

SUPREME COURT OF INDIA

Bharatiya Gramin Punarrachana Sanstha

Vs.

Vijay Kumar

C.A.No.5200 of 2002

(S. S. M. Quadri and S. N. Variava JJ.)

23.08.2002

JUDGEMENT

Syed Shah Mohammed Quadri, J.:-

1. Leave is granted.
2. This appeal is from the judgment and order of the High Court of Judicature at Bombay, Bench at Aurangabad, in Writ Petition No. 697 of 2001, dated April 11, 2001. By the impugned order the High Court upheld the order of the Presiding Officer, School Tribunal, Aurangabad Division, Aurangabad (for short, 'the Tribunal') in Appeal No.222 of 1997 dated January 6, 2001 directing re-instatement of the first respondent in service with 75% back wages and consequential benefits.
3. On August 6, 2001, this Court issued notice limited to the question as to why the appointment of the respondent (respondent No.1) should not be confined to the period mentioned in the order of appointment dated June 22, 1996.
4. To appreciate the contention of the learned counsel for the parties the following facts may be noticed.
5. The appellant is a public trust and a society under the Bombay Public Trusts Act and Societies Registration Act, which runs Sant Bahinabai Educational Institutions at Shioor Taluka Vaijapur, District Aurangabad, which are fully aided. The first respondent applied for the post of Lab Attendant in response to an advertisement. He was selected and appointed by the appellant on June 22, 1996 for a period of two years from June 24, 1996 to June 23, 1998. The appointment of the first respondent was approved by the Deputy Director of Education, Aurangabad initially for the academic year 1996-97. As no approval was forthcoming for the next academic year 1997-98 and the management was not in a position to pay the salary to the first respondent, his services were terminated by the appellant on September 17, 1997. The first respondent challenged the order of his termination before the Tribunal. However, on February 2, 1998, the Deputy Director of Education approved the

appointment of the first respondent for the academic year 1997-98. The Tribunal by its order dated January 6, 2001 directed reinstatement of the first respondent with 75% back wages and consequential benefits. That order was unsuccessfully challenged by the appellant before the High Court in Writ Petition No. 697 of 2001 which was dismissed on April 11, 2001. That order of the High Court is assailed in this appeal.

6. The submission of Mr. Ashok Godhamgonkar, learned counsel appearing for the appellant, is that though the post was meant for a Scheduled Tribe candidate according to the roster, by mistake it was shown as reserved for a Scheduled Caste candidate, therefore, the first respondent could not be continued in the said post particularly when a Scheduled Tribe candidate has been appointed in the said post. The High Court did not accept that contention on the ground that the vacancy could be carried forward. On June 4, 1996, the appellant issued an advertisement calling for applications for appointment to fill up various posts including the post of Lab Attendant. Though, according to the roster the said post is said to be earmarked for Scheduled Tribe candidate, the advertisement, however, shows that it is reserved for a Scheduled Caste candidate. A perusal of the advertisement as well as the order of appointment does not support the contention that the vacancy was reserved for a Scheduled Tribe candidate. The Tribunal noticed that a copy of the roster filed before it, did indicate that the vacancy was meant for a Scheduled Tribe candidate but it did not act upon it as the original roster was not produced before it. We have, therefore, no reason to hold that the High Court erred in not quashing the order of the Tribunal for that reason.

7. It is next contended that the appointment was purely temporary for a period of two years and that an undertaking was also taken from the first respondent in regard to the nature of appointment and the approval of the appointment of the appellant given from time to time was also for the said period, therefore, the reinstatement of the first respondent could have been ordered only for the said period. Mr. B.N. Deshmukh, the learned senior counsel appearing for the first respondent, invited our attention to sub-section (2) of Section 5 of the *Maharashtra Employees of Private Schools Registration Act, 1977* (for short, the 'Act') and submitted that after the period of two years the first respondent would be deemed to have been confirmed, therefore, the order under challenge does not warrant any interference.

8. We may notice here, Section 5 of the Act deals with certain obligations of management of private schools. Sub-section (2) of Section 5 on which reliance is placed by Mr. Deshmukh reads as under:

5. Certain obligations of management of private schools -

(1) xxx xxx xxx

(2) Every person appointed to fill a permanent vacancy shall be on probation for a period of two years. Subject to the provisions of sub-sections (4) and (5), he shall, on completion of this probation period of two years, be deemed to have been confirmed."

A plain reading of the said provision which is subject to the provisions of sub-sections (4) and (5), would show that it applies to a person who is put on probation consequent upon his appointment in a permanent vacancy. In such a case the period of probation will be for a period of two years. Sub-section (4) refers to computation of the period of probation of a probationer who is terminated by the management during the period of probation but who has been re-appointed within a period of one year. Sub-section (5) empowers the management to fill up temporary vacancy by appointing a qualified person in such a vacancy. It is thus clear that only when an employee has completed successfully the probation period of two years, sub-section (2) directs that he shall be deemed to have been confirmed. In our view, this provision does not help the first respondent. First, because his services were terminated before completion of two years and his case does not fall within sub-section (4); secondly, admittedly the first respondent was appointed only for the period of two academic years 1996-97 and 1997-98 and was not put on probation. The order of appointment specifically mentions that after the expiry of the said period of two years the services of the first respondent would come to an end without any notice. Even the undertaking given by the first respondent recites that on relieving him on the expiry of the period of academic year 1997-98 he shall not claim any right on the said post. It may be noticed that, admittedly, the approval of appointment of the first respondent given from time to time is also upon 1997-98. The order of termination, referred to above, dated September 17, 1997, was passed before the expiry of the said period of two years. Under the said order of appointment the first respondent is entitled to remain in service till the end of academic year 1997-98.

9. For the aforementioned reasons the order of the Tribunal directing reinstatement in service of the first respondent has to be confined to the period till June 23, 1998. The first respondent is, therefore, entitled to his salary from the date of his termination till June 23, 1998. The order of the Tribunal as confirmed by the High Court is modified in the above terms.

10. Pursuant to the order of this Court dated August 10, 2001, the appellant has deposited a sum of Rs. 50,000/-. The first respondent shall be paid his salary for the period from September 18, 1997 to June 23, 1998 and the costs of this appeal which we quantify at Rs. 5,000/-, out of the said amount of Rs. 50,000/-. The balance amount, if any, shall be refunded to the appellant. If, however, the liability of the appellant exceeds Rs. 50,000/-, then any amount due to the first respondent shall be paid by the appellant to the first respondent within four weeks from today. The appeal is accordingly allowed with costs.
Order accordingly.