

(1997) 08 BOM CK 0073

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No"s. 3524, 3547 of 1995, with 1198, 1946, 1947 and 225 of 1996

Vidya Vikas Samiti, Paratwada
and another

APPELLANT

Vs

Presiding Officer, School
Tribunal, Amravati Division,
Amravati and others

RESPONDENT

Date of Decision: Aug. 4, 1997

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10
- Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 - Rule 3, 31(2), 33, 36, 37

Citation: (1998) 2 ALLMR 346 : (1998) 2 BomCR 769 : (1998) 1 MhLj 462

Hon'ble Judges: V.S. Sirpurkar, J; B.H. Marlapalle, J

Bench: Division Bench

Advocate: N.R. Saboo, R.L. Khapre and A.M. Deshmukh, for the Appellant; A.G. Mujumdar, A.G.P., M.G. Bhangde, V.V. Bhangde, Smt. S.S. Wandile and A.M. Badar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V.S. Sirpurkar, J.

This judgment shall govern the Writ Petitions Nos. 3524/95, 3547/95, 1198/96, 1946/96, 1947/96 and 225/96. Rule returnable forthwith. Heard finally with the consent of the parties.

2. Firstly a short history :

The petitioner in the Writ Petitions Nos. 3524/95, 3547/95, 1198/96, 1946/96 and 1947/96 is the managing body called "Vidya Vikas Samiti", Paratwada (hereinafter referred to as "The Management"). This society was running a Junior College to which a school was also attached. It so happened that one Kunte who was an

erstwhile Lecturer in "History" and was working as a Junior College Lecturer died somewhere in the year 1993. Before that the respondent No. 2 Shri Bonde was already working as an Assistant Teacher in the Middle School which is attached to that Junior College. Shri Bonde is M.A. IIIrd Class in Economics and also B.Ed. As such he could not have taught the subject of Economics in Junior College. He thereafter acquired the qualification of M.A. IInd Class Marathi. For the reasons best known to the petitioner, the petitioner shifted Shri Bonde from Middle School and appointed him as the Lecturer in Junior College and strangely enough, for that purpose the classes which were allotted to one Miss Kakad for teaching Marathi subject were split and half the workload was transferred in favour of Bonde. Additionally he was also asked to teach Economics, thereby the management tried to show that one post which was created was filled in. Now this could not have been done obviously for the simple reason that Miss Kakad was already a confirmed full time lecturer in Marathi having a full workload exclusively for herself. There was absolutely no justification in splitting her workload and transferring the half workload in favour of Bonde. This was presumably done in order to oblige Bonde. Unfortunately, the Deputy Director also saw nothing wrong with this arrangement and accorded approval to begin with on 11-1-1994. What the Deputy Director did not see was that this was an unnatural creation of the place for Bonde as firstly the lectures given to Miss Kakad could not have been split and secondly Bonde apart from being only a middle school teacher could not have been asked to teach Economics because admittedly he is M.A, third class which is not an adequate qualification for teaching in the junior college. This action gave rise to the further litigation and further chaos. The management did not stop here but the management firstly appointed one Miss Nanda Wankhede as a Part-Time Lecturer in History. It also appointed one Turkhede as a Full-Time Teacher presumably to fill in the void which was created because of Bonde's "promotion". We will tackle the subject of appointments of Wankhede and Turkhede later on. However, presently we would deal only with the promotion of Shri Bonde. It so happened thereafter that the Deputy Director probably realised his mistake and issued a communication dated 16-5-1994 by which he directed Bonde to be brought back. He also withdrew the original approval granted to Bonde's promotion, with the result that the management thereafter issued a communication to Shri Bonde reverting him from the post of Junior College Lecturer to the Assistant Teacher of the middle school which he was already holding. Bonde filed an appeal against this order treating it to be a termination or as the case may be a reversion. This appeal number was 113/94.

3. Before the Tribunal the management took a stand that it was merely honouring the orders passed by the Deputy Director and more particularly the subsequent order passed by the Deputy Director bringing back Bonds, the respondent herein. The Tribunal has taken a view that this reversion could not have been ordered by the management unless the management held a departmental enquiry in this affair. The Tribunal relied on Rule 31(2) of the Maharashtra Employees of Private Schools

(Conditions of Service) Rules, 1981 and also referred to Rules 33, 36 and 37. It viewed this action on the part of the management as a penal reversion. On the basis of this it quashed the action of the management and also quashed the subsequent communication by the Deputy Director dated 16-5-1994 and strangely enough, held that the Deputy Director could not in law have issued that communication. It held that in the absence of any enquiry or any opportunity having been given to Shri Bonde the respondent No. 2 herein, the action in "reverting" Shri Bonde was bad in law. The Tribunal gave the following direction :

"The respondents are directed to continue the appellant as junior college lecturer as per his appointment order dated 18-10-1993 which was by way of promotion in the pay-scale of Rs. 2000-3200/- and pay his salary accordingly. That as the appellant is already allowed to join his duties as Junior College lecturer, his salary be paid by the respondent No. 3 from Government grants with back wages, if not paid already and regularly."

4. Shri R.L Khapre, the learned Counsel for the petitioners in Writ Petition No. 1198/96 which impugns the order of Tribunal has severely criticised this order. He raises two points. According to him, the order bringing back the respondent No. 2 could not have amounted to a reversion. Since the placement of Shri Bonde the respondent No. 2 as a junior college lecturer could not have been deemed to be a promotion at all. Secondly, Shri Khapre contends that the Tribunal has completely ignored the position that Bonde did not have the initial educational qualification for being promoted at all and as such his so-called promotion even if it could be called to be a promotion in law was non est and could not have taken effect.

5. Shri Bhangde, the learned Counsel for the respondent No. 2, very strenuously contended that since there is a difference in salary and since the salary of lecturers in junior college is more it cannot be said that Shri Bonde was not promoted. He pointed out that as an Assistant Teacher Shri Bonde would draw less salary and as a Junior College Lecturer he would definitely draw a better salary. In that view of the position, according to Shri Bhangde, this had to be called a promotion. He further pointed out that if this was a promotion unless a proper departmental enquiry was held the petitioner could not have been reverted. Thirdly Shri Bhangde submits that even if it is conceded that Shri Bonde did not have the necessary educational qualification, he points out that unless the management finds that position by way of an enquiry, Shri Bonde could not have been brought back and could not have been ordered to be reverted. Lastly Shri Bhangde contends that even otherwise since the order passed by the Tribunal has now been complied with and Shri Bonde has now been replaced or reinstated as the lecturer he does not propose to continue with appeal and he should be allowed to withdraw his appeal before Tribunal though the same stands allowed.

6. Considering the rival contentions, it is clear from the Rules and more particularly Rule 41 that when a teacher in a school which is attached to a junior college is

placed as a lecturer in the junior college, it cannot be said to be a promotion. Rule 41, sub-rule (5)(b) suggests that such arrangement could be at the most called to be a transfer. Now merely because a teacher who is teaching in the secondary school gets such a transfer and is posted as a lecturer in the junior college and gets a better salary it could not be said that this would be a promotion of a teacher. Indeed, there is nothing in the Rules which suggests that the teacher would have any right to be "promoted" as the lecturer in the junior colleges attached to their schools. Rule 41(5)(b) particularly mentions as under :---

"Teachers in secondary school shall not be transferred to a junior college of education against their will. Such transfers may, however, be made if they are at the employee's own request subject to the following conditions : namely (i), (ii) & (iii) ---- (not relevant)...."

This specific language suggests that such an arrangement cannot amount to a promotion. The Tribunal's view, therefore, that this amounts to a promotion is clearly incorrect and has to be quashed. There is one more reason why the placement of respondent Bonde in the post of a lecturer in junior college cannot be deemed to be a promotion. Rules 3 and 5 deal with the subject of promotion of a secondary school teacher like the respondent No. 2 herein. It does not appear from these rules that a post of a junior college lecturer is a promotional post for a teacher in a secondary school which is attached to a junior college. If the legislature had intended that post to be a promotional post, a clear-cut provision to that effect would have been found in the rules. Instead a glance at the rules generally, suggests that the promotional posts available to a teacher like the respondent No. 2 are only Superintendent (where the number of classes is adequate for that post) or Assistant Head Master (where number of students is adequate) and a Head Master. The list of promotional posts does not go further. Therefore, placement of a teacher of a secondary school as a lecturer in the attached junior college would be merely a transfer. Again Rule 41(b)(ii) is clear enough to suggest that the inter se seniority of such teacher is retained, on transfer as a junior college lecturer, which would be another clear indication in support of the view taken.

7. Once it is held that that was not a promotion the bringing back of the respondent No. 2 Shri Bonde in his original position as an assistant teacher could not amount to a reversion. If it could not amount to a reversion there was no necessity of holding any departmental enquiry as is contemplated by the Rule. The Tribunal's finding that an enquiry was a must, therefore, must be set aside and is accordingly set aside.

8. Lastly the Tribunal has completely ignored the position that Shri Bonde did not have the necessary educational qualifications which is contemplated by the Rules. In that view of the matter, his promotion itself initially was without any sanction of law and must be held to be non est. It is accordingly held to be non est and it is held that Shri Bonde was rightly ordered by the Deputy Director to be brought back and the

management rightly acted on that communication of the Deputy Director. Once this position is clear, the petition will have to be allowed and the order of the Tribunal will have to be quashed and set aside. Shri Bonde will be accordingly brought back. The subsequent directions by the Tribunal are also set aside.

9. However, the matters do not stop here. An unprecedented chaos has been created by this management by appointing two persons, namely, Turkhede and Nanda Wankhede. As a sequel to Shri Bonde's being brought back, the management realised the chaos that it had created and directed the termination of Nanda Wankhede as also Shri Turkhede. Nanda Wankhede, therefore, filed an appeal before the Tribunal and there was a stay granted in her favour. Also the same situation prevailed in respect of Turkhede who had filed an appeal. Turkhede also continued to serve because of the stay orders passed by the Tribunal. The appeal filed by Nanda Wankhede was Appeal No. 136/94 while one filed by Jitendra Turkhede was No. 128/94. They were allowed and disposed of by the Tribunal on 17-8-1995 by two separate orders. These orders came to be challenged by the management by filing two separate Writ Petitions Nos. 3524/95 and 3547/95 against Miss Nanda Wankhede and Shri Jitendra Turkhede respectively. These two writ petitions are still pending. However, again as if all this chaos was not sufficient, the management after the order passed by the Deputy Director proceeded to terminate the services of these two respondents, namely, Nanda Wankhede and Jitendra Turkhede by a fresh termination order dated 11-9-1995. Needless to mention that the teachers again approached the Tribunal by way of separate appeals. The Appeal filed by Nanda Wankhede is Appeal No. 150/95 while the one filed by Jitendra Turkhede is Appeal No. 149/95. Again the Tribunal granted the stay orders in these appeals and directed these two persons to be continued, against which the management has filed two Writ Petitions, i.e. in case of Nanda Wankhede Writ Petition No. 1946/96 and in respect of Jitendra Turkhede Writ Petition No. 1947/96. The management herein challenges the interim orders passed by the School Tribunal. Now it is needless to mention that Writ Petition No. 3524/95 and Writ Petition No. 3547/95 have been rendered infructuous as the impugned orders of Tribunal passed therein have already been effaced because of the subsequent termination orders dated 11-9-1995 in case of both these teachers. Shri Khapre, however, submits that the findings in those orders as handed out by the Tribunal will have to be dealt with by this Court. We find that all the findings in those petitions would depend upon the basic finding in respect of Shri Bonde because it is because of Shri Bonde's placement that all these subsequent developments have taken place. We, therefore, do not propose to tackle with these findings ourselves as we have already indicated that Shri Bonde's original placement as junior college lecturer was itself illegal. It will be, therefore, futile for us to deal with those orders in Writ Petitions Nos. 3524/95 and 3547/95 as we propose to direct the Tribunal to deal with the orders in respect of Nanda Wankhede and Jitendra Turkhede on the backdrop of our finding in respect of Shri Bonde.

10. Again in so far as the other Writ Petitions Nos. 1946/96 and 1947/96 are concerned, these are against the interim orders passed, and it is an admitted position that Appeal Nos. 150/95 and 149/95 are still pending. The Tribunal shall decide the rights of Miss Wankhede and Shri Turkhede in these appeals. We direct the Tribunal to decide these appeals on the backdrop of our finding that Shri Bonde's placement as a junior college lecturer itself was illegal and that he was rightly brought back to school. The tribunal shall do well to dispose of those appeals within three months from today. In the meantime the status quo as it continues today shall continue. If ultimately it is found that Nanda Wankhede and Jitendra Turkhede were not entitled to the reliefs that are claimed by them, they would still be paid for the actual services rendered by them by the management from their own funds.

11. That leaves in the field the last Petition No. 225/96 filed by one Smt. Sunita Dani. Dani had made an application for intervention claiming that she had an interest in these two appeals. Again it must be made clear that Smt. Dani is claiming a direct interest on the basis of the death of Shri Kunte and claims that she would have a right to be appointed as a junior college lecturer in the post created by the death of Shri Kunte. That subject is distinct but is essentially connected with the chaos which has been created by the management due to the placement of Shri Bonde. The Tribunal has rejected her application for intervention and Smt. Dani has challenged that order rejecting her intervention application. We direct that the Tribunal should also hear Smt. Dani and allow her intervention application because even otherwise her claim is so intermingled with the claim of Smt. Nanda Wankhede and Shri Jitendra Turkhede that it would be futile to consider her claim independently. Her claim, therefore, shall also be decided. We therefore, allow the Writ Petition No. 225/96 and direct the Tribunal to hear Smt. Dani after allowing her application for intervention. Needless to say that this shall be done in Appeal Nos. 149/95 and 150/95. Shri Bhangde while opposing the application for intervention pointed out that Smt. Dani had made an application for intervention along with one Shri Awsarmal. He points out that the Tribunal had rejected those applications. While Smt. Dani kept quiet, Shri Awsarmal had filed a writ petition against that order and this Court had confirmed the order. He accordingly suggests that Dani's application should also meet the same fate. We do not agree. We find that Smt. Dani's claim is inextricably intermingled with the claims which are involved in Appeal Nos. 149/95 and 150/95. The contention of Shri Bhandge is, therefore, rejected.

12. In the result, we dispose of the petitions in the light of the reasonings given by us above. Under the circumstances, we do not propose to pass any order regarding the costs.

13. Order accordingly.