
(2015) 03 BOM CK 0310
In the Bombay High Court
Case No : Writ Petition No. 8315 of 2003

Ashwini Anant Purav

APPELLANT

Vs

Bhayandar Kelvani Mandal and Others

RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 11, 5(2)

Citation : (2015) 03 BOM CK 0310

Hon'ble Judges : M.S. Sonak, J

Bench : Single Bench

Advocate : Sandesh Patil, Advocates for the Respondent

Judgement

M.S. Sonak, J—This petition is directed against the judgment and order dated 21 April 2003 made by the School Tribunal, Navi Mumbai, dismissing the petitioner's appeal against the termination of her services by order dated 26 March 1999.

2. The petitioner was appointed as a Librarian in J.H. Poddar High School ("School") w.e.f. 6 June 1994. The appointment order state that such appointment was on purely temporary basis for a period of one year. It is the case of the petitioner that though she was appointed as a Librarian, she was assigned the duties as an Assistant Teacher and also entreated to complete her B.Ed course, which, the petitioner ultimately completed. On 17 June 1997, appointment order was issued, appointing the petitioner as an Assistant Teacher on purely temporary basis for one year. By this date, the petitioner possessed qualifications of B.Com., M.A. And B.Ed. In the month of April 1998 however, the petitioner was issued with a notice informing her that her services would not be required from 1 May 1998 and that the said notice to be treated as one month's notice for termination. It is the case of the petitioner that despite such notice, the petitioner continued to work as an Assistant Teacher upto 30 April 1999. She was however not paid the salary for summer vacation upto 12 June 1999. On 26

March 1999, however yet another termination notice was issued to the petitioner, informing her that her services would no longer be required from ensuing academic year. It is further the case of the petitioner that she was informed by the school management that the termination letter was issued as a matter of formality and that she would be permitted to resume duties at the commencement of the ensuing academic year. However, on 13 June 1999, when the petitioner reported for duties, she was not permitted to resume duties. The petitioner, by her communication dated 28 June 1999 protested against the termination. As there was no response from the respondent No. 3 i.e. the Education Officer, Zilla Parishad, the petitioner instituted appeal before the School Tribunal to challenge the termination order dated 26 March 1999. By the impugned judgment and order dated 21 April 2003, the School Tribunal has dismissed the appeal. Hence, the present petition.

3. Mrs. Ashwini Purav, the petitioner in person, made the following submissions in support of the petition:

"(A) That she had completed more than four years service in the school without any break. For the period between 1994 and 1997, even though the petitioner's appointment was styled as Librarian, the petitioner in fact discharged duties as an Assistant Teacher. The petitioner upon the entreaties of the school management obtained high academic qualifications, including that of B.Ed. From 17 June 1997, the petitioner was issued formal appointment order as Assistant Teacher and has discharged duties as such, until her unceremonious termination vide order dated 26 March 1999, but w.e.f. 13 June 1999. The petitioner's appointment was in a clear vacancy and therefore, notwithstanding the phraseology employed in the appointment orders, the petitioner ought to be regarded as a permanent employee of the School. In such circumstances, termination, by mere service of one month's notice was incompetent, illegal, null and void;

(B) The record would indicate that the petitioner was fully qualified to hold the post of Assistant Teacher. Further, the petitioner's appointment was neither in a leave vacancy nor in a substituted vacancy. In such circumstances, the petitioner's appointment had to be regarded as one under probation. There is no record of petitioner's services being found to be unsatisfactory. In fact, the certificates issued by the school management would indicate that the petitioner was an efficient employee. The termination is not alleged to be on account of any misconduct on the part of the petitioner. In such circumstances, there was absolutely no reason to terminate the petitioner's services;

(C) The school management has virtually exploited the petitioner by resort to the policy of a "hire and fire". The real foundation for termination is the petitioner joining hands with other employees of the said School in instituting the petition in support of the demand for proper salary and other conditions of service. The termination order, being a product of such vindictiveness, cannot sustain;

(D) It is in fact at the behest of the school management that the petitioner completed her M.A. and B.Ed. courses. As the school had no sufficient and competent staff members, the petitioner bettered her qualifications and sincerely taught various subjects assigned to her. Ignoring all such service and without compliance with the principles of natural justice and fair play, the School has illegally terminated her services."

4. The petitioner placed reliance upon the decisions of this Court in the case of *Shikshan Prasarak Mandal Vs. Presiding Officer, School Tribunal and Another*, (2005) 6 BomCR 311 : (2005) 4 MhLj 485 and *The Secretary, Lucy Sequeira Trust, Mumbai & Anr. v. Smt. Sushma Pramod Upadhyay & Ors.* 2004 (3) ALL MR 913

5. Mr. Sandesh Patil, the learned counsel for the respondent No. 1 submitted that the petitioner was appointed purely on temporary basis for a period of one year and this position was made very clear in the appointment order dated 17 June 1997 itself. Such appointment was duly accepted by the petitioner. However, the school management was incompetent to appoint the petitioner on regular basis, since no advertisement had been issued inviting eligible applicants and the selection was also not in pursuance of any Selection Committee as contemplated under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 or the Rules made thereunder ("said Act" and "said Rules"). All this was clearly known to the petitioner and therefore, the petitioner cannot be heard to complain about her termination. Mr. Patil placed reliance upon the decision of the Full Bench in the case of *Ramkrishna Chauhan and Others Vs. Seth D.M. High School, Deputy Director of Education, The Bharat Jatiya Sangh and State of Maharashtra and Others etc. etc.*, (2013) 3 ALLMR 1 : (2013) 2 BomCR 481 : (2013) 1 LLN 611 : (2013) 2 MhLj 713 , in the cases of *Priyadarshini Education Trust and The Head Master, National Urdu High School Vs. Ratis (Rafia) Bano*, (2007) 6 ALLMR 238 : (2007) 6 BomCR 79 : (2007) 109 BOMLR 1663 : (2007) 6 MhLj 667 and *Hindustan Education Society and another Vs. Sk. Kaleem Sk. Gulam Nabi and others*, AIR 1997 SC 2126 : (1997) 4 JT 92 : (1997) 1 LLJ 1071 : (1997) 3 SCALE 107 : (1997) 5 SCC 152 : (1997) SCC(L&S) 1210 : (1997) 2 SCR 910 : (1997) AIRSCW 1977 : (1997) 3 Supreme 292 .

6. Rival contentions now fall for determination.

7. A perusal of the record indicates that the petitioner came to be appointed as Librarian, by appointment order dated 6 June 1994. The said appointment order states that the same is purely temporary and for a period of one year. By a letter of acceptance, possibly of the same date, the petitioner accepted such appointment. Thereafter, by yet another appointment order dated 17 June 1997, the petitioner, whose qualifications were indicated as B.Com., B.Ed. came to be appointed as an Assistant Teacher. Again, even this appointment order states that the appointment is purely on temporary basis for a period of one year, by a letter of acceptance, possibly of the same date, the petitioner accepted such appointment. Thereafter, by notice dated 26 March 1999, the petitioner was

informed that her services no longer be required w.e.f. 13 June 1999. There is no averment in the petition that prior to the issuance of either of the appointment orders, any public advertisement was issued inviting applications or that the selections came to be made by any duly constituted selection committee. That apart, the appointment orders, very clearly indicate that the appointments were on temporary basis and for a fixed duration. Until the service of notice of termination, there is no material to indicate that the petitioner protested against appointment, merely on temporary basis and not on permanent basis or on probation. In the aforesaid circumstances, it is unfortunately not possible to accept the petitioner's contention that her appointment be regarded as one on permanent basis or at least on probation.

8. The Full Bench of this Court in the case of Ramkrishna Chauhan (supra), was constituted to answer the following question:

"Would it be open to the School Tribunal to hold that an employee would be deemed to be on probation within the meaning of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 on the ground that the appointment was made in a clear and permanent vacancy, notwithstanding the fact that the letter of appointment specifically stipulated that the appointment has been made in a temporary capacity?"

9. Upon detailed consideration of the matter, and following the law laid down by the Hon'ble Apex Court in the case of Hindustan Education Society (supra), the Full Bench of this Court answered the aforesaid question in the negative and held that it is not open to the School Tribunal to assume, as a fact, that the appointment made against a clear and permanent vacancy is deemed to be on probation, within meaning of Section 5(2) of the said Act. The School Tribunal cannot disregard the terms and conditions of the letter of appointment, if it expressly provides that the appointment is on temporary basis, for a limited term.

10. The decision in the case of Shikshan Prasarak Mandal (supra) cannot be of assistance to the petitioner, because in the said case it was held that there was no material on record to show that the teacher concerned was appointed against a vacancy which was of a temporary nature. Besides, in the case of Ramkrishna Chauhan (supra), the Full Bench of this Court has not approved the view taken in the case of Shikshan Prasarak Mandal (supra). Similarly, in the case of the Secretary, Lucy Sequeira Trust (supra), the teacher in question was working for five years and her appointment was approved subject to the consideration of data about the workload to be made available to the department. In such circumstances, it was held that the school management cannot refuse to pay on the spacious plea that it had obtained an undertaking that the teacher would not claim wages, if the approval is declined. Such issue does not arise in the present case.

11. In the present case, there is no material on record which establishes that the petitioner's appointment was in a clear and permanent vacancy. However, if it is

presumed that this was so, looking to the express terms of appointment orders, the School Tribunal was right in declining relief of reinstatement to the petitioner.

12. Notwithstanding the aforesaid, reference is required to be made to certain other circumstances in this matter. In the appeal memo as well as memo of the petition, the petitioner has averred that though she was appointed as a Librarian, she was made to discharge the duties as a teacher. The petitioner has also averred that upon completion of B.Ed. and M.A., formal appointment order as teacher was issued to her. The petitioner has also averred that at the stage when no qualified teachers were available in the school, the petitioner was made to and has discharged duties as a teacher in the said School. The petitioner has also annexed to the petition a certificate issued by the school management, appreciating the services of the petitioner. There is no serious denial, in so far as such averments are concerned.

13. That apart, there is no material placed on record by the school management that the services of the petitioner were terminated so as to make regular appointment after compliance with provisions of the said Act or the said Rules. In such circumstances, there does appear to be some substance in the petitioner's contention that the real reason for terminating the services of the petitioner was that the petitioner along with other employees, instituting petition before this Court demanding enhanced salaries.

14. Although, the aforesaid circumstances may not entitle the petitioner to relief of reinstatement or full back-wages, it would, at least be appropriate if some compensation is awarded to the petitioner for the treatment meted out to her by the school management. The petitioner has discharged services for a period of almost four years. In the course of such period, the petitioner obtained qualifications of B.Ed. and M.A. The petitioner discharged duties as a teacher, when there were no qualified teachers available in the school. In the circumstances, case is made out by the petitioner for award of some compensation. Section 11 of the said Act, inter alia provides that where the Tribunal decides not to reinstate the employee or any other appropriate case, the Tribunal can award to the employee twelve months salary (pay and allowances, if any) if such employee has been in service of the School for ten years or more and six months salary (pay and allowances, if any) if he has been in service for less than ten years, by way of compensation, regard being had to loss of employment and the possibility of getting or not getting suitable employment thereafter, as it may specify. Applying the aforesaid basis, in my judgment, in the facts and circumstances of the present case, it would be appropriate if the respondent Nos. 1 and 2 are directed to pay to the petitioners six months salary (at the present scale) within a period of eight weeks from today.

15. Accordingly, the impugned order dated 21 April 2003 made by the School Tribunal is modified. The termination order dated 26 March 1999 is not interfered with. However, the respondent Nos. 1 and 2 are directed to pay to the petitioners six months salary (at the present scale) within a period of eight weeks from

today.

16. Rule is made partly absolute. There shall be no order as to costs.