
(1989) 02 BOM CK 0001
In the Bombay High Court
Case No : Writ Petition No. 692 of 1985

Abdul Manan Azmi

APPELLANT

Vs

Sayed Mohammed Askari and Others

RESPONDENT

Date of Decision : 07-02-1989

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 2(12), 5(3)

Citation : (1989) 59 FLR 95 : (1995) 3 LLJ 230

Hon'ble Judges : Tipnis, J;Pendse, J

Bench : Division Bench

Advocate : L.J. Kadri and J.M. Bhatt, for the Appellant; M.M. Vashi, for the Respondent

Final Decision : Allowed

Judgement

Pendse, J.—By this petition filed under Article 226 of the Constitution of India, the Headmaster and Trustee of An-juman Riyazul Islam High School is challenging legality of judgment dated January 16, 1985 delivered by Presiding Officer, School Tribunal, Bombay, in appeal preferred by an employee u/s 9(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1978 (hereinafter referred to as the "Act"). The facts which gave rise to the passing of this order are as follows:

2. The respondent No. 1 was initially appointed on January 19, 1983 as a peon in the School and the order was to Be effective from February 1, 1983. In March 1983, the respondent No. 1 was appointed as a Junior Clerk but without any appointment letter. The respondent No. 1 was required to produce certificate indicating passing of Secondary School Certificate Examination but the certificate was not produced for a considerable long time. On August 28, 1984, the Headmaster served notice of termination on respondent No. 1 and the termination was to be effective from September 1, 1982. The cheque for Rs. 737/- equivalent to salary of one month towards notice fees was also enclosed

with the notice of termination. The employee then approached the Presiding Officer, School Tribunal, Bombay, by filing an appeal.

3. It was urged before the School Tribunal that respondent No. I was appointed in a clear vacancy as a Junior Clerk and the vacancy was a permanent vacancy and, therefore, respondent No. I is entitled to be made permanent at the expiry of two years. The employee further claimed that termination notice was signed by the Headmaster who was not authorised by the management to terminate the service. The appeal was resisted by the petitioner by claiming that the services of respondent No. I were not satisfactory and respondent No. I was temporary and had not completed two years probationary period and, therefore, it was open for the petitioner to terminate the employment. The petitioner pointed out that memos and warnings were given to respondent No. I during his period of service.

The Tribunal held that there were sufficient grounds to terminate the services of respondent No. I since respondent No. I was temporary employee and his probationary period had not been completed. The Tribunal further held that the services of the temporary employees can be terminated by giving one calendar month's notice or one month's pay in lieu of notice. The Tribunal further held that the record clearly indicated that the work and behaviour of respondent No. I was not satisfactory. After recording this finding, the Tribunal set aside the order of termination on the narrow ground that the termination letter was signed by the Head-master who was also the Secretary of the School Committee, and it was noticed that the Headmaster was not authorised by the Management to terminate the service of respondent No. 1. The decision of the Tribunal is under challenge.

4. It was contended on behalf of the petitioner that the conclusion of the Tribunal that the Headmaster was not authorised by the Management to terminate the service of the employee is totally incorrect. In support of the submission, our attention was invited to the meeting of the Managing Committee of the school held on June 22, 1982. The resolution passed in this meeting provided that the petitioner who was the Managing Trustee and founder Honorary General Secretary and the Headmaster of the School is authorised on behalf of the Managing Committee to make appointments of the members of the staff and terminate services of the members of the staff, if found unfit or committing breach of conditions of service as laid down under Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, (hereinafter referred to as the "Rules"). This Resolution is clear answer to the objection found out by the Tribunal to set aside the order of termination. As mentioned hereinabove, the Tribunal has held in favour of the employee on all the counts, but has disturbed the order of termination solely on the ground that the Management had not authorised the Headmaster to issue the termination letter. In face of the Resolution, the order of the Tribunal cannot be sustained.

Shri Vashi, learned counsel appearing on behalf of the employee, submitted that the Headmaster of the School cannot be equated with the management and

these two authorities are different and distinct. Shri Vashi relied upon decision of Single Judge delivered on April 16, 1986 in Writ Petitions Nos. 2205, 2206 and 2207 of 1985 in support of submission that the order of termination signed by the Headmaster is not valid order. Shri Vashi submitted that the decision of the Single Judge was upheld by the Division Bench and, therefore, the conclusion of the Tribunal should be upheld. It is impossible to accede to the submission of the learned counsel and it is obvious that the decision of the learned Single Judge has been misread and misconstrued by the Tribunal. Section 5(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 prescribe that the Management shall, as soon as possible, fill in every permanent vacancy in a private school by the appointment of a person duly qualified. The expression "management " has been defined u/s 2(12) of the Act and means (a) in the case of the school administered by the State Government, the Department, (b) in the case of school administered by a local authority such authority; and (c) in any other case, the person or body of persons, whether incorporated or not and whatever name called, administering such school. The plain reading of the expression "Management" in case of schools not administered by State Government or local authority means any person or body of persons by whatever name called administering such school. Shri Vashi submitted with reference to expression "Head of a school" u/s 2(9) of the Act that the head of the school includes a principal, vice-principal, headmaster, etc, and, therefore, the expression "Management" cannot include in its ambit the headmaster. It is impossible to accept the submission because in case of a school not administered by State Government or local authority, a person can be administering the school as well as be its headmaster. It will have to be determined in every case whether the same person is a headmaster and also is administering the school and, therefore, management. There cannot be a general rule that a headmaster can never administer the school and, therefore, cannot fall within the definition "Management".

The reliance upon the decision of the learned Single Judge is wholly inappropriate. In the case before the learned Single Judge, a specific finding was recorded that the school is run by the trust and, therefore, the headmaster was not administering the school and did not fall within the expression "Management" u/s 2(12) of the Act. The decision should not be misconstrued by holding in every case that the headmaster can never administer the school and, therefore, would not come within the definition of "Management". In our judgment, in a given case, the headmaster can also administer the school and, therefore, can be in the management of the school. In the present case, in view of the specific resolution passed by the Trustees, there is no difficulty whatsoever in concluding that the headmaster was perfectly entitled to terminate the employee of respondent No. I.

5. Shri Vashi then submitted that the appointment of respondent No. I was in a clear vacancy and the finding of the Tribunal that respondent No. 1 was a temporary employee and his services could have been terminated under Rule

10(1) is incorrect. We will examine the submission of the learned counsel on the basis that respondent No. 1 was appointed in a clear vacancy and which was also a permanent one. Sub-section (2) of Section 5 of the Act provides that every person appointed to fill a permanent vacancy shall be on probation for a period of two years. The respondent No. 1 was appointed as Junior Clerk in March 1983 and before period of two years, his service was terminated with effect from September 1, 1984 on the ground that his work was found unsatisfactory. Sub-section (3) of Section 5 of the Act enables the management to terminate the service of a probationer during the period if the work or behaviour is found not satisfactory. The Tribunal, in the present case, has recorded a clear-cut finding that the record shows that the work and the behaviour of respondent No. 1 was not satisfactory. Shri Vashi challenged the finding submitting that the management did not produce any confidential record maintained in regard to the work of respondent No. 1 and, therefore, under Sub-rule (5) of Rule 15 it must be presumed that the work of respondent No. 1 was satisfactory. Rule 15 prescribes for writing of confidential reports and Sub-rule (3) provides that the reporting authority shall arrange to communicate in writing adverse remarks, if any, to the concerned employee before the end of August, every year. Now, in the present case, the services of respondent No. 1 were terminated by September 1, 1984 and by that time the respondent No. 1 had put in service of about 1 1/2 year. Sub-rule (5) provides that failure to write and maintain confidential reports and to communicate adverse remarks to the employees shall have the effect that the work of the employee was satisfactory during the period under report. Shri Vashi submitted that respondent No. 1 was not communicated with any adverse remarks and, therefore, his record should be treated as satisfactory. It is not possible to accept the submission for more than one reason. In the first instance, the Management produced before the Tribunal Memos and warnings issued to respondent No. 1 during the period of service. Secondly, what is required to be communicated is only the adverse remarks and not merely the fact that the employee's work is not satisfactory. There are large number of cases where though there are no adverse remarks against the employees, the work of the probationer is found unsatisfactory and the probationer is discontinued. It is not mandatory that the probationer's service can be discontinued only in case of adverse remarks. In our judgment, on the findings recorded by the Tribunal, it is not possible to hold that the record of respondent No. 1 was satisfactory.

6. Shri Vashi also submitted that it was urged by the management before the Tribunal that respondent No. 1 was guilty of committing fraud of the school fees, donations and in respect of other accounts. The management also claimed before the Tribunal that respondent No. 1 had misbehaved with lady teachers and in support of which non-cognizable complaints were lodged at the Police Station. There were other complaints depicting the behaviour of respondent No. 1 which was brought to the attention of the Tribunal and Shri Vashi submits that these facts reveal that the termination was not termination simpliciter but was to impose punishment upon respondent No. 1. The submission is that termination

which was imposed as punishment cannot be sustained in absence of holding of an enquiry and framing of the charge. The submission is not correct. The facts about the behaviour of respondent No. 1 was brought to the attention of the Tribunal only with a view to sustain the action of the management. Sub-section (3) of Section 5 of the Act specifically provides that the Management could terminate services of the probationer if during the period of probation the work or behaviour of any probationer is found not satisfactory. It is, therefore, obvious that the Section confers power on the management if the work as well as the behaviour of the probationer is found unsatisfactory. The facts about behaviour of respondent No. 1 with lady teachers and in respect of handling of the funds of the Management was pointed out to the Tribunal to highlight that the action of Management was bona fide and not to suggest that the termination was as a result of decision to impose penalty. In our judgment, the order of termination does not suffer from any infirmity and the order of Tribunal was entirely incorrect.

7. Accordingly, petition succeeds and the impugned order dated January 16, 1985 passed by the School Tribunal, Bombay and copy of which is annexed as Ex. "E" to the petition, is set aside and the order of termination of respondent No. 1 is upheld. In the circumstances of the case, there will be no order as to costs.