

(2012) 07 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 8173 of 2011

Bhartiya Mahila Mandal Chavani and Another

APPELLANT

Vs

Chagan Pavlasa Bhalekar and Others

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5, 5(12), 9

Citation : (2013) 1 ALLMR 600 : (2013) 2 BomCR 646

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : V.D. Gunale, for the Appellant; B.V. Virdhe for R/1, Advocate and Mr. U.B. Bondar for R/2. R. No. 3 in person, for the Respondent

Final Decision : Allowed

Judgement

S.S. Shinde, J.—This writ petition takes exception to the judgment and order dated 25th March, 2011 passed by the School Tribunal in Appeal No. 51/2004. Rule, returnable forthwith. By consent of the parties, taken up for final hearing.

2. This petition has been filed by the Secretary of Bhartiya Mahila Mandal Chavani, Aurangabad and Headmistress of Holi Child English School, CIDCO, Aurangabad. According to the respondent No. 1, the oral termination is by the petitioner No. 2. There is some dispute raised about filing this petition by the petitioner No. 1 as Secretary. Instead of going into that controversy, this petition is considered only on behalf of the petitioner No. 2 Headmistress of the said school.

3. The learned Counsel for the petitioner submits that the school tribunal has not considered the provisions of section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, referred to as the MEPS Act). At the relevant time, the respondent No. 1 was not duly qualified for the appointment as Assistant Teacher. The School Tribunal has misread the documents which were produced on record and reached to the erroneous

conclusion that the respondent No. 1 has been appointed on permanent vacancy and further in view of subsection (2) of section 5 of the MEPS Act, after completion of two years, the respondent No. 1 has become deemed permanent employee of the school. He also submitted that necessary points which were required to be framed by the school tribunal for the adjudication of the appeal have not been framed as per the judgment of this Court in case of Anna Manikrao Pethe Vs. The Presiding Officer, School Tribunal and others, . He also invited my attention to the judgment of the Division Bench in case of Priyadarshini Education Trust and The Head Master, National Urdu High School Vs. Ratis (Rafia) Bano, and submitted that in order to claim the benefit of deemed permanency, a teacher must be duly qualified and selected. The learned Counsel further submitted that by a cryptic judgment and order, the appeal filed by the respondent No. 1 came to be allowed. The School Tribunal has also not considered that from 2004 till disposal of the appeal, the respondent No. 1 has not worked. The tribunal has granted relief of back wages even in absence of any affidavit on record by the respondent No. 1 stating therein that he was not gainfully employed during that period. It is submitted that though the proposal for approval was forwarded to the Education Officer, the said proposal was turned down on the ground that the respondent No. 1 was not duly qualified to be appointed as an Assistant Teacher. Therefore, relying upon the pleadings, grounds taken in the petition, annexures thereto, the learned Counsel for the petitioner submitted that the petition deserves to be allowed.

In the alternative, he submits that the matter may be remanded back to the School Tribunal for fresh adjudication.

4. On the other hand, the learned Counsel for the respondent No. 1 invited my attention to the appointment letter, which is placed at Exh. R-6, page 115 along with reply. Relying upon the contents of the said appointment letter, the learned Counsel for the respondent No. 1 submitted that the respondent No. 1 was appointed on clear vacancy and on permanent basis and after successful completion of two years from the date of appointment, he has acquired the status of permanent employee. Therefore, according to the learned Counsel for the respondent No. 1, this writ petition is devoid of any merits and the same deserves to be dismissed. He also invited my attention to the affidavit-in-reply on behalf of respondent No. 1. He further submitted that the petitioner No. 1 has no locus to file this petition. It is submitted that in 1999 the respondent No. 1 has acquired the qualification of D.Ed., and therefore, the respondent No. 1 became duly qualified for the said post, at least in the year, 1999 and the management should have considered the said development and granted benefit to the respondent No. 1. It is submitted that in 2010, two other Assistant Teachers were appointed by the petitioner. Therefore, there was no reason why the respondent No. 1, duly qualified at least in the year, 2002, should not be continued and granted benefit of permanency as Assistant Teacher as directed by the School Tribunal.

5. The respondent No. 3-party-in-person, has a limited grievance that the petitioner no. 1 is not holding the post of Secretary of the said institution.

6. I have given due consideration to the rival submissions of the parties. At the outset, it is clarified that this petition is being entertained only on behalf of petitioner No. 2 Headmistress of the said school. Even the case of the respondent No. 1 is that the services of respondent No. 1 were orally terminated by the petitioner No. 2. Therefore, this petition can very well be considered only on behalf of petitioner No. 2.

7. Upon careful perusal of the impugned judgment of the school tribunal, it appears that four points were framed for consideration/determination by the school tribunal. The reasons for allowing the appeal are mainly assigned in para 6 of the judgment of the school tribunal, which reads thus:

6. As to point No. 2 and 3, as far as the appointment is concerned, by virtue of appointment order placed on record it clearly appears that the appellant was appointed as permanent employee in the respondent schools w.e.f. 28/6/1988. Therefore, it clearly appears that the appellant has worked for the period of about 16 years in the respondents school. Therefore, by virtue of section 5(12) of the MEPS Act the appellant has acquired the status of deemed permanent. Hence, it was essential for the respondent Management to have taken recourse to provisions of MEPS Act and Rules thereunder for terminating the services of the appellant. By careful scrutiny of entire case record it does not appear that the respondent Management has taken recourse to any of the procedure as laid down under the provisions of MEPS Act and Rules thereunder for the purpose of termination of services of the appellant. Hence the oral termination prima facie is illegal and bad and illegal in law and is liable to be quashed and set aside.

(i) Many times has been wasted on the various applications made by one Pushpa Parker claiming to be Secretary of the respondent Management. It is legally settled that who ever is the office bearer of the respondent Management is liable to follow the procedure laid down by MEPS Act and Rules thereunder for terminating the services of the appellant. If a particular person is a Secretary/ President of the respondent Management does not make any difference to this legal position.

8. Upon careful perusal of para 6 of the impugned judgment, it would make it abundantly clear that the tribunal has not considered the mandate of section 5 of the MEPS Act and proceeded to decide the appeal without even adverting to the language of subsection (1) of section 5 of the MEPS Act. Even the tribunal has misread the letter of appointment which was placed on record by the respondent No. 1. The said letter clearly mentions that the appointment of the respondent No. 1 was on temporary basis. Therefore, there was no occasion for the school tribunal to observe in para 6 that the appointment of the respondent no. 1 is as a permanent employee. Apart from the above, the school tribunal has not considered the provisions of section 9 of the MEPS Act.

Careful perusal of perusal of the provisions of section 5 of the MEPS Act would make it abundantly clear that if there is any permanent vacancy and if the person is duly qualified, in that case, such person can be appointed as a teacher or Assistant Teacher, as the case may be. On successful completion of probation period of two years, said appointee shall be deemed to have been confirmed. In the present case, admittedly, the respondent No. 1 was not duly qualified in the year, 1988. Therefore, in absence of necessary qualification required for the post of Assistant Teacher, the question of appointing the respondent No. 1 on a permanent vacancy as duly qualified person, would not arise. It is true that the respondent No. 1 has acquired necessary qualification in the year, 1999 and to that effect, certain benefits would be accrued to the respondent No. 1. However, the fact remains that at the time of first appointment in the year, 1988, the respondent No. 1 was not duly qualified. In my opinion, the school tribunal, has not considered the vital aspect of the matter and misread the documents, which were placed on record by the respondent No. 1. However, the respondent No. 1 and also the management should get one further opportunity to put forth their contention and place on record the documents and, therefore, this Court thinks it appropriate to quash and set aside the impugned judgment and order of the school tribunal and remand the matter back to the school tribunal for fresh adjudication.

Accordingly, the impugned judgment and order dated 25th March, 2011 passed by the School Tribunal in Appeal No. 51/ 2004 is quashed and set aside. The said appeal is restored to its original file. The School Tribunal to hear the parties afresh after affording them proper opportunity of hearing and also placing the evidence on record and decide the said appeal afresh by framing necessary points for its determination as held by this Court in case of Anna Manikrao Pethe Vs. The Presiding Officer, School Tribunal and others, .

It is needless to clarify that the school tribunal should not get influenced by any observations made in this judgment, while deciding the appeal afresh. Since the respondent No. 1 is litigating for a considerable period and he is out of employment, it is desirable that the school tribunal hears and disposes of the appeal, as expeditiously as possible and in any case, not later than six months from today. The school tribunal shall not grant unnecessary adjournments to the parties unless there are extraordinary circumstances to do so.

In the light of above, Rule is made absolute. Petition allowed accordingly, and stands disposed of.