



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2225 OF 2011

SANT BHAGWAN BABA SHIKSHAN MANDAL &
ORS.

..... APPELLANTS

VERSUS

GUNWANT & ORS.

..... RESPONDENTS

ORDER

1. The appellants are aggrieved by the judgment dated 17th November, 2009, passed by the High Court of Judicature at Bombay, Aurangabad Bench, whereunder a Writ Petition¹ filed by the respondent no.1 praying *inter alia* for being appointed to the post of Shikshan Sevak in the appellant no.3-School was allowed and the appellants were directed to ensure that he is appointed to the subject post on or before 31st December, 2009, in accordance with law.
2. We may briefly advert to the relevant sequence of events. The respondent no.1 was appointed as a Peon in the appellant no.3-School, being run by the appellant no.1-Society on 14th June, 1991. His appointment to the subject post was approved *vide* letter dated 29th January, 1998. While working on the subject post, in the year 2004, the respondent no.1 passed Bachelor of Arts examination from the Yashwant Rao Chavan Open University, Nasik. In the year 2005, he passed the Bachelor of Physical Education Examination. On 10th June, 2005, the respondent no.2-State of Maharashtra issued a Government Resolution² for

¹ Writ Petition No. 1895 of 2007

² For short the 'GR'

implementation of the revised Shikshan Sevak Yojana in aided Secondary and Higher Secondary Schools/Colleges, D.Ed. Colleges and Sainik Schools in the State. The tenure of the Shikshan Sevak was fixed as three years and it was clarified in paragraph 8 as follows:

“8. Where the non-teaching employee in the secondary school and Junior college acquires educational qualification required for teachers and such posts are available in the secondary and higher secondary/school/colleges, then such non-teaching member will have to be appointed as Shikshan Sevak and he will be entitled for honourarium as applicable to Shikshan Sevak and all other terms and conditions will be applicable to him. However, service rendered by non-teaching staff will be taken into consideration for pension”.

3. On 15th February, 2007, the respondent no.2-State of Maharashtra issued a fresh GR in the background of the Central Government framing the Sarva Shiksha Abhiyan (Education for All Campaign), which left it to the States to develop a framework for appointment of teachers within the guidelines of the National Council of Teachers Education. Keeping in mind the said Scheme, the respondent no.2-State considered it imperative to implement an alternative Scheme for appointing Shikshan Sevaks on vacant posts of teachers in all Secondary/Higher Secondary Schools/Junior Colleges and College Education in the State. For the purposes of implementing the said Scheme, several Resolutions were passed from time to time, starting with the first GR dated 13th October, 2000, followed by GRs dated 26th July, 2001, 27th July, 2001, 18th December, 2003, 28th May, 2004, 07th January, 2005, 10th January, 2005 and 26th April, 2006.
4. All the aforesaid GRs were clubbed and included in the original GR dated 13th

October, 2000, which was updated by virtue of GR dated 15th February, 2007. After updating the original GR, the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act³, 1977 was amended and the post of Shikshan Sevak was included in the definition Clause, i.e., Section 2(24A) and the consequential amendments were included by virtue of the Maharashtra Act XIV of 2007. Section 5 of the Act, 1977 that mandates the management to fill up every permanent vacancy in a Private School by appointment of a person duly qualified to fill such a vacancy was also amended in the following manner:

“5. (1) The Management shall, as soon as possible, fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy:

[Provided that, unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay, [the Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools; and in the event of such person being available, the Management shall appoint that person in such vacancy.]

(2) Every person appointed to fill a permanent vacancy [except Shikshan sevak] shall be on probation for a period of two years. Subject to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed.

[Provided that, every person appointed as [Shikshan sevak]] shall be on probation for a period of three years.]

[(2A) Subject to the provisions of sub-sections (3) and (4), shikshan sevak shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.]

(3) If in the opinion of the Management, the work or behaviour of any probationer, during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving him one month's notice [or salary [or honorarium] of one month in lieu of notice].

³ For short the ‘Act of 1977’

(4) If the services of any probationer are terminated under sub-section (3) and he is reappointed by the Management in the same school or any other school belonging to it within a period of one year from the date on which his services were terminated, then the period of probation undergone by him previously shall be taken into consideration in calculating the required period of probation for the purposes of sub-section (2).

[(4A) Nothing in sub-section (2), (3) or (4) shall apply to a person appointed to fill a permanent vacancy by promotion or by absorption as provided under the proviso to sub-section (1).]

(5) The Management may fill in every temporary vacancy by appointing a person duly qualified to fill such vacancy. The order of appointment shall be drawn up in the form prescribed in that behalf, and shall state the period of appointment of such person."

5. It is the case of the respondent no.1 that on acquiring requisite qualifications for the post of Shikshan Sevak, he submitted several representations to the appellant no.1 for being appointed to the said post, but the same were not considered favourably. In the year 2006, one Mr. B.R. Dhakne, who was working as a Physical Education teacher in the school, was to retire on attaining the age of superannuation. The appellant no.1 claims to have issued an advertisement on 01st June, 2008, published in the daily newspaper, 'Lokmaan' inviting application for appointment to the post of Shikshan Sevak. The appellants claim that though the respondent no.1 was aware of the said vacancy and the advertisement issued for filling up the vacancy for appointment to the post of Shikshan Sevak, he did not submit his application. Instead, after the post was filled up by the appellants, he challenged the appointment of the respondent no.5 by filing a Writ Petition⁴ before the High Court. The respondent no.1 separately filed an appeal⁵ before the School Tribunal, Latur, which was dismissed for want of prosecution. On 31st January, 2007, the

⁴ Writ Petition No. 1895 of 2007

⁵ Appeal No. 131 of 2006

respondent no.1 approached the High Court by filing a Writ Petition, which has been decided in his favour by virtue of the impugned judgment.

6. Mr. Adarsh Kumar Pandey, learned counsel for the appellants submits that the High Court has erred in allowing the Writ Petition filed by the respondent no.1 for the reason that it failed to take into consideration the fact that the respondent no.1 was given promotion from the post of a Peon (non-teaching staff) to the post of Shikshan Sevak, which is a teaching post which is in contravention of the provisions of the Act and the Rules. In support of the said submission, he seeks to place reliance on Clause 3 of the Schedule 'F' of the Maharashtra Employees of Private School Rules, 1981, that lays down the guidelines for fixation of seniority of non-teaching staff and casts an obligation on the concerned school to maintain a common seniority list of the lower grade staff on the basis of the date of their appointment and further mandates that if any of the lower grade staff improves his qualification as prescribed for the post of Laboratory Assistant or Clerk, then the said employee ought to be given preference by filling up the said post as per his placement in the common list of seniority. It is submitted by learned counsel for the appellants that respondent no.1 was working on the post of a Peon and at best, he could have been promoted in accordance with the placement of his name in the seniority list, to the position of a Laboratory Assistant or Clerk, but to no other post, including the post of Shikshan Sevak, which was under the category of teaching staff. It is thus submitted that the respondent no.1 was not entitled for promotion to the post of Shikshan Sevak, a post that is a part of the teaching cadre and a non-

promotional post.

7. *Per contra*, Mr. Vivek C. Solshe, learned counsel for the respondent no.1 supports the impugned judgment and submits that the entire controversy has been set at rest on amendment of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, by including the post of Shikshan Sevak under the Act and casting an obligation on the management of Private Schools to fill up the said post by appointing a person suitable in the list of surplus persons maintained by the office of Education Inspector, Greater Bombay or the Education Officer, Zilla Parishad, as the case may be, for absorption to the post.
8. We have heard learned counsel for the parties, perused the records as also the impugned judgment. In our opinion, the arguments advanced by learned counsel for the appellants regarding non-entitlement of the respondent no.1 for appointment from a non-teaching cadre to a teaching cadre has been duly considered and turned down by the High Court for valid reasons.
9. It is not in dispute that the respondent no.1 who was working on the post of Peon, had taken permission from the appellants-Management for undergoing further education and improving his qualifications. It is also not in dispute that in terms of the qualifications acquired by him in the course of his service, the respondent no.1 qualified for being appointed to the post of Shikshan Sevak. Thirdly, on completion of the requisite qualification, the respondent no.1 had submitted a representation to the appellants-management for being appointed

to the subject post as and when a vacancy would arise.

10. Despite the aforesaid position, when a vacancy to the subject post arose on Mr. Dhakne superannuating in the year 2006, instead of approaching the Education Inspector/Education Officer/Zilla Parishad, as the case may be, being the office designated by the Director of Education for vacancies to be filled up by a suitable person available on the list of surplus persons maintained in that office, the appellants proceeded to issue an advertisement inviting applications from the public at large for filling up the subject post, thereby completely ignoring the claim of the respondent no.1 for being appointed to the subject post. The High Court has noticed in paragraph 14 of the impugned judgement that even the aspect of issuing a public notice in the daily newspaper is doubtful, since the appellants did not file the relevant page of the daily newspaper along with their counter affidavit and what was filed, could not be treated as an authentic newspaper. Further, the application submitted by the respondent No.1 for being appointed to the subject post has not been disputed by the appellants. Their only plea is that the respondent no.1 did not qualify for being appointed as a Shikshan Sevak and that the appellants were well entitled to fill up the post in terms of the advertisement issued.
11. Once the respondent no.1 had acquired the requisite qualification in the course of his service with the appellant no. 3-School, and the relevant GR which was ultimately incorporated in the Act of 1977, permitted appointment of a non-teaching employee in a school as a Shikshan Sevak subject to the employee acquiring the requisite educational qualifications and further, subject to such a

post being available, the appellants cannot be heard to state that the respondent no.1 being a part of the non-teaching staff, was not entitled for being considered for appointment to the subject post. In fact, the language used in the regulation dated 10th June, 2005, itself makes it clear that the employee was not required to take any steps by making a representation for being appointed to the post of a Shikshan Sevak and an obligation was cast on the appellants to ensure that on a permanent vacancy being available to the post of Shikshan Sevak, a member of the non-teaching staff, who would have acquired the educational qualification required for such a post, ought to be appointed directly.

12. In view of the aforesaid discussion, we are of the opinion that the impugned judgment is well reasoned and does not deserve any interference.
13. Now coming to the aspect of molding the relief. Though the appellants have duly impleaded the private respondents no. 4 and 5 in this appeal, being necessary and proper parties, they have not entered appearance. Respondent No.5 was issued an appointment letter to the post of a Shikshan Sevak, in terms of the letter dated 24th August, 2009, issued by the appellants. He had executed a consent/guarantee letter stating *inter alia* that in the event the respondent no.1 succeeds in his Writ Petition, he shall not claim any right to the subject post. Additionally, a consent letter was also executed by the Secretary of the appellant no.1 on behalf of the appellant no.1 and the appellant no.3- School stating *inter alia* that in the event the judgement in the Writ Petition filed by the respondent no.1 goes against the Society, then the entire responsibility

shall be that of the Society. The respondent no.3-Education Officer had also approved the appointment of the respondent no.5 to the post of Shikshan Sevak subject to the outcome of the Writ Petition filed by the respondent no.1.

14. The records reveal that while issuing notice in the present appeal on 18th December, 2009, operation of the impugned judgment was stayed. As a result, the respondent no.5 has been continuing to discharge his duties in the appellant no.3-School as a Physical Education teacher, on the post of an Assistant Teacher. As noticed above, the respondent no.5 was duly served in the present appeal but he has elected not to appear or participate in the proceedings. Now that the impugned judgement has been upheld by this Court and the respondent no.1 has been held entitled to appointment to the post of Shikshan Sevak w.e.f. 01st January, 2010 and on expiry of a period of three years reckoned therefrom, to the post of Assistant Teacher, this Court is required to consider balancing the equities. We are informed that in all these years, respondent no.1 has been serving on the post of Peon in the appellant no.3-School. Though learned counsel for the respondent no.1 states that the financial impact of depriving him for appointment to the post of Shikshan Sevak in terms of the impugned judgment comes to ₹.21,00,000/- (Rupees Twenty One Lakhs) approximately, we are of the opinion that ends of justice would be met if the appellants are directed to pay a consolidated sum of ₹.10,00,000/- (Rupees Ten Lakhs) to the respondent no.1 on account of the financial loss incurred by him and for his non-appointment to the subject post. Needful shall be done within eight weeks. For purposes of claiming seniority and retiral

benefits, the notional date of his appointment to the post of Shikshan Sevak shall be reckoned as 01st January, 2010. Respondent no.3 shall issue a letter indicating the pay scale of the respondent no.1 by notionally computing it on the post of Shikshan Sevak w.e.f. 01st January, 2010 and to the post of Assistant Teacher w.e.f. 01st January, 2013 and furnish a copy thereof to the appellants within three months.

15. As for the respondent no.5, it is directed that in the event the post of a Physical Education Teacher is vacant and available in any of the schools/colleges being run by the appellant no.1-Society, he shall be duly accommodated on the post of an Assistant Teacher there. In the alternative, the respondent no.5 shall be considered by the State authorities for appointment in terms of Regulation 5 of the Act of 1977, as amended from time to time, on being declared as a surplus teacher. However, there shall not be any recovery of salary or emoluments from the respondent no.5 for the period during which he has rendered services with the appellant no.3 – School.

16. The appeal is disposed of on the above terms, while leaving the parties to bear their own expenses.

.....J.
[HIMA KOHLI]

.....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
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