
(2014) 08 BOM CK 0083

In the Bombay High Court

Case No : Writ Petition Nos. 6886 of 2013 and 49, 50, 51 of 2014

Bhartiya R.B. Damle Gram Sudhar and Shikshan Prachar
Society

APPELLANT

Vs

Smita

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

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

Citation : (2015) 6 ALLMR 277 : (2014) 6 BomCR 569

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : P.D. Rane, Advocate for the Appellant; P.N. Shende, G.G. Mishra and
V.N. Patre, Advocate for the Respondent

Final Decision : Allowed

Judgement

A.P. Bhangale, J.—Rule returnable forthwith. Heard finally by consent.

2. The petitioners have questioned legality of the Judgment dt. 30.11.2013 passed in Appeal No. STN/65/2012 (in Writ Petition No. 49 of 2014), Appeal No. STN/66/2012 (in Writ Petition No. 50 of 2014), Appeal No. STN/64/2012 (in Writ Petition No. 51 of 2014) and Appeal No. STN/63/2012 (in Writ Petition No. 6886 of 2013) by the learned Presiding Officer of the School Tribunal at Nagpur whereby the appeals filed by respondent no. 1 (original appellants) were partly allowed and the orders terminating their services were set aside and the petitioner/Management was directed to reinstate them in service on the same post with continuity within one month from the date of Judgments.

3. On 21.12.2009, respondent no. 1 in Writ Petition Nos. 49 of 2014, 50 of 2014 and 51 of 2014 were appointed as "Shikshan Sevaks" and on 21.1.2011, respondent no. 1 in Writ Petition No. 6886 of 2013 was appointed as a "Shikshan Sevak" for three years. On 27.3.2012, the Education Officer communicated to the Management to terminate the services of teachers as mentioned in the

communication pursuant to the staff approval for the Academic Session 2011-2012. On 30.3.2012, notices of termination came to be issued and on 30.4.2012, the services of respondent no. 1 in all the petitions were terminated. Respondent no. 1 appealed against the termination. The Management contested and filed the Written Statement. The School Tribunal partly allowed the appeal of respondent no. 1 and directed reinstatement and continuity of service. The petitioner has challenged the same order as unsustainable under the law. It is case of the petitioners that they ought to have been heard by the School Tribunal in view of the principles of natural justice for proper adjudication of the case on merits. The petitioners/Management has prayed to quash and set aside the impugned order.

4. The Full Bench of this Court in below mentioned ruling has decided the question as to whether the Shikshan Sevak-on completion of three years or 30 months" service appointed on regular basis as an Assistant teacher in a School in terms of Clause 8 of the Government Resolution, dated 13th October, 2000 is required to be appointed as a confirmed teacher or a teacher on Probation. Taking note of the amendment made by the Maharashtra Act XIV of 2007, the Full Bench mentions that the "Shikshan Sevak " shall be on probation for three years. Subject to the provisions of Sub-Sections (3) and (4) of Section 5, a Shikshan Sevak, upon completion of probation period of three years, be deemed to have been appointed and confirmed as a teacher. Section 5 of the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977. (Briefly referred to as "the MEPS Act") deals with certain obligations of Management of Private Schools.

"5. Certain obligations of Management of Private Schools-

(1) xxx xxx xxx

(2) Every person appointed to fill a permanent vacancy shall be on probation for a period of two years. Subject to the provisions sub-sections (4) and (5) he shall, on completion of this probation of two years, be deemed to have been confirmed."

5. In the case of Ram Avadh Mahel Pal Vs. Shivdutta Educational Trust and Others, the question before the Full Bench was as to whether the Shikshan Sevak on completion of three years" or 30 months" service appointed on regular basis as an Assistant teacher in school in terms of Clause 8 of the Government Resolution, dated 13th October, 2000 is required to be appointed as a confirmed teacher or a teacher on probation ? The answer to the question referred was given in terms that, subject to the provisions of sub-sections (3) and (4) of Section 5, a Shikshan Sevak shall, on completion of three years of probation period, be deemed to have been appointed and confirmed as a teacher.

6. In the case of Pramod Rajaram Pawar vs. The Head Mistress, Saraswati Vidyalaya & Ors. reported in 2004 (3) All M.R. 283 (Bom.), the petitioner therein was appointed as a teacher on 14.6.1999 and his service was temporary for the

period upto 30.4.2000 and on 27.6.2000, he was informed that his service was terminated with effect from 30.4.2000. This Court held that, even assuming that the teacher was appointed in a clear vacancy, on probation he had not completed two years" service and hence, he had no right to the post.

7. In the ruling of Maharashtra Shikshan Prasarak Mandal a Public Charitable Trust and Sau Indumati Jagannath Mahajan Managing Trustee, Maharashtra Shikshan Prasarak Mandal Vs. Shri Kashinath Bhanoji Tayade, The Deputy Director of Vocational Education and Training and The State of Maharashtra, the services of the petitioners were terminated before completion of the period of probation. The petitioners are held not entitled to the benefit of protection of Rule 26(2)(iii) of the MEPS Rules, 1981.

8. The grievance of the petitioners herein is that the Tribunal failed to give thoughtful consideration to the facts. It did not address itself to the factual question as to whether the Management had followed prescribed procedure according to law laid down by the MEPS Act and the Rules framed thereunder and the Tribunal violated the principles of natural justice as no opportunity to put forward the contentions was accorded to the petitioner/Management. It is contended that, for the aforesaid reason, the impugned orders are liable to be quashed and set aside.

9. After hearing the submissions and for the reason stated above, without expression on merits, it would be worthwhile if the matters are remitted to the Tribunal to ensure that the petitioners/Management gets sufficient opportunity to put forward all its contentions and the Tribunal addresses itself upon all the points agitated by the petitioner and the respondents herein, applies its mind afresh and decides the petitions on its own merits and in accordance with law.

10. Hence the impugned orders are set aside with a direction to the School Tribunal to hear the parties, apply its mind afresh and to decide the appeals as early as possible, preferably within six months. The petitions are, thus, allowed and disposed of. Rule is made absolute accordingly in all the petitions.