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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3153 OF 2011

Ms.Sk.Azra Parveen d/o. Mohammed Haneef .. Petitioner

V/s.

The State of Maharashtra & Ors. .. Respondents

Mr.Zia-ul-Mustafa with A.R. Shaikh for the Petitioner
Mr.C.R. Sonawane, AGP, for the Respondent Nos.1 to 4
Ms.Chaitrali Deshmukh for Resp. No.5
Mr.R.D. Rane for Resp. No.6

CORAM: **B.H. MARLAPALLE &
SMT.NISHITA MHATRE, JJ.**

DATED: **OCTOBER 12, 2011**

P.C.:

1. Heard. The Municipal Corporation of Nashik be deleted from the array of parties.
2. This petition filed under Article 226 of the Constitution of India seeks to challenge the order dated 15.12.2011 thereby cancelling the Petitioner's initial appointment as Shikshan Sevak w.e.f. 24.11.2005 resulting into termination of her services as an assistant teacher in the primary school run by the Municipal Corporation of Malegaon and the consequent relieving order dated 15.2.2011 passed by the

Headmistress.

3. The petitioner appears to have approached this Court in extraordinary circumstances. The petitioner was one of the petitioners in Writ Petition No.689 of 2006 challenging the order dated 31.12.2005 and the said petition with a group of other petitions came to be disposed off by a common order passed by the Division Bench of this Court (Aurangabad bench) on 4.6.2008. It appears that a group of petitions i.e. Writ Petition Nos.571 of 2006, 688 of 2006, 6154 of 2007, 3771 of 2007, 3770 of 2007 and 5110 of 2007, etc. challenging the order dated 31.12.2005 were heard and decided by a common order dated 22.4.2008. The petitions were dismissed and therefore, some of the petitioners had filed review applications in those petitions. While deciding the review applications, writ petition No.689 of 2006 was also clubbed with them and by a common order dated 4.6.2008, the petitions and review applications were rejected.

4. The facts leading to the present petition have a chequered history. In the years 2000-2001 to 2002-2003, the admissions to the postal D.Ed. Course were alleged to have taken place on a number of illegal grounds including the ineligibility of the admitted candidates. W.P. NO.465 of 2002 and PIL Criminal W.P. NO.47 of 2004 came to be

filed praying for orders against these illegal admissions. Pursuant to the orders passed by this Court, the State Government ordered an enquiry into these admissions to postal D.Ed. Course. Shri S.B. Jagtap, the then Divisional Chairman of SSC Board, Pune was appointed as the employees' officer and after holding a detailed enquiry, he submitted his report in May 2005. The report was accepted by the State Government and it directed the Maharashtra State Council for Education Research and Training at Pune (for short, 'the Council') to take appropriate action on the said report. The Council in turn passed an order dated 31.12.2005 and the admissions were cancelled on the following grounds:

- a) The appointment made as primary teacher was on additional post
- b) The staff approval prior to 5.11.1997 was essential and it was not submitted.
- c) In the staff approval placed on record, there was interpolation / overwriting.
- d) Recommendations were not made by the Education Officer (Primary) and Divisional Deputy Director and
- e) The record was doubtful.

5. On cancellation of the admissions, the postal D.Ed. students who were aggrieved approached the Aurangabad Bench of this Court and one such group of the petitioners came to be decided by the order dated 22.4.2008 whereas the second group came to be decided

alongwith review applications on 4.6.2008 as noted hereinabove. The petitions were dismissed.

6. However, some other group of petitions i.e. Writ Petition No.610 of 2006, 258 of 2006, 592 of 2006 and all other connected petitions came up before another Division Bench at Aurangabad and by a common judgment dated 7.12.2010, the petitions came to be allowed by setting aside the order dated 31.12.2005 cancelling the admissions to postal D.Ed. course.

7. In para 4 of the common order dated 4.6.2008, the Division Bench observed,

“What we find is that an inquiry was duly conducted in the matter of the petitioners initial appointment as a primary teacher (untrained) which was found to be improper on various counts because of which they were found to be ineligible for being admitted in Postal D.Ed. Course, and each petitioner has been informed of the reasons which are annexed in Writ Petition No.2528/2008 from Page No.23 to 100. Cases of deficiencies are of the nature are enlisted from No.1 to 25 in the impugned orders which are:

- (1) School is not recognised.
- (2) Post of concerned primary teacher is not according to norms/register.
- (3) Appointment is on additional post.
- (4) Appointment is not according to reservation.
- (5) Your services are terminated.

- (6) Grant before 05-11-1997 is not annexed/without name.
- (7) Annual inspection report before 1997-98 is not annexed.
- (8) Inspection reports of 1997-98, 98-99, 99-2000, 2000-01 are not annexed. Hence your services are discontinued.
- (9) Overage at the time of appointment. Certificate of competent authority for age relaxation is not annexed.
- (10) Underage at the time of appointment.
- (11) Appointment is to middle school section.
- (12) Earlier services are relating to primary section.
- (13) Appointment is as Superintendent/ Clerk/ Peon.
- (14) There is no mention of year, name in the grant/ there are corrections.
- (15) There is no mention of name in the Annual Inspection report of the year...../ there are corrections/ overwritings/ deficiencies.
- (16) Signatures made at once/record changed/corrections made.
- (17) No recommendations of Education Officer (Primary) and Regional Dy. Director.
- (18) Your services seem to be terminated in the year.....
- (19) No simultaneous recognition to Hindi/Marathi/English Medium schools.
- (20) Simultaneously running unauthorised classes, no recognition.
- (21) Appointment order of the Institution is from.....
- (22) No certificate from competent authority / controlling officer.
- (23) Being shifted school, no permission from the Government and hence unauthorised.
- (24) No recognition of the Government to the concerned school in which you are working.
- (25) Others.....

8. It is apparent from the subsequent common judgment dated 7.12.2010 that though the earlier common judgment dated 22.4.2008 and 4.6.2008 were relied upon by the learned AGP to oppose the group of petitions in the 3rd round, the Division Bench took a different view. In

para 7 of the common judgment dated 7.12.2010, the Division Bench specifically referred to the arguments advanced by the learned AGP. It would be appropriate to reproduce the following submissions recorded in para 7 of that common order:

“7] Smt. Godhelakear, learned AGP appearing on behalf of the State, submits that all the petitioners have obtained the admissions by practising fraud and as such, the petitioners who have been admitted with the aid of fraudulent activities, are not entitled to any relief in the present petitions. It is submitted that the petitioners, either by suppressing certain documents or by fabricating the documents had obtained admissions and as such, they are not entitled to any equitable relief. The learned counsel relies on the orders passed by this court in W.P. No. 6154 of 2007, with companion petitions, dated 22nd April, 2008 and the orders passed by this court in Writ Petition No. 2528/2008 alongwith other matters dated 4/6/2008, to contend that the Division Bench of this court have already negated the contention, which is identical with the contention raised in the present petitions and further that a Special Leave Petition preferred thereagainst having been dismissed, it is not permissible for this court to consider the issues raised in the present petition”.

9. The learned Counsel for the respondents before us relies on the orders passed by this Court in Writ Petition No.6154 of 2008 and other companion petitions, on 22.4.2008 and the orders passed by this Court in Writ Petition No.2528 of 2008 alongwith other matters, on 4.6.2008 to contend that the Division Bench of this Court has already negated the contentions, which are identical with the contentions raised by the present petitioner and further that a Special Leave Petition preferred having been dismissed it is not permissible for this Court to consider

the issues raised in the present petition. It was also urged by the Respondents that the order dated 7.12.2010 passed by the subsequent Division Bench and relied upon by the petitioner, could not have been passed.

10. In para 25 of the common judgement dated 7.12.2010, the Division Bench referred to the order passed by the Supreme Court and noted that the Special Leave Petitions were dismissed in limine at the admission stage without hearing the parties on merits of the matter. The Division Bench observed, “..... In any case, the said petitions have been dismissed in limine at the admission stage without hearing the parties on merits of the matter. Not only that, but the Special Leave Petitions, preferred thereagainst, challenging the said order have also been dismissed in limine.” The Division Bench therefore held that the earlier common judgments dated 22.4.2008 and 4.6.2008 rendered by the coordinate benches would not detain it in proceeding further to decide the petitions on merits. The Division Bench while dealing with the merits of the enquiry report submitted in May, 2005 observed as follows:

11. It could thus be seen that the only finding that is given by said Shri Jagtap in his report is that 308 candidates were found to be ineligible for admission. It is further been found that 23 candidates working in the Ashram School were also

found to be ineligible.

12. It appears from clause 2 of his finding that he had found that some of the candidates were ineligible since their names were only found in the annual inspection report and, therefore, he has himself observed that the cases of individual candidates will have to be relaxed taking into consideration the provisions of the Government Resolutions dated 22nd June, 2000 and 11th July, 2000.

13. He has further observed that almost 90% of the candidates had acquired their D.Ed. Qualification and that the concerned Education Officer of the respective Zilla Parishads have given personal approvals and, therefore, there is a possibility that all such candidates would be included in the sanctioned posts. It further appears from the said report that 80% of the candidates have been held to be ineligible only on the ground that they were not appointed prior to 5th November, 1997 on the sanctioned posts. It is further observed that, however, subsequently after 5th November, 1997 on the sanctioned posts. It is further observed that, however, subsequently after 5th November, 1997, in view of the various reasons like (1) increase in the divisions (2) Trained Teachers leaving the school (3) Retirement of the teachers etc. Most of the candidates were working from last 2 to 3 years in the respective schools after completion of the D.Ed. Course. The Enquiry Officer, therefore, recommends that in view of this, the Government was competent enough to regularize the admissions of such of the candidates (1) who were working in the school through which they had submitted their application forms for Postal D.Ed. Course (2) who had passed D.Ed. Examination. (3) who were granted approval by the Examination. (3) who were granted approval by the Education Officer (Primary) and (4) who were presently working within the sanctioned strength.

14. It is further to be noted that said Enquiry Officer has recommended that penalty should be imposed on the concerned responsible persons, the management, the officers and admissions of the candidates should be regularized. Perusal of the entire report would reveal that

there is not even a whisper about fraud, leave aside, there being any finding to that effect. It is a settled law that allegations regarding fraud have to be specific and it is also necessary to point out as to what act of a person constitutes fraud. A general and bald allegation of fraud would not be tenable in the eyes of law.

11. The Division Bench also found that by a stereotype order dated 31.12.2005 admissions to the postal D.Ed. course had been cancelled. Only one or two grounds were either tick marked while cancelling the admission or some additional grounds were added. Most of the petitioners had completed the postal D.Ed. course for some or the other reasons, whereas the impugned orders were passed in the year 2005. The Bench also noted that the petitions were filed and admitted in 2006 and interim orders were operative since then. The Division Bench thus distinguished the view taken by coordinate benches in the earlier common judgments dated 22.4.2008 and 4.6.2008.

12. Subsequently, W.P. No.76 of 2006, 777 of 2006, 800 of 2006, 782 of 2006, 793 of 2006, 794 of 2006, 807 of 2006 and 813 of 2006 came up before yet another Division Bench (Aurangabad Bench) and by a common judgment dated 18.3.2011, the Division Bench had allowed the petitions by following the common judgment dated 7.12.2010.

13. It is in these circumstances, the petitioner has approached us in a

fresh round challenging the subsequent orders passed by the administrative officer of the municipal corporation and the consequent relieving order passed by the Headmistress of the concerned school i.e. Urdu Primary School No.56, Tashkent Bag, Malegaon. Affidavit in reply has been filed by the Administrative Officer of the Municipal Corporation school Board, Malegaon. It has been pointed out that the termination order dated 15.12.2011 was issued cancelling the appointment order 24.11.2005 and he acted on the basis of the letter dated 13.2.1011 he had received from the Director of the Council. It has also been contended that the petition is not maintainable in view of the common judgment dated 22.4.2008 and 4.6.2008. It has been urged that by the common judgment dated 4.6.2008 in Writ Petition No.689 of 2006 in which the present petition was one of the petitioners, her challenge to the order dated 31.12.2005 came to be dismissed and the Special Leave Petition challenging the said order was also dismissed by the Supreme Court.

14. On behalf of the Council, Shri Prabhakar Karat, Lecturer, has filed an affidavit in reply and it has been stated that the State Government has decided to file Special Leave Petition against the common judgment dated 7.12.2010 rendered in Writ Petition No.610 of 2006 and other connected petitions but the Special Leave Petition has not yet

been filed and the action is in process by the said office so as to file the SLP. Whereas the learned Counsel for the petitioner submitted that in the subsequent common judgment dated 7.12.2010 and 18.3.2011 the coordinate benches have gone through the enquiry report and held that the order dated 31.12.2005 cancellation of admission, was unsustainable. It has also been pointed out that the petitioner had completed her postal D.Ed. course on 7.2.2005 i.e. much before the enquiry officer submitted his report in May 2005.

15. It is also to be noted that the Division Bench which rendered the common judgment dated 18.3.2011 was presided over by one of us (Smt.Nishita Mhatre, J.). We have given our anxious considerations to the arguments advanced by the petitioner as well as the respondents and in our considered opinion, so as to resolve the controversy between the different views taken by the coordinate benches of this Court, there is a case made out to refer this petition to a larger bench under Rule 7 of Chapter 1 of the Bombay High Court (Appellate Side) Rules.

16. We must also note that despite the dismissal of Writ Petition No.689 of 2008 filed by the petitioner and others, by the common judgment dated 4.6.2008, the petitioner was retained in service till the

impugned order was passed by the Administrative Officer on 15.2.2011 and, therefore, she claims to rely upon the subsequent common judgment dated 7.12.2010 and 18.3.2011.

17. Hence, we frame the following issues for the consideration of the larger bench:

- i) Whether this petition is maintainable
- ii) Whether the order dated 31.12.2005 for cancellation of admissions to postal D.Ed. course and based on the enquiry report submitted in May 2005, despite the fact that most of the candidates had completed their postal D.Ed. course prior to the submission of the report or prior to the order of cancellation of admission, is sustainable in law.
- iii) Whether the order of termination dated 15.2.2011, is sustainable.

18. We therefore direct the Registrar (Judicial) to place the papers before the Chief Justice for further appropriate order.

19. The order of status quo granted earlier to continue until further orders.

(SMT.NISHITA MHATRE, J.)

(B.H. MARLAPALLE, J.)