

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil)...CC 20732/2009

(From the judgment and order dated 06/05/2009 in WP No. 1559/2009 of The HIGH COURT OF BOMBAY)

RAYAT SHIKSHAN SANSTHA & ANR.

Petitioner(s)

VERSUS

PATIL MALTI JANARDAN & ORS.

Respondent(s)

(With appln(s) for c/delay in filing SLP)

Date: 17/12/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Shivaji M. Jadhav, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

We have heard learned counsel for the petitioner and perused the record.

Delay of 99 days in filing the special leave petition is condoned.

In the main case, the petitioner has questioned the legality and correctness of order dated 6.5.2009 passed by the learned Single Judge of the Bombay High Court who dismissed the writ petition filed by the petitioner and approved the order passed by the School Tribunal, Pune Division, Pune (for short, 'the Tribunal').

2

Respondent No. 1, who possessed the qualification of B.A., B.Ed. at the relevant time, was appointed as Assistant Teacher with effect from 19.8.1994 in the school established and managed by petitioner No.1. The tenure of her appointment was co-terminus with the academic year 1994-1995. She was again appointed for the year 1995-1996 and this process continued till 20.2.2000, when she was appointed on probation against a clear and permanent vacancy. Her service was discontinued with effect from 3.8.2005 on the ground that she was not having the qualifications prescribed by National Council of Teacher Education (NCTE) in 2003.

Respondent No. 1 challenged the termination of her service by filing an appeal. She also questioned the appointment of respondent No.3. By an order dated 16.1.2008, the Tribunal partly allowed the appeal of respondent No. 1 and directed petitioner No.1 to reinstate

her and pay her salary and other allowances. The learned Single Judge confirmed the order of the Tribunal and dismissed the writ petition filed by the petitioners. He opined that respondent No.1 was eligible for appointment in 1994 and her services could not have been dispensed with by applying the qualifications prescribed by NCTE in 2003.

In our opinion, the view taken by the Tribunal and the learned Single Judge of the High Court is in consonance of the basic rule of service jurisprudence that a person who is eligible for appointment at a given point of time and is appointed against the sanctioned post, his/her services cannot be terminated on the ground that he/she does not fulfill the qualification prescribed subsequently.

With the above observation, the special leave petition is dismissed. Ordinarily we would have saddled the petitioners with cost at this stage itself, but keeping in view the fact that they are running educational institutions, we refrain from doing so.

3

(S. Thapar)
P.S. to Registrar

(Mithlesh Gupta)
Court Master