist. Sangli. The petitioner belongs to the S.C. category. On or about 4th January, 2006 the petitioner was appointed on probation for a period of two years on clear permanent vacancy. On the date of the

appointment of the petitioner, the petitioner had already completed the required qualification of B.A.B.Ed., B.P.Ed. Shiksha Visharad. When the respondent no.1 had started the said school in the year 1990, initially there was a division of 8th standard. During the next two years 9th and 10th standards were set up. In the academic year 1999-2000 the respondent no.1 management opened the division of 5th standard. In the year 2002, the said school became full fledged school having 5th to 10th standard. Since 2000, grant-in-aid has been granted to the 8th to 10th standard. Thereafter in respect of 5th to 7th standard the school started receiving partial grant-in-aid. There is no dispute that since year 2008, the school has been getting 100% grant-in-aid.

3. There were three posts in D.Ed. category and 1 post in B.Ed. category in the school run by the respondent no.1. After appointing the petitioner in the said post, the respondent no.1 forwarded the proposal of the petitioner to the Education Department for approval. The Education Officer passed an order refusing to grant approval to the appointment of the petitioner on the ground that the petitioner was not having qualification of D.Ed and was accordingly an untrained teacher. Based on the refusal of the approval of the Education Officer, the respondent nos.1 and 2 passed an order of termination of the services of the petitioner by letter dated 25th June, 2008. This order of termination by the respondent nos. 1 and 2 came to be challenged by the petitioner by filing an appeal (55 of 2008) before the School Tribunal, Kolhapur. The education officer filed an affidavit before the school tribunal contending that since the petitioner herein belonged to the reserved category having qualification of B.A.,B.Ed., B.P.Ed. and was appointed on D.Ed. vacancy, in lieu of the judgment delivered by this court in Writ Petition No. 4159 of 1998 on 5th May, 2000, the candidate holding B.Ed. degree could not be treated as the qualified teacher for a primary school.

4. Insofar as respondent nos. 1 and 2 management is concerned, it was contended by them that the respondent no.1 school had appointed the petitioner on probation for the standard 5th to 7th which were unaided divisions at the relevant time. The management however admitted that the work and behaviour of the petitioner was satisfactory. In the letter of termination issued by the respondent nos. 1 and 2, it was however mentioned that the services of the petitioner was terminated in view of the education officer refusing to grant an approval to the appointment of the petitioner. The presiding officer of the school tribunal passed an order dated 17th October, 2011 dismissing the appeal filed by the petitioner.

5. Mr. Deshmukh, learned counsel for the petitioner invited my attention to the advertisement issued by the respondent no.1 management for the said post on which the petitioner was appointed, the letter of appointment issued by the respondent no.1 appointing the petitioner as assistant teacher for a period of two years probation, the order passed by the education officer, letter of termination issued by the respondent nos. 1 and 2 and the affidavits filed by the management as

well as the education officer before the school tribunal and various findings and conclusions drawn by the school tribunal in the impugned order.

6. It is submitted by the learned counsel for the petitioner that the petitioner was admittedly appointed as an assistant teacher in the clear and permanent vacancy. He submits that the petitioner belonged to the S.C. Category and was possessing B.A.,B.Ed., B.P.Ed. Shiksha Visharad though was appointed in the post reserved for D.Ed and was thus qualified and a trained teacher. He submits that the education officer has not granted approval to the appointment of the petitioner merely on the ground that the petitioner did not have D.Ed. qualification but had B.Ed. degree. He submits that the management could not have terminated the services of the petitioner on the ground that his appointment was not approved by the education officer.

7. Learned counsel for the petitioner invited my attention to the various paragraphs of the impugned order passed by the school tribunal. He submits that the school tribunal has considered the judgment of this Court in case of Jayashri Chavan v. State of Maharashtra, 2000(3) Mh.L.J. 605 which had taken a view that the teacher holding qualification of B.Ed or B.P.Ed. could not be considered as equivalent to D.Ed and cannot be considered as a trained teacher. My attention is also invited to the judgment of Supreme Court in case of State of Maharashtra and Ors. v. Tukaram Tryambak Chaudhari and Ors., 2007 AIR SCW 1321. He submits that the Supreme Court has considered this issue at great length and has approved the judgment of this court delivered by Division Bench in case of Kondiba s/o.Dattarao Mirashe v. State of Maharashtra and others reported in 2003(2) Mh.L.J. 432. He submits that the Supreme Court in the said judgment has held that the decision rendered by this court in case of Kondiba (supra) is closure to the facts of that case. The Supreme Court noticed that the Government resolution dated 14th November, 1979 was not pointed out before the Full Bench in case of Jayshri Chavan (supra) and accordingly the Full Bench of this court rendered a conflicting view with regard to the eligibility of a graduate holding the B.Ed. degree to be appointed in the primary school. He submits that since the order and judgment delivered by the school tribunal is based on the judgment of Full Bench which is not approved by the Supreme Court in case of State of Maharashtra v. Tukaram Tryambak Chaudhari (supra), the judgment of school tribunal deserves to be set aside on that ground alone.

8. Learned counsel for the petitioner also placed reliance on the judgment of this court delivered on 12th March, 2008 in case of Govind Narayan Gunajal v. The State of Maharashtra and Ors. in Writ Petition No.6437 of 2007 and would submit that the Division Bench of this court after considering the judgment of Supreme Court in case of State of Maharashtra v. Tukaram Tryambak Chaudhari (supra), has categorically held that a person/individual qualified as B.A., B.Sc./B.Ed., B.P.Ed., is entitled to be considered as trained teachers if he is employed with primary schools with standards 5th to 7th. He also placed reliance on the judgment of this court

delivered by the learned Single Judge in case of Anil B. Honmane v. The Chairman, Kai Ramchandra Patil Shikshan Sanstha and Ors. in Writ Petition No.2123 of 2010 dated 1st December, 2011 holding that the petitioner who held qualification of B.A.Ed. and who is appointed in D.Ed. scale should be considered as trained teacher. He submits that this court after considering the Government resolution issued by the Government dated 11th November, 2011 has set aside the order of termination of his services and directed Education Officer to accord approval for appointment of the teacher holding B.Ed.degree.

9. Learned counsel appearing for the respondent nos. 1 and 2 submits that there is no dispute that the petitioner has been working in the school managed by the respondent no.1 since the date of appointment till date and is qualified to be appointed as assistant teacher holding B.A., B.Ed., B.P.Ed qualification. He submits that service of the petitioner was terminated in view of the order passed by the education officer refusing to grant approval to the appointment of the petitioner. He does not dispute the proposition of law canvassed by the learned counsel by the petitioner based on the judgment of the Supreme Court in case of State of Maharashtra v. Tukaram Tryambak Chaudhari and Ors. (supra).

10. The learned A.G.P. appearing for the education officer however opposes this petition on the ground that the appointment of the petitioner was made by the management without obtaining prior approval of the education officer before issuance of any advertisement. She submits that a copy of such advertisement was not submitted before education officer when proposal for approval was filed by the management. She submits that the school tribunal has considered this issue in the impugned order and has rightly held that the appointment of the petitioner was not approved by the education officer also on various other grounds and not only on the ground that he did not have D.Ed qualification on the date of his appointment. It is submitted by the learned counsel that the school tribunal rightly applied the judgment of Full Bench of this court in case of Jayashri Chavan(supra).

11. Mr. Deshmukh, learned counsel appearing for the petitioner in rejoinder would submit that the education officer has not rejected the approval to the appointment of the petitioner on the ground that the respondent no.1 management had not obtained any prior approval of the education officer before issuing any advertisement for the said post of assistant teacher. He submits that the petitioner has annexed a copy of such advertisement issued by the respondent no.1. It is submitted that as no such issue was raised either by the management or by the education officer before the school tribunal, the school tribunal on its own could not have considered any such issue without giving any opportunity to the petitioner to deal with the same. It is submitted that in the order passed by the education officer, the only ground for rejection was that since the petitioner did not have qualification of D.Ed. on the date of his appointment in the school run and management by the respondent no.1, the petitioner could not be considered as a trained teacher. He

submits that the education officer thus cannot be allowed to supplement the reasons for not granting approval to the post of assistant teacher across the bar before the school tribunal or before this court.

12. A perusal of the record indicates that the petitioner belonged to scheduled caste and was already holding qualification of B.A., B.Ed., B.P.Ed. Shiksha Visharad on the date of his appointment. The petitioner was appointed on the probation for a period of two years on 4th January, 2006 on clear and permanent vacancy.

13. A perusal of the order passed by the education officer indicates that the approval to the appointment of the petitioner to the post of the assistant teacher was not granted merely on the ground that the petitioner did not have qualification of D.Ed. and thus could not have been considered as a trained teacher. There is no dispute that the order passed by the respondent no.1 thereby terminating the services of the petitioner was only on the ground that the education officer had not approved the appointment of the petitioner. In my view the services of the petitioner could not have been terminated by the respondent no.1 management on the ground that his approval was not granted by the education officer. There is no provision in the provisions of M.E.P.S. Act for termination of services of the teacher on the ground that approval is not granted by the education officer. In my view the respondent no.1 thus could not have terminated the service of the petitioner on this ground.

14. Insofar as the reasons recorded by the school tribunal while dismissing the appeal filed by the petitioner is concerned, a perusal of the said order indicates that the school tribunal has rejected the appeal filed by the appellant mainly on the ground that the Full Bench of this court in case of Jayshri Chavan (supra) has taken a view that B.Ed. or B.P.Ed. qualification could not be treated as equivalent to D.Ed. and since the appellant was not having qualification of D.Ed. at the time of appointment, he could not have been appointed to the said post of assistant teacher.

15. Supreme Court in case of State of Maharashtra v. Tukaram Tryambak Chaudhari and Ors. (supra) has considered the Government resolution issued by the State Government dated 14th November, 1979 which described that the teacher holding B.Ed. qualification also could be appointed in the post meant for D.Ed and could be qualified as a trained teacher. Supreme Court held that the said Government resolution however was not brought to the notice of this court in case of Jayshri Sunil (supra) and accordingly Full Bench took an inconsistent view. The Supreme Court has approved the judgment of Division Bench in case of Kondiba Dattarao Mirashe (supra) having found the said decision closer to the facts of the case before the Supreme Court. The facts before the Supreme Court in case of State of Maharashtra v. Tukaram Tryambak Chaudhari and Ors. (supra) in my view are identical to the facts of this case and squarely applies to the facts of this case. In my view since the judgment delivered by the Full Bench of this court in case of Jayshri

Chavan(supra) is found inconsistent with the view taken by the Supreme Court in case of State of Maharashtra and Ors. v. Tukaram Tryambak Chaudhari and Ors., the order and judgment of the school tribunal based on the judgment of Full Bench of this court thus deserves to be set aside.

16. The judgment of Supreme Court in case of State of Maharashtra v. Tukaram Tryambak Chaudhari and Ors. (supra) has been also followed by Division Bench of this court in case of Govind Narayan Gunajal v. The State of Maharashtra and Ors.(supra) and it is held that the person/individual qualified as B.A., B.Sc./B.Ed., B.P.Ed., are entitled to be considered as trained teachers. In my view the judgment of Division Bench of this court also squarely applies to the facts of this case. Admittedly the petitioner was having qualification of B.A.B.Ed., B.P.Ed. Shiksha Visharad on the date of his appointment and thus has to be considered as a trained teacher on the date of his appointment. The learned Single Judge of this court in case of Anil B. Honmane (supra) after considering the Government resolution dated 11th November, 2011 has held that the teacher who held qualification of B.A.Ed. and who is appointed in D.Ed. scale should be considered as trained teacher. In my view the said judgment of Single Judge of this court in case of Anil B. Honmane (supra) also squarely applies to the facts of this case and is binding on this court. Since the view taken by the school tribunal is contrary to the law laid down by the Supreme Court and Division Bench and single judge of this court, the same is contrary to the law and thus deserves to be set aside. In my view the said Government resolution has removed the doubt that the teacher who holds qualification as B.Ed. and is appointed in D.Ed. scale should be considered as trained teacher.

17. Insofar as submission of the learned A.G.P. that the appointment of the petitioner could not have been approved by the education officer also on the ground that the management had not obtained prior approval of the education officer before issuance of any advertisement is concerned, in my view the learned A.G.P. cannot be allowed to urge this submission across the bar at this stage. No such reason is recorded by the education officer in the impugned order passed by the education officer refusing to grant approval to the appointment of the petitioner. The education officer had though filed an affidavit before the school tribunal did not raise any such issue in the said affidavit. In my view the education officer cannot be allowed to supplement the reasons across the bar or in the affidavit in reply which were not recorded in the impugned order.

18. In my view the school tribunal thus could not have considered any such alleged additional reasons in the impugned order for the first time without giving any opportunity to the petitioner nor can I permit the education officer to render such additional reasons across the bar for the first time in this writ petition.

19. In my view the letter of termination issued by the management and the order passed by the school tribunal, order passed by the education officer being contrary to law thus deserves to be set aside. I, therefore, pass the following order :-

(a) Impugned order and judgment dated 17th October, 2011 passed by the Presiding Officer, School Tribunal, Kolhapur is set aside.

(b) Appeal No. 55 of 2008 filed by the petitioner (Ex.31) is allowed in terms of prayer clauses (A) to (C). Termination order dated 25th June, 2008 issued by the respondent nos. 1 and 2 is set aside. The order passed by the education officer refusing to grant approval to the appointment of the petitioner is set aside. Education Officer is directed to accord approval to the appointment of the petitioner as trained teacher.

(c) Rule is made absolute in the aforesaid terms. No order as to costs.

(d) In view of the disposal of the writ petition, civil application does not survive and is accordingly dismissed.