

(1994) 09 BOM CK 0053
In the Bombay High Court
Case No : Writ Petition No. 833 of 1983

Chetanlal Jivanlal Shah

APPELLANT

Vs

Master Tutorial High School and Others

RESPONDENT

Date of Decision : 30-09-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 70 FLR 739

Hon'ble Judges : S.M. Jhunjhunwala, J; M.L. Pendse, J

Bench : Division Bench

Judgement

M. L. Pendse, J.—By this petition filed under Article 226 of the Constitution, the petitioner is challenging legality of order dated September 1, 1982 passed by the Presiding Officer, School Tribunal, Bombay. The facts which gave rise to the passing of this order are not in dispute and are required to be briefly stated to appreciate the grievance of the petitioner.

2. On June 14, 1973 the petitioner had applied for appointment as an Assistant Teacher in the respondent No. 1 School. By letter dated October 8, 1973 the petitioner was informed about his appointment as Assistant Teacher with effect from November 5, 1973. The petitioner was informed on March 28, 1975 that his temporary service stands terminated after one month in accordance with Rule 77(1) of Secondary School Code. The petitioner was reappointed on June 16, 1975 and the appointment letter recites that the petitioner is allowed to join on condition that his probation period will be extended by one year after the usual probation period i.e. two years, expires. The services of the petitioner were terminated with effect from October 3, 1975 without assigning any reason. The petitioner was paid salary for a period of one month in lieu of notice and also the vacation salary.

3. The petitioner preferred an appeal before the Education Officer as contemplated under the Secondary School Code. The Education Officer rejected the appeal by order dated August 14, 1980. The petitioner claims that the appeal

was to be heard by Education Officer, South Division but instead, Education Officer, North Division disposed of the same. The petitioner carried further appeal before the Deputy Director and that appeal filed on October 10, 1980 was transferred to the School Tribunal after the Legislature enacted the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The Tribunal by the impugned order dated September 1, 1982 dismissed the appeal and that gave rise to the filing of the present petition. The petition was admitted on June 13, 1983. The petition was dismissed by learned Single Judge by order dated July 19, 1989 as the petitioner did not care to serve respondent Nos. 2 and 3. The petitioner carried appeal before the Division Bench against the order of the learned Single Judge and the Division Bench set aside the order by judgment dated July 27, 1992 on condition that the petitioner will not be entitled to backwages from the date of dismissal of the petition by the learned Single Judge till reinstatement even if the petitioner succeeds in the petition. The fact that the petitioner had reached the age of superannuation on September 5, 1988 was not brought to the attention of the Division Bench. In pursuance of the order of the Division Bench, the petition has restored to file and is now placed for hearing.

4. Shri Vashi learned counsel appearing on behalf of the petitioner, raised three contentions to challenge legality of order of termination passed by the management. The first submission of the learned counsel is that the appeal preferred by the petitioner before the Education Officer under Secondary School Code was dismissed by Education Officer, North Division who had no jurisdiction. We are unable to find any merit in the contention. Even assuming that the grievance that the Education Officer, North Division had no jurisdiction to decide the appeal is correct, that makes little difference to the order passed by the Tribunal. After enactment of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, all appeals against the order passed by the management lie to the Tribunal and the Tribunal was examining the validity of the order passed by the management and was not concerned with the order passed by the Education Officer. The first contention of the learned counsel is therefore without any merit.

The second contention urged by the learned counsel is that the petitioner was a probationer and the services of the probationer could not have been terminated without there being any material to indicate that the performance of the petitioner was not upto the mark. Shri Vashi submitted that the order of termination is mala fide and was passed inspite of the fact that the performance of the petitioner was upto the mark. The submission is not correct because the return filed by the management sets out in detail how the petitioner was unsuitable for the post of Assistant Teacher. The issue as to whether the petitioner was suitable or not cannot be examined in writ jurisdiction and especially when the record of the petitioner is produced by the management to squarely meet the grievance. The second contention of the learned counsel must therefore be turned down.

5. The final contention urged by the learned counsel is that the order of termination is passed during the Diwali Vacation and it was not open for the management to do so in view of provisions of Rule 77(1) of Secondary School Code. The relevant provision indicates that the services of the non-permanent employee can be terminated by the management at any time without assigning any reason after giving one calendar month's notice or by paying one month's salary in lieu of notice. The provision further recites that the notice should, however, be not given during vacation or so as to cover any part of the vacation or within a month after the vacation. Shri Vashi did not dispute that the petitioner was offered salary for one month in lieu of notice and also salary for the vacation period. We are unable to appreciate how the provisions of Rule 77(1) of the Code was violated. Another aspect of the matter is that it is well settled by the Full Bench decision of this Court that the provisions of the Secondary School Code have no statutory force and cannot be enforced at the behest of the teacher. The Full Bench held that the Secondary School Code sets out the rules governing the relationship between the management and the Government and it is not open for the High Court in exercise of writ jurisdiction to give direction to the management on complaint of the teacher that the provisions are not complied with. In our judgment, the grievance that the provisions are not complied with is not correct and the order of the Tribunal consequently does not suffer from any infirmity.

6. Accordingly, petition fails and rule is discharged, but there will be no order as to costs.