

CASE NO.:
Appeal (civil) 4627 of 2007

PETITIONER:
Asha Shamkumar Patil

RESPONDENT:
Sadhana Rajan Kamble & Ors

DATE OF JUDGMENT: 03/10/2007

BENCH:
Tarun Chatterjee & P.Sathasivam

JUDGMENT:
JUDGMENT
O R D E R
(Arising out of SLP)No.13837 of 2006)

TARUN CHATTERJEE, J.

1. Leave granted.

2. In this appeal, the appellant questions the correctness of the judgment and order dated 7th March, 2006 passed by a Division Bench of the Bombay High Court in Writ Petition No.5652 of 2003 by which the High Court had allowed the writ petition filed by the respondent No.1 challenging the appointment of the appellant as a permanent teacher of Dr. Babasaheb Ambedkar Mahavidyalaya, Peth Vadgaon, Dist. Kolhapur.

3. The appellant was initially appointed as a Full-Time teacher in Hindi by an order of appointment dated 10th of July, 1986 on a temporary basis for a period of one year. The appointment continued, since then, every year on the same terms and conditions. On 27th of June, 1991, an advertisement in a Daily Newspaper was published by Jai Prakash Education Society, respondent No.2 herein, advertising three posts, including the post of a teacher in Hindi. A bare perusal of the advertisement would show that all the three posts advertised were reserved for candidates belonging to Scheduled Tribe/D.T and N.T. categories. The appellant was from the general category. Nevertheless, by an order dated 16th of July, 1991, she was appointed a full time teacher in Hindi to the aforesaid post reserved for Scheduled Tribe/D.T. and N.T. category candidates. The writ petitioner-respondent No.1 herein, also applied for appointment to the said post of a teacher in Hindi on the basis of the advertisement, as indicated hereinabove. The respondent No.1 was a scheduled caste candidate, which is not in dispute. However, she was appointed, by an order dated 16th of July, 1991, as a part time Hindi teacher.

4. The respondent No. 1, initially, challenged the appointment of the appellant and also her non-selection as a full time teacher, by filing an appeal before the School Tribunal, Kolhapur, Maharashtra, which was dismissed, inter alia, on the ground of limitation and jurisdiction. This order of the School Tribunal was challenged by the respondent No. 1 by way of a writ petition, which was, however, withdrawn by her on 3rd of September, 2002. Subsequent to the withdrawal of appeal, the respondent No. 1 challenged her non-selection by filing a Writ Petition No. 5652 of 2003 for declaring her as a full time teacher in Hindi on a permanent post from 16th of July, 1991

and for quashing the appointment of the appellant as a full time teacher in Hindi. By the impugned order, a division bench of the High Court allowed the same and made the following directions:
\023With these observations, we allow this petition and direct respondent Nos.1 to 3 to reinstate the petitioner as a full time Hindi teacher in the respondent No.2 College. It is further directed that the petitioner\022s services shall be treated as a full time Hindi teacher from the date of her first appointment. However, considering the facts and circumstances, while granting continuity in service, we direct respondent No.2 to pay all monetary benefits from the date of filing of the petition, after deducting monetary benefits already paid. Considering the facts and circumstances of the case, respondent No.1 is directed to pay to the petitioner the difference of pay and allowances from the date of filing of the petition i.e. 2nd May, 2003 till date\005\024

5. Feeling aggrieved, the appellant has filed the present special leave petition in respect of which leave has already been granted.

6. Having heard the learned counsel for the parties and after going through the relevant rules and resolutions, we are of the view that no interference is called for in the present case. Admittedly, the appellant is from the general category. From the advertisement in the daily newspaper, it would be clear that the posts for which teachers were wanted were reserved for candidates belonging to ST/DT/NT and other backward classes. However, it was also clarified that if candidates from the aforesaid reserved category were not available, then, candidates belonging to scheduled caste would be considered. In this connection, we may also refer to Rule 9(a) of the Maharashtra Employees of Private Schools, 1981, which reads as follows:

\023Rule 9(a) \026 In case it is not possible to fill in the teaching post for which a vacancy is reserved for a person belonging to a particular category of Backward Classes, the post may be filled in by selecting a candidate from the other remaining categories in the order specified in sub-rule (7) and if no person from any of the categories is available, the post may be filled in temporarily on an year to year basis by a candidate not belonging to the Backward Classes.

A plain reading of Rule 9(a), which deals with appointment of staff of a school, would show that in case it is not possible to fill in the teaching post for which a vacancy is reserved for a person belonging to a particular category of candidates, the post may be filled in by selecting a candidate from the other remaining categories in the order specified in sub-rule (7) and if no person from any of the categories is available, the post may be filled in temporarily on an year to year basis by a candidate not belonging to the Backward classes. (Emphasis supplied)

7. From the above, it is, therefore, clear that the post may be filled in by a candidate belonging to the other remaining categories if no person is available from ST/DT or NT categories. If no person is available from any of the categories, then, the said post can be filled in temporarily on a year to year basis by a candidate not belonging to the classes of candidates mentioned in Rule 9(a). Here, in the present case, the appellant was appointed on a permanent status as a teacher in the said school, which

under Rule 9(a) is not permissible.

8. In this case, it is not in dispute that the respondent No.1 applied on the basis of the advertisement and prayed for her appointment as a Full-Time Hindi teacher. It is also not in dispute that the respondent No.1 is a scheduled caste candidate. Both the appellant and respondent No.1 had applied in terms of the advertisement dated 27th June, 1991 for the post of Full-Time Hindi teacher in the Junior College. Since the respondent No.1 was a scheduled caste and the post in question was reserved for ST/DT/NT candidates and in case not available, a scheduled caste candidate could be selected, the respondent No. 1 only was entitled to be appointed in the said reserved category and not the appellant. At the risk of repetition, we may say that the appellant was neither a scheduled tribe nor a scheduled caste candidate, whereas the respondent No.1, admittedly, was a scheduled caste candidate, as noted herein earlier. It is no ground that only because the appellant was working as a Hindi teacher with temporary status, she could become eligible to be appointed permanently because she had worked on the said post temporarily for a considerable period of time. We are of the view that the appellant cannot be permitted to get the benefit of her continued service as a temporary teacher, when, admittedly, the post was reserved for ST/DT and NT candidates and when statutory rules do not permit the authorities to appoint a candidate as a permanent teacher of the school from the general category. Mr. Lalit, senior counsel, appearing on behalf of the appellant however submitted that in view of the fact that appointments of candidates in the reserved post were already filled in and there was no vacancy in the said reserved post, it was open for the authorities to appoint the appellant from the general category. We are unable to accept this contention of Mr. Lalit. As noted hereinabove, Rule 9(a) of the said rules clearly provides that in the event, the reserved post is filled up or candidates are not available, in that case, a general category candidate, can be appointed purely on a temporary basis from year to year and can not be appointed as a permanent teacher of the school.

9. It is true that the appellant had worked in the school since 1986, but that does not confer any power on the authorities to appoint her permanently, when, admittedly, the post was reserved either for a scheduled tribe or a scheduled caste candidate.

10. Such being the position, we are not inclined to interfere with the order passed by the High Court and accordingly, the appeal fails and is hereby dismissed without any order as to costs.