

(2014) 09 BOM CK 0010

In the Bombay High Court

Case No : Writ Petition Nos. 1623 and 2279 of 2013

Adarsha Dnyan Prakash Shikshan Sanstha

APPELLANT

Vs

Education Officer (Secondary)
 Ku. Padma Vs Adarsha
Dnyan Prakash Shikshan Sanstha

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 5(1), 9

Citation : (2014) 6 ABR 610 : (2015) 2 ALLMR 24 : (2015) 2 MhLj 891

Hon'ble Judges : A.S. Chandurkar, J

Bench : Single Bench

Advocate : B.G. Kulkarni, Advocate, A.M. Gordey, Senior Advocate and Abhay Sambre, Advocate for the Appellant; A.M. Gordey, Senior Advocate, Abhay Sambre, Advocate, P.V. Bhoyar, Asstt. Government Pleader, V.K. Paliwal, Advocate and B.G. Kulkarni, Advocate for the Respondent

Judgement

A.S. Chandurkar, J.—In terms of the order dated 14-8-2013, both these writ petitions are heard finally with the consent of the learned Counsel appearing for the parties by issuing Rule. As common issues arise for determination in both these petitions, they are being decided by this common judgment. Service on respondent No.2 in Writ Petition No.1623/2013 is dispensed in view of the order proposed to be passed.

2. The challenge in writ petition No.1623/2013 is to the judgment dated 1-3-2013 passed by the learned Presiding Officer, School Tribunal, Nagpur thereby dismissing the appeal preferred by the petitioner under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 (for short the Act). In writ petition No.2279/2013, the petitioner who claims to be the President of Adarsha Dnyan Prakash Sanstha has challenged the finding recorded against issue no.3 in aforesaid appeal by the School Tribunal, Nagpur.

3. The petitioner in Writ Petition No.1623/2013 being duly qualified to hold the post of Shikshan Sevak applied pursuant to an advertisement issued on 14-2-2010 by the Head Master, Prakash Vidyalaya, Gumthala. The petitioner on being found suitable was issued order of appointment dated 2-3-2010. Said appointment was on the post of Shikshan Sevak for a period of three years. The petitioner's appointment was duly approved by the Education Officer. However, prior to completion of the period of three years, the petitioner's services came to be terminated by order dated 12-3-2012 issued by the President of the respondent No.1 Sanstha. Being aggrieved thereby, the petitioner preferred appeal under Section 9 of the said Act before the School Tribunal. The learned Presiding Officer by impugned judgment dated 1-3-2013 held that the petitioner's appointment was made by the Head Master on the basis of Circular dated 19-11-2001 and as under said Circular the appointment could have been made only for a period of one year, the continuation of the petitioner in service after completion of one year was illegal. It was further held that in view of amendment to the provisions of said Act in the year 2007, Circular dated 19-11-2001 would not apply. It was, therefore, held that as the appointment of the petitioner was itself illegal, the appeal was liable to be dismissed. On that basis by judgment dated 1-3-2013, the appeal preferred by the petitioner was dismissed.

4. Shri B. G. Kulkarni, the learned Counsel appearing for the petitioner in Writ Petition No.1623/2013 submitted that the learned Presiding Officer erred in holding that the appointment of the petitioner was not in accordance with law. He submitted that in the memorandum of appeal, a specific case had been made out that the petitioner's appointment was made by the Head Master as there was no School Committee in existence. It was submitted that when the School Committee was not in existence, the authority to issue order of appointment had been given to the Head Master under Circular dated 19-11-2001. He further submitted that under said Circular, the appointment on the post of Shikshan Sevak could be made for a period of three years. However, the learned Presiding Officer wrongly held that such appointment could be made only for one year. He further submitted that after following due procedure, the petitioner came to be appointed and hence, there was due compliance with the requirements of Section 5(1) of the said Act. He, therefore, submitted that without considering these relevant aspects of the matter, the learned Presiding Officer dismissed the appeal by misinterpreting Circular dated 19-11-2001. He further submitted that after passing of the impugned judgment, interim protection that was granted by the School Tribunal earlier was continued and in view of order passed on 14-8-2013 in the present writ petition, the petitioner continues to be in service. He, therefore, submitted that the impugned judgment deserves to be set aside.

5. Shri A. M. Gordey, the learned Senior Counsel along with Shri Abhay Sambre, learned Counsel appearing for respondent No.1 submitted that the appointment of the petitioner had not been made in accordance with law. It was submitted that the assumption that the School Committee was not in existence itself was

erroneous. It was urged that as the School Committee was in existence, there was no occasion for the Head Master to rely upon Circular dated 19-11-2001 and seek to make appointment of the petitioner. It was further submitted that the petitioner in her appeal before the School Tribunal did not specifically assert that the School Committee was not in existence. It was further submitted that the finding recorded by the learned Presiding Officer that the impugned order of termination was not legal was incorrect. He submitted that the aforesaid finding had been independently challenged by the respondent No.1 in the present writ petition by preferring Writ Petition No.2279/2013. He, therefore, submitted that considering the various orders passed in proceedings under the Maharashtra Public Trust Act, 1950 (for short, "the Trust Act") the respondent No.1 had sufficient authority to issue the order of termination. The learned Presiding Officer, therefore, could not have held that said respondent No.1 had no authority to terminate the services of the petitioner. It is further submitted that the School Tribunal had passed an appropriate order in the facts of the case and as it had found that the appointment itself was illegal, no relief could be granted to the petitioner. He, therefore, submitted that Writ Petition No. 1623/2013 was liable to be dismissed and the finding recorded against the Issue no.3 should be set aside by allowing Writ Petition No.2279/2013.

6. Shir P. V. Bhoyar, the learned Assistant Government Pleader appearing for the respondent No.3 relying upon the affidavit filed by the Dy. Education Officer (Secondary) submitted that after examining the relevant facts, permission was granted to the Head Master to fill in the post in question. He further submitted that the approval was also granted after examining the entire record. He, therefore, submitted that no fault could be found with the aforesaid action of the Education Officer.

7. Shri V. K. Paliwal, the learned Counsel appearing for the respondent No.4 submitted that the respondent No.1 had no authority whatsoever to issue the order of termination. It was submitted that the School Committee was very much in existence and it was the respondent No.4 who was administering the affairs of the trust and hence, was in management thereof. Referring to various orders passed in the proceedings under the Trust Act, it was submitted that the same indicated that it was the respondent no.4 who was managing the affairs of the trust. He, therefore, questioned the authority of the respondent No.1 to issue the order of termination to the petitioner.

8. I have carefully considered the respective submissions made by the learned Counsel for the parties. I have also gone through the documents filed on record.

9. Perusal of the impugned judgment indicates that the learned Presiding Officer has arrived at a specific conclusion that though the appointment of the petitioner was made by the Head Master on the basis of the Circular dated 19-11-2001, such appointment could be made only for one year. It has been further held that in view of amendment to the said Act in the year 2007, the Circular dated 19-11-2001 did not have any legal force. On that basis, a finding has been

arrived at that the appointment of the petitioner made on the basis of Circular dated 19-11-2001 was itself illegal. A further finding has been recorded that the respondent No.1 did not have specific authority to terminate the services of the petitioner. On these findings, the appeal preferred by the petitioner came to be dismissed.

10. It would be first necessary to refer to the proceedings that were pending under provisions of the Trust Act between the trustees. On 19-5-1993, an order came to be passed in proceedings under Section 47 of the Trust Act thereby appointing four trustees. The learned Joint Charity Commissioner had directed that the administration of the Trust should be carried out by said four trustees by rule of majority. This order dated 19-5-1993 was challenged by the present respondent No.4 in First Appeal No.256 of 1993. Aforesaid first appeal was admitted on 5-7-1993, but no stay was granted to the directions as issued by the learned Joint Charity Commissioner. During pendency of aforesaid proceedings, on 22-2-2008 the Division Bench of this Court passed an order continuing the interim arrangement that had been made from time to time with a rider that no policy decision like transfer or promotion should be taken without making an application to that effect before the learned Single Judge. In accordance thereof, an application was made in First Appeal No.256/1993 vide Civil Application No.1301/2010. By said application, permission to make certain appointments was sought from this Court. On 5-7-2010, a direction was issued permitting the applicant therein and members of the School Committee concerned to fill in the said posts temporarily in accordance with law. It was made clear that in case of any infirmity or illegality, the appointment so made could be cancelled by the Education officer. It may be noted that aforesaid First Appeal has now been decided finally on 28-7-2014 and the same has been dismissed.

11. Before considering the rival submissions, it would be necessary to refer to certain provisions of the said Act and the Rules of 1981 framed thereunder. Rule 2(i) of the Rules of 1981 defines the expression "School Committee" to be a Committee constituted in accordance with provisions of Schedule-A. Clause (2) of Schedule-A prescribes the manner in which the School Committee shall be constituted and under Clause 3(c) thereof, one of the functions of the School Committee is to appoint employees other than the Head of the School. Similarly, under Schedule-I Clause 2(p) and (w) there is reference to convening meetings of the School Committee and other steps to be taken by such Committee with regard to administration of the School. The expression "management" has been defined by Section 2(12) of the said Act. In the Clause (c) thereof, it has been stated that it could be a person or a body of persons whether incorporated or not and by whatever name called administering such school.

12. It would also be necessary to refer to Circular dated 19-11-2001 on the basis of which power to make appointment has been exercised by the Head Master. In said Circular, there is reference to resolution dated 7-2-2001 and it has been stated that when the School Committee is not in existence, then the Head Master

in his capacity as Member- Secretary of the School Committee can appoint a Shikshan Sevak for a period of three years. It may be noted that the validity of aforesaid Circular had been challenged before this Court in Writ Petition No.5313/2012 (Selu Shikshan Mandal, Selu. vs. The State of Maharashtra and others). By judgment dated 24-4-2013, the validity of said Circular has been upheld observing that by said Circular, the State Government has provided for a situation whenever there could be a vacuum on account of non-existence of School Committee.

13. The specific case of the petitioner in the appeal preferred before the School Tribunal was that there was a serious dispute amongst the trustees as regards management of the Trust. It was averred that in view of disputes between the trustees, no authorized/approved School Committee was in existence. In view of aforesaid fact, the Headmaster of the School had been authorized to make appointments on various posts of Shikshak Sevak as per Circular dated 19.11.2001. It was further stated that such appointments could be made for a period of three years in terms of said Circular. It was thereafter stated that the respondent no.1 in the Appeal had illegally sought to interfere in the management of the aforesaid school and had passed an order on 12.03.2012 terminating the services of the petitioner. With these pleadings the aforesaid appeal was filed before the School Tribunal.

14. In reply thereto, the respondent no.1 in the appeal took the stand that the appointment of the petitioner was in violation of the mandatory provisions of said Act. A specific stand was taken that the appointment of the petitioner made by the Head Master by relying upon the Circular dated 19.11.2001 was contrary to law. It was also stated that the appointment of the petitioner was of a temporary nature and hence her services had been rightly terminated.

15. In so far as the Education Officer is concerned, he had also filed his reply in the appeal in which it was stated that after scrutinizing the proposal for appointment of the petitioner and after examining the same, approval was granted in accordance with law. In so far as the present respondent no.4 is concerned, he had also filed reply to the aforesaid appeal. According to him, the petitioner had been appointed after following the due procedure prescribed. It was further stated that the petitioner had been appointed on a clear and permanent post after issuing advertisement by the competent School Committee. It was thereafter stated that the order of termination issued by respondent no.1 was contrary to law.

16. The School Tribunal while considering issue no.2 as regards validity of the appointment of the petitioner observed that said appointment was made by the Headmaster on the basis of Circular dated 19.11.2001. It was however observed that said appointment could be made for a period of one year only. It was further held that in view of the amendment in the year 2007 to the said Act, the Circular dated 19.11.2001 would have no application and hence the petitioner's appointment was held to be illegal. On that basis the finding was recorded that

the petitioner's appointment had not been made in accordance with law and hence said issue was answered in the negative.

17. In so far as issuance of order of termination is concerned, it has been held while answering issue no. 3 that respondent no. 1 had not been permitted by the High Court to terminate the services of any employee in terms of order dated 11.02.2011. It was further held that prior permission of the Deputy Director of Education was not taken while terminating the services of the petitioner. On that basis, issue no. 3 was answered in the negative and it was held that the order of termination was not in accordance with law.

18. In *Yavatmal Islamia Anglo Urdu Education Society, Yavatmal and another Vs. Mujib Ahmed Abbas Ali and another* 2010 (1) Maharashtra Law Journal 359, while considering the duties of the School Tribunal with regard to consideration of issues raised before it, this Court in para 5 of aforesaid judgment observed thus:

"It is the duty of the Tribunal to refer to and address each and every pleading which is relevant and material and consider the submissions made by the parties, so also the evidence tendered before it and then address itself on those aspects. After all, School Tribunal is a first Court or tribunal exercising the power of the first Court or the trial Court though the proceedings before it are termed as "appeal". This Court has held that said term "appeal" is misnomer."

It is, therefore, clear that Tribunal is required to refer and address each and every pleading which is relevant and material while adjudicating the appeal before it.

19. As noted above, it was the specific case of the petitioner that as the School Committee as contemplated by Schedule A to the said Act was not in existence, her appointment had been made in terms of Circular dated 19.11.2001. This specific stand of the petitioner was countered by the respondents in their reply. It is, therefore, obvious that in view of specific assertions and denial thereof, the same gave rise to an issue as to whether circumstances existed so as to make appointments on the basis of Circular dated 19.11.2001 and whether the appointment of the petitioner was validly made on the basis of Circular dated 19.11.2001. It was, therefore, necessary for the School Tribunal while considering the said aspect to have gone into the question as to whether the School Committee as contemplated by law was in existence and further whether the Headmaster was justified in the facts of case to have sought permission to make such appointments and thereafter whether such appointment was made in accordance with law. However, it is clear on reading the impugned judgment that these vital aspects have not been taken into account and merely by observing that the right to appointment under Circular dated 19.11.2001 could be for a period of only one year, the learned Presiding Officer has proceeded to record a finding that appointment of the petitioner was contrary to law. In fact, said Circular clearly permits the appointment of Shikshan Sevak for a period of three years and not one year as observed by the learned Presiding Officer. It is,

therefore, clear that consideration of these vital aspects suffer from non-application of mind.

20. In terms of law laid down by the Division Bench of this Court in the case of Anna Manikrao Pethe Vs. Presiding Officer, School Tribunal, Amravati and Others, , it is necessary for the School Tribunal to consider in facts of the case before it, as to whether the appointment of the appellant before it has been made in accordance with Section 5 of the said Act. While considering aforesaid issue it would therefore be necessary in the facts of the present case also to consider if the appointment of the petitioner as made by the Headmaster by relying upon the Circular dated 19.11.2001 was justified or not. This aspect of the matter not having been considered and there being no finding in that regard, this Court is not in a position to adjudicate as to whether the Headmaster was justified in making the appointment of the petitioner in terms of Circular dated 19.11.2001 due to absence of the School Committee. It is, therefore, necessary that the School Tribunal should be directed to rehear the appeal and decide all relevant issues that arise for consideration before it in view of the pleadings of the parties.

21. In so far as challenge to the validity of the order of termination is concerned, the same will also have to be reconsidered in the light of final adjudication of First Appeal No. 256 of 1993. It is true that aforesaid First Appeal has been finally decided after the appeal before the School Tribunal was decided. However, considering the fact that the action of termination is sought to be defended by relying upon certain interim orders by one party and is sought to be challenged on the basis of other interim orders by the rival party, as aforesaid First Appeal has now been finally decided the validity of the order of termination can also be reexamined.

22. In view of aforesaid, it would be necessary to remand the proceedings to the School Tribunal for fresh adjudication in the light to observations made herein. While considering the appeal afresh and while determining the validity of the order of appointment under Section 5 of the said Act, the following aspects as agreed by learned counsel for the parties could also be taken into consideration:

a] Whether the permission for filling up the vacant post was granted by the Education Officer to the Head Master in view of the fact that the School Committee was not existing or was not validly constituted?

b] Whether the process of selection and appointment of the appellant was initiated and completed under the authority of the Head?

c] Whether the Education Officer had granted approval to the appointment of the appellant by confirming that the said appointment was in view of provisions of Circular dated 19.11.2001?

Similarly while considering the validity of the order of termination the following aspects can also be taken into consideration as agreed between the parties:

a] Whether Shri Prakashe had the authority to issue the order of termination in view of order dated 05.10.2011 in Misc. Application No. 96 of 2010 passed by the Deputy Charity Commissioner?

b] Whether the ground for issuing the order of termination is sustainable in the eyes of law?

23. Similarly, as First Appeal No. 256 of 1993 has now been decided on merits the effect of judgment dated 28.07.2014 can also be considered in said appeal. It is however clarified that if on the basis of pleadings of the parties to the appeal, the learned Presiding Officer is of the view that some additional issues also arise for determination, the School Tribunal would be free to frame such issues and adjudicate the same in accordance with law.

24. It is to be noted that during pendency of the present Writ Petition, the interim relief that was granted by the School Tribunal during pendency of the Appeal before it had been continued. Similarly, by orders dated 14.08.2013 and 29-10-2013 passed in Writ Petition No.1623/2013, various directions were issued after hearing all parties in the matter of payment of salary to the petitioner. It is, therefore clear that as on date the petitioner continues in employment and hence said arrangement shall continue till aforesaid appeal is finally decided and thereafter for a period of two weeks from the date of judgment of the School Tribunal in case the same is adverse to the appellant.

25. In view of the aforesaid the following order is passed:

a] The impugned judgment dated 01.03.2013 passed by the learned Presiding Officer, School Tribunal Nagpur in Appeal No. STN-55 of 2012 is set aside.

b] The proceedings are remitted to the School Tribunal for deciding the same afresh in accordance with law and by taking into account the observations made herein and especially paras 22 and 23. It is clarified that the School Tribunal shall independently decide aforesaid appeal without being influenced by any observations made in this judgment as said observations have been made only for the purposes of adjudicating the present Writ Petitions. Parties to the appeal are at liberty to amend their pleadings in the facts of the case. The School Tribunal shall endeavour to decide the appeal expeditiously.

c] The petitioner shall continue in employment in terms of interim directions issued in the Writ Petition filed by the appellant and as clarified by order dated 14.08.2013 passed in Writ Petition No.1623/2013. It is further directed that in case any adverse order is passed in the appeal, the same shall not be acted upon for a period of 15 days from the date of the judgment of the School Tribunal.

d] Rule is made absolute in Writ Petition No.1623/2013 in aforesaid terms. Rule in Writ Petition No.2279/2013 stands disposed of in terms of what has been held herein above. All pending civil applications also stand disposed of. No costs.