

(2011) 07 BOM CK 0214

In the Bombay High Court

Case No : Writ Petition No's. 1292 and 1308 of 2011

Chota Gondia Education Society and another

APPELLANT

Vs

Dilip Kathane and another

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 5, 5(2), 9

Citation : (2012) 132 FLR 460 : (2011) 6 MhLj 595

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : I.S. Charlewar, for the Appellant; H.A. Deshpande, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Savant, J.—Rule, with the consent of learned Counsel for the parties made returnable forthwith and heard.

2. The above petitions take exception to the judgment and order of the School Tribunal dated 15-2-2011 whereby the appeals filed by the respondent No. 1 in each of the petitions came to be allowed and the petitioners were directed to reinstate the respondent-Teachers in the Junior College where they were working and a further direction was issued that the petitioners, i.e. Management to pay compensation of Rs. 5,000/- and Rs. 1,000/- as costs of the proceedings.

3. The respondent-Teachers in each of the above petitions were appointed as a Shikshan Sevak by appointment orders dated 13-10-2000. The appointment orders state that their appointment was to be for the period from 14-10-2000 to 13-10-2001. A proposal was sent to the Education Officer seeking approval to their appointment. By order dated 19-3-2001, the Education Officer in terms of the Scheme applicable to the Shikshan Sevaks granted them approval for a period of three years, i.e. upto 15-10-2003. It appears that the petitioner-Management terminated the service of the respondent-Teachers on 15-10-2003

when the said period of approval came to an end.

4. Aggrieved by the said termination, the respondent-Teachers initially approached the Grievance Committee constituted under the Government Resolution specifically for redressal of the grievances of the Shikshan Sevaks. Before the Grievance Committee, it was the case of the respondent-Teachers that they were appointed as Shikshan Sevaks. However, the Grievance Committee considering the fact that the School was not 100% grant-in-aid School, opined that it did not have jurisdiction and relegated the respondent-Teachers to the remedies that they had in law. This resulted in the respondent-Teachers filing Appeals u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1971 before the School Tribunal.

5. Before School Tribunal, it was the case of the respondent-Teachers that they were appointed by an appointment order dated 22-12-1999 on probation for a period of two years and that though they ought to have been confirmed in service, their services came to be terminated. It is pertinent to note that in the Appeals filed by the respondent-Teachers, no written statement was filed on behalf of the petitioner-Management. The School Tribunal framed a preliminary issue as regards the maintainability of the appeals. It is pertinent to note that the appointment order purported to be dated 22-12-1999, Resolution of the School Committee dated 20-12-1999 and the approval order dated 19-3-2001 were placed on record by the respondent-Teachers.

6. As indicated above, the School Tribunal framed two preliminary issues, i.e. whether the School was a recognised School and whether appointment of the respondent-Teachers was in terms of section 5 of the said Act. Both the issues were answered in favour of the respondent-Teachers. In so far as recognition of the School was concerned, since the same was an admitted fact, the School Tribunal proceeded on the said basis. In so far as appointment of respondent-Teachers was concerned, the School Tribunal took into consideration the appointment order dated 22-12-1999, joining report dated 22-12-1999 and the Resolution passed by the School Committee dated 20-12-1999. The School Tribunal considering the said documents reached a conclusion that appointment of the respondent-Teachers was in terms of section 5(2) of the said Act. It is pertinent to note that the petitioner-Management alleged before the School Tribunal that the documents, which were produced by the respondent-Teachers, were forged and fabricated. The School Tribunal went into the said aspect also and held that the Management was not able to demonstrate as to how the said documents were forged and fabricated. The School Tribunal also considered the case of the petitioners as regards the appointment of the respondent-Teachers for a fixed tenure. However, considering the fact that the respondent-Teachers were continued up to 15-10-2003, i.e. till the date when approval was in their favour, the School Tribunal was of the view that their services could not be terminated in the manner done in terms of the Shikshan Sevak Scheme.

7. What weighed with the School Tribunal was also the fact that though the

respondent-Teachers were appointed on 22-12-1999, no further proposal for approval was sent and in view of the fact that approval was granted by the Education Officer up to the period 15-10-2003, the School Tribunal reached the conclusion that the formalities as required in respect of appointment of Shikshan Sevak have been duly complied with by the Management. The preliminary issues were accordingly, as stated hereinabove, answered in favour of the respondent-Teachers.

8. The Appeals were thereafter taken up for final hearing by the School Tribunal, at which time, the petitioner-Management sought to file written note of arguments taking exception on various grounds to the documents filed by the respondent-Teachers on the basis of which the findings were recorded by the School Tribunal. The School Tribunal on the basis of the findings recorded on the preliminary issues, decided the Appeals in favour of the respondent-Teachers.

9. It is sought to be contended on behalf of the petitioner-Management by the learned Counsel Shri Charlewar that the respondent-Teachers have played a fraud on the School Tribunal by producing documents, which were forged and fabricated. The learned Counsel for the petitioners drew my attention to the advertisement wherein a part has been blanked out, the appointment letter wherein the figure "2000" is scored and in its place figure "1999" is incorporated as also the Resolution of the Management wherein the figure "2000" is replaced by figure "1999". The learned Counsel would contend that by misrepresenting the facts to the School Tribunal, the respondent-Teachers have obtained the impugned judgment and order. It is further sought to be contended by the learned Counsel for the petitioner-Management that before the Grievance Committee it was the case of the respondent-Teachers that they were appointed as Shikshan Sevaks whereas before the School Tribunal their case was that they were appointed as probationers by letter of appointment dated 22-12-1999 and, therefore, the respondent-Teachers are approbating and reprobating in so far as their appointments are concerned. The learned Counsel submitted that the respondent-Teachers are not entitled to deemed permanency and for the said purpose, relied upon two Division Bench judgments of this Court in Priyadarshini Education Trust and The Head Master, National Urdu High School Vs. Ratis (Rafia) Bano, and Chandramani Devraj Tiwari Vs. The Secretary, Smr. R.B. Tiwari Sanskrutik Kendra and Others, wherein the Division Bench has held that for the benefit of deemed permanency, the employee concerned must prove before the School Tribunal that he was duly selected in the manner prescribed.

10. Per contra, it is submitted by Shri Deshpande, learned Counsel appearing for the respondent-Teachers in both the above petitions, that the advertisement in question to which reference has been made by the learned Counsel appearing for the petitioners has not been produced by the respondent-Teachers before the School Tribunal, and in fact, no reliance has been placed by the respondent-Teachers upon the said advertisement before the School Tribunal. The learned Counsel would further contend that assuming that the year "2000" is mentioned

in the Resolution passed by the Management as well as in the appointment order for the post of Assistant Teacher, same would have no bearing on the case of the respondent-Teachers. The learned Counsel would contend that appointment of the respondent-Teachers as Shikshan Sevaks was by appointment order dated 13-10-2000 and assuming that Resolution of the School Committee is dated 20-12-2000 instead of 20-12-1999, it is unimaginable that the Resolution is passed after issuance of the appointment order and, therefore, the year 1999 would be the correct year. The learned Counsel would contend that the documents as supplied to the respondent-Teachers were produced by them before the School Tribunal and they are not responsible for any correction made therein.

11. Having heard learned Counsel for the parties, in my view, there is no substance in the above petitions. It is pertinent to note that various contentions are now sought to be raised in respect of the documents, which have been produced by the respondent-Teachers before the School Tribunal. It is significant to note that the petitioner-Management did not even bother to file a written statement, more so in view of the fact that the parties had already undergone an earlier round of litigation before the Grievance Committee. If the petitioner-Management was seriously disputing the documents produced by the respondent-Teachers before the School Tribunal, the least that was expected of it was to file a written statement and deal with the said documents. Having not done so, the petitioner-Management now cannot be allowed to make submissions in respect of the said documents, which submissions give rise to serious disputed questions of facts, which could have been gone into by the School Tribunal. However, to see that justice is done between the parties, the Civil Applications filed by the petitioner-Management to produce the said documents on record were allowed by an order passed today so that the petitioners could be in a position to demonstrate to this Court *ex facie* whether any fraud was played by the respondent-Teachers.

12. In so far as the case of the respondent-Teachers is concerned, it is pertinent to note that the respondent-Teachers had approached the School Tribunal on the basis of appointment letter dated 22-12-1999, which appointed them on probation for a period of two years. However, the said appointment letters were overtaken by the subsequent facts inasmuch as the respondent-Teachers were thereafter appointed as Shikshan Sevaks by appointment order dated 13-10-2000. It is in the said context that the School Tribunal was required to adjudicate the issue. The School Tribunal considering the said appointment of the respondent-Teachers by a letter dated 13-10-2000 as also considering the Resolution passed by the School Committee, which contents are not denied by the petitioner-Management as also the approval letter dated 19-3-2011 issued by the Education Officer came to a conclusion that the appointment of the respondent-Teachers meets the requirement of section 5(2) of the said Act. In my view, the said findings of the Tribunal in the teeth of the material on record cannot be found fault with.

13. In so far as the alleged forgery/fabrication is concerned, the said case of the petitioner-Management has also been considered by the School Tribunal and the School Tribunal has come to a conclusion that the said charge has not been brought home by the petitioner-Management. Before this Court also, submissions were sought to be made on the said basis. In so far as appointment letter dated 22-12-1999 is concerned, in view of the fact that there is no dispute regarding Resolution being passed by the School Committee appointing the respondent-Teachers, the said appointments, in my view, cannot be questioned by the petitioner-Management now. It is also required to be noted that the petitioner-Management cannot be allowed to take advantage of its own wrong. If the respondent-Teachers were appointed by appointment letters dated 22-12-1999, then their proposals for approval should have been sent by the petitioner-Management to the Education Officer. Having not sent the proposals, but thereafter having appointed them as Shikshan Sevaks by appointment letter dated 13-10-2000, the School Tribunal has rightly come to a conclusion that their appointments as Shikshan Sevaks, which were approved by the Education Officer by letter dated 19-3-2011, were in order. As contended by learned Counsel Shri Deshpande appearing for the respondent-Teachers, correction of the year from "1999" to "2000" in so far as Resolution of the School Committee is concerned, would make no difference. In fact, the case of the petitioner-Management that the year "1999" cannot be accepted as appointment of the respondent-Teachers as Shikshan Sevaks was on 13-10-2000 cannot be accepted, assuming the date of the Resolution of the School Committee to be 20-12-2000, it is beyond comprehension as to how the Resolution could be passed two months after the date of the appointment and, therefore, Resolution of the School Committee would have to be considered as one passed on 20-12-1999 as is the case of the respondent-Teachers.

14. In so far as the present petitioners are concerned, the appointment of the respondent-Teachers are sought to be questioned on the ground that there was a restraint order passed by the Deputy Charity Commissioner and such material was on record. In the absence of the written statement filed by the petitioner-Management before the School Tribunal, the said statement is obviously a false statement as nothing was placed on record by way of written statement by me petitioner-Management.

15. Now coming to the judgments relied upon by the learned Counsel for me petitioners, it is a well settled position of law that me appointment as either Assistant Teacher or Shikshan Sevak has to be in terms of the procedure prescribed therein. In the instant case, a finding of fact has been recorded by the School Tribunal on the basis of material on record that me appointment of the respondent-Teachers meets the requirement of section 5(2) of the said Act and hence, me judgments supra in the facts and circumstances of the instant case, would have no application. In that view of the matter, no case for interference is made out. The writ petitions are accordingly dismissed. Rule discharged. No order as to cost.