
(1992) 07 BOM CK 0068

In the Bombay High Court

Case No : Writ Petition No. 1535 of 1992

Abdul Haleem Siddiqui

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 27-07-1992

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 14

Citation : (1992) 3 BomCR 251

Hon'ble Judges : P.D. Desai, C.J.; S.H. Kapadia, J

Bench : Division Bench

Advocate : Umesh Nabar, instructed by A.V. Bukhar, for the Appellant;

Judgement

P.D. Desai, C.J.—The Writ Petitioner is a suspended employee of the 2nd respondent which runs M.H. Saboo Siddik Polytechnic in Bombay. In an appeal preferred before the School Tribunal, Bombay by another employee of the said respondent, whose services have been terminated, the said employee desired to be represented by the Writ petitioner. The Writ Petitioner, therefore, sought permission of the 2nd respondent to represent the said employee in those proceedings as required by the proviso to section 14 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, hereinafter referred to as the Act. The permission was rejected on the ground that since he was under suspension he could not be granted the permission. Hence the present Writ Petition.

2. The Writ Petitioner challenges the constitutional validity of the proviso to section 14 of the Act which reads as follows :

"Provided that, the appellant shall, if he so desires, be allowed to represent himself before the Director or the Tribunal through any other person of his choice who shall be an employee in the same or any other private school. Such representative shall obtain permission to do so from the Management of his school."

The submission is that the power to grant permission leaves an uncontrolled and unguided discretion in the school management and that it also restricts the discretion of the employee to select his representative in the proceedings in which the said employee is challenging the action of the school management.

3. We are unable to accede to the submission. There is nothing inherently wrong in prescribing that the chosen representative should seek permission of the management of the school in which he is serving since he is undertaking an assignment, while in service, which is outside the scope of his duty. No employee can engage himself, without the permission of the employer in any activity or undertake any assignment, gratis or otherwise, which might conceivably detract from or affect the performance of his duty or require him to abstain from duty. The power to grant permission is not vested in the Head Master/Principal but in the school management which is the highest body administering the school. It is legitimate to assume that the power would be exercised bona fide and on the relevant considerations and if that is found lacking in a given case the action could be challenged but not the statute. The investment of such power cannot be regarded as conferring unguided or uncontrolled discretion since its exercise has necessarily to be guided by keeping in view, inter alia, the object and purpose underlying the provision and other related factors. It is incorrect to assume that once a representative is chosen an absolute right to be represented by such person is acquired. The right of representation through houseel introduced the further requirement of the chosen representative seeking the permission of the management of his school before accepting the assignment. The challenge to the constitutional validity of the proviso to section 14 must, therefore, fail.

4. The ground on which the permission is rejected in the instant case cannot be regarded as arbitrary or irrational. The school management retains administrative control even over a suspended employee since the relationship of master and servant does not come to an end as a result of suspension. If the school management is of the view that a suspended employee should not be granted permission to be the representative of another of its employees in the appellate proceeding before the School Tribunal and refuses permission on that ground, it cannot be said that any irrelevant factor has entered into consideration or that rejection of permission is arbitrary and irrational.

5. For the foregoing reasons, the Writ Petition fails and it is summarily rejected.