

(2000) 03 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No. 3295 of 1989

Chandrakant Ganpat Narkhede

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 06-03-2000

Acts Referred:

Maharashtra Educational Institutions (Management) Act, 1976 — Section 3, 3(7)(a), 3(7)(e), 3(7)(f)
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 2, 4

Citation : (2000) 03 BOM CK 0013

Hon'ble Judges : V.K. Barde, J;A.S. Bagga, J

Bench : Division Bench

Advocate : Vasumihara Kudmuhvar, for the Appellant; V.B. Ghatge, Assistant Government Pleader for Respondents Nos. 1, 2 and A.G. Talhar, for the Respondent

Final Decision : Allowed

Judgement

V.K. Barde, J.—The petitioner was employed as Senior Clerk in Salve English Vidyalyaya -respondent No. 3- with effect from 11-9-1967. The petitioner was in continuous service. On 6-10-1980, Administrator was appointed for the Institute as per the provisions of the Maharashtra Educational Institutions (Management) Act, 1976 (hereinafter referred to as "the 1976 Act"). Shri Charudatta Narkade was the Head Master of the School. The management of the Society had filed a case against him on various grounds, including the allegation regarding forgery and the petitioner was main witness on behalf of the prosecution in the said matter. Shri Narkade was reappointed as Head Master with effect from 6-10-1980 by the Administrator, Shri Narkade had a grudge against the petitioner.

2. The Administrator of the Society appointed by the State Government served a notice on the petitioner dated 24-11-1981. The notice, inter alia mentioned that, in the audit objections, it was observed that the auditors fees were paid in cash

on 31-3-1980 and the said amount was also paid by cheque. Thus, for the same transaction, twice the amount was paid and the receipt was prepared for the two amounts paid and thus, the amount of Rs. 300 was misappropriated. It was also mentioned in the notice that the auditor had observed that the management failed to produce Receipt Book No. 12 containing Receipts Nos. 1102 to 1200. The petitioner was asked to submit his explanation within eight days.

3. The petitioner immediately submitted his application contending that the documents pertained to the period of 1979-1980 and 1980-1981. Therefore, he be given all the necessary documents and also the audit report to enable him to submit his explanation.

4. The petitioner has further contended that on 24-12-1981. he applied for permission to attend the conference of non-teaching staff at Thane. He also gave reminders to the Administrator for the same. He also informed that if the management was not willing to send him as representative of the management, then he was ready to take casual leave and to attend the conference at his own expenses: and he asked permission accordingly.

5. The petitioner has further contended that the Administrator, by his letter dated 25-2-1983. issued show cause notice to the petitioner, calling upon him to give his explanation regarding the various allegations made in the show cause notice. He was asked to submit his explanation within eight days and he was further informed that if he failed to furnish his explanation, it would be presumed that he had admitted all the charges mentioned in the notice. The petitioner submitted his reply on 3-3-1983. The petitioner has described in the petition what reply he has given to the allegations made in the notice.

6. On 26-3-1983, the petitioner submitted application for leave for 15 days, because he was ill. Along with that, he submitted medical certificate. He thereafter submitted further application for extension of leave till 11-6-1983.

7. The petitioner has contended that the Administrator by his letter dated 9-6-1983 informed the petitioner that his services were terminated with effect from 13-6-1983. The petitioner made an appeal to the Administrator on 15-6-1983 and requested to withdraw the notice of termination of service, because it was issued when he was on leave.

8. The petitioner has contended that a meeting of the advisory committee of the school had taken place after 3-3-1983 and it was decided that the petitioner should not be removed from services. In spite of this decision of the advisory committee, the Administrator terminated the services of the petitioner. The petitioner thereafter filed appeal before the Director of Education. But on 25-3-1984, the petitioner was informed that his appeal was rejected.

9. The petitioner has contended that his services were terminated without giving him reasonable opportunity to defend himself. The charges framed against him were vague. The documents called for before submitting his explanation were not

supplied to him. No enquiry was held even though he had specifically denied all the allegations levelled against him. So, the order of termination issued by the Administrator is illegal. The Appellate Authority also failed to take into consideration all these circumstances and has wrongly rejected his appeal. The principles of natural justice were not followed, either at the time of issuing the order of termination or at the time of hearing of the appeal. Hence, the petitioner has filed this petition with the prayer that the order of termination of his service and the decision in appeal be quashed and the petitioner be reinstated in service with full back wages and other consequential benefits.

10. Along with the petition, the petitioner has filed the copies of show cause notice, explanation given by him, the order passed by the Administrator and the order passed in appeal by the Director of Education. He has also filed on record documents indicating that the advisory committee had advised that the petitioner's services be not terminated.

11. Respondent No. 2 has filed affidavit in return. The contention of respondents Nos. 1 and 2 is that the show cause notice was served on the petitioner and his explanation was sought. The explanation was not found satisfactory. So, as per the provisions of 3(7)(e) of the 1976 Act, the services of the petitioner were terminated. It is also mentioned in the affidavit, how the explanation given by the petitioner was not satisfactory. It is further contended that when the petitioner filed the appeal as per the provisions of section 3(7)(f) of the 1976 Act, ample opportunity was given to the petitioner to attend the hearing of the appeal, but he failed and ultimately, the appeal was rejected. Sufficient opportunity was given to the petitioner to defend himself and, therefore, the contention of the petitioner that the termination is illegal is not tenable and it is, therefore, prayed that the petition be dismissed.

12. At the time of hearing of the petition, the petitioner was allowed to add the school as well as the institute as respondents Nos. 3 and 4. Respondents Nos. 3 and 4 have also filed their affidavit in return and have supported the case of respondents Nos. 1 and 2.

13. It is admitted fact that show cause notice was served on the petitioner. The allegations against the petitioner were mentioned in the show cause notice and he was called upon to file his explanation. The petitioner filed his explanation. The Administrator did not find the explanation sufficient and, therefore, he passed the order of termination of service. Thus, it is very clear that no departmental enquiry was held against the petitioner. The petitioner filed the appeal before the Director of Education and the Director of Education also confirmed the order of termination.

14. The Learned Counsel for the petitioner, therefore, has argued that the petitioner, being an employee of a private school, the departmental enquiry ought to have been held against him as per section 4 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act. 1977

(hereinafter referred to as "the 1977 Act") and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, framed thereunder (hereinafter referred to as "the 1981 Rules"). As that procedure was not followed by the Administrator, the order of termination of service is illegal.

15. The Learned Counsel for the petitioner has pointed out that clause (a) of sub-section (7) of section 3 of the 1976 Act, inter alia, provides as under.

the service conditions, as approved by the Director, of the employees shall not be varied to their disadvantage.

And clause (e) thereof reads as under :

It shall be lawful for the Administrator to terminate the services of any employee who in his opinion is acting in any manner detrimental to the interest of the institution or education imparted therein after giving the employee a reasonable opportunity of showing cause against the proposed action.

If these two provisions are read together, it will be very clear that even if the Administrator has power to terminate the services of the employee, he must give reasonable opportunity to the employee concerned before passing the order of termination. The reasonable opportunity would be the opportunity, which is contemplated under the service rules. So, if the service rules provide for an opportunity and method of termination of service, then that method will have to be followed by the Administrator before passing any order of termination. Merely by giving show cause notice and obtaining explanation, the services cannot be terminated by the Administrator, if the service rules indicate some other procedure.

16. The Learned Counsel for the petitioner also argued that, here there are serious charges such as misappropriation of amount of Rs. 300 and causing loss of receipt book. When such serious charges are there, it has utmost necessary for the management to hold regular enquiry by giving sufficient opportunity to the petitioner to defend himself, but the Administrator was satisfied by adopting the method of calling explanation only and this has caused grave injustice to the petitioner.

17. Shri Ghatge, the learned Assistant Government Pleader appearing for respondents Nos. 1 and 2; and Shri Talhar, the Learned Counsel appearing for respondents Nos. 3 and 4, have strongly contended that the administration of the institute was taken over by the Government as per the 1976 Act and, therefore, the services of the petitioner are governed by the provisions of the 1976 Act. The procedure prescribed under the 1976 Act had to be followed by the Administrator while passing the order of termination of service and that was duly followed. The petitioner cannot have any grievance on that count, because he even filed the appeal against the order of termination of service as per the provisions of clause (f) of sub-section (7) of section 3 of the 1976 Act. So, in such circumstances, sufficient opportunity was given to the petitioner by calling

his explanation and the principles of natural justice were followed. The Appellate Authority had considered all the aspects of the case and then has confirmed the order of termination. It is also contended that the provisions of the 1977 Act and the 1981 Rules cannot be made applicable to the present case.

18. It is to be noted that the 1977 Act is specially enacted to give protection to the employees of private schools and the 1977 Act itself makes provisions regarding the departmental enquiry in case services of any employee are to be terminated by way of punishment. Sub-section (6) of section 4 of the 1977 Act reads as follows :

No employee of a private school shall be suspended, dismissed or removed or his services shall not be otherwise terminated or he shall not be reduced in rank by the Management, except in accordance with the provisions of this Act and the rules made in that behalf.

19. The 1981 Rules are promulgated and made applicable for the purpose of the 1977 Act. The procedure for departmental enquiry is laid down from rule 36 to rule 39. In the present matter, this procedure is not at all followed.

20. Though the 1976 Act gives power to the State Government to take over the management of an educational institute, it is to be noted that this management is taken over only for a specified period and not on permanent basis. So, a school run by the private institute remains a private school even if it is administered by the Administrator appointed under the 1976 Act. The 1976 Act is passed for the purpose of proper administration of the institute running private school or schools. The institute does not lose its identity as a private institute running a private school, simply because the management is taken over by the Government under the 1976 Act.

21. In view of this position, it is specifically mentioned in section 3(7)(a) of the 1976 Act that the service conditions of the employees cannot be varied to the disadvantage of the employees. So, whatever may be the service conditions, applicable to the employees before taking over the management by the State Government, will continue to apply to those. The Service conditions prior to the 1977 Act were as per the Secondary Schools Code. But, by the 1977 Act, a statutory recognition is given to the service conditions and the rules are also framed under the 1977 Act. So, those service conditions become statutory service conditions, which must be made applicable and followed in respect of each and every employee of a school, whether it is run by the private institute, or if the administration of the institute is taken over by the Government, by such Administrator. The 1977 Act is a special law and it will have overriding effect over the 1976 Act. which is introduced for a limited period for the better administration of the institute.

22. The term management is defined as per clause (12) of section 2 of the 1977 Act; and it is as under:

Management in relation to a school, means,-

(a) in the case of a school administered by the State Government, the Department;

(b) in the case of a school administered by a local authority, that local authority; and

(c) in any other case, the person or body of persons, whether incorporated or not and by whatever name called, administering such schools.

So. the 1977 Act contemplates that even if the school is administered by the Government, that Management will be covered under the provisions of the 1977 Act.

23. Clause (6) of section 4 of the 1977 Act has used the word "management" simpliciter. That means, the "management" as defined in clause (12) of section 2 of the 1977 Act.

24. So, even if the management is taken over by the Government, by following the provisions of the 1976 Act, that management is covered by clause (6) of section 4, read with clause (12) of section 2 of the 1977 Act. Therefore, the provisions of the 1977 Act are fully applicable while passing any order of termination of service of any employee by way of punishment.

25. The reasonable opportunity, which is to be given to an employee as per the provisions of section 3(7) (e) of the 1976 Act means the opportunity, which is contemplated in the statute, here the 1977 Act. The management has no authority to curtail the rights of the employee, which are accrued to him under the 1977 Act and the 1981 Rules. The management cannot say that only by giving a show cause notice and on obtaining explanation, the management can terminate the services of an employee. The provisions of the 1976 Act mention reasonable opportunity. That means, the opportunity, which is contemplated under the service rules. No short cut is contemplated by using the words "reasonable opportunity". Hence, it was not at all proper on the part of the Administrator to terminate the services of the petitioner only after obtaining the explanation of the petitioner to the show cause notice. When the petitioner had denied all the charges levelled against him, then it was absolutely necessary to hold enquiry by following the 1977 Act and the 1981 Rules, especially Rule 36 to Rule 39.

26. The Director of Education failed to take into consideration this aspect of the case and was under the impression that merely by giving the opportunity to explain, the reasonable opportunity was given to the petitioner and, therefore, he considered the explanation given by the petitioner and came to the conclusion that it was not satisfactory, and thus, confirmed the order of termination of service. He also failed to take into consideration the correct position under the law.

27. In such circumstances, the order of termination of service issued by the Administrator and further confirmed in appeal by the Director of Education has to be set aside and the petitioner has to be reinstated in service.

28. The petitioner has claimed full back wages and other service benefits. The Learned Counsel for respondents Nos. 3 and 4 has argued that when this order of termination of service of the petitioner was passed, the private management was not functioning. Whatever wrong is committed is committed by respondents Nos. 1 and 2 and, therefore, the institute be not burdened with the back wages payable to the petitioner. Respondents Nos. 1 and 2 only be directed to pay the back wages. In the given situation, we find substance in this contention, as the school has to receive the grants from the Government, and from that point of view also, on issuing the order of payment of back wages, the Government will have to pay the back wages through the grants payable to the institute, because the services of the petitioner were regular services in the cadre of Senior Clerk.

29. Hence, this writ petition is allowed. The order of termination of service of the petitioner passed by the Administrator on 9-6-1983 is set aside. So also, the order in appeal passed by the Director of Education. Maharashtra State, Pune, is set aside. The petitioner be reinstated in service as Senior Clerk in respondent No. 3 School, with full back wages and other consequential benefits. Respondents Nos. 1 and 2 to calculate the full back wages of the petitioner and to pay the same to him within a period of three months from this date.

30. Rule made absolute accordingly. There will, however, be no order as to costs.