
(2000) 07 RAJ CK 0059
In the Rajasthan High Court
Case No : Civil Appeal No. 583 of 1998

Dhanroop Chand	Vs	APPELLANT
The State of Rajasthan		RESPONDENT

Date of Decision : 21-07-2000

Acts Referred:

Citation : (2000) 3 RLW 1373 : (2000) 3 WLC 707 : (2000) 3 WLN 15

Hon'ble Judges : A.R. Lakshmanan, C.J.;Rajesh Balia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

AR. Lakshmanan, C.J.—Heard learned Counsel for the parties.

2. This appeal is directed against the order dated 2.4.1998 passed by the learned single Judge of this Court. The writ petition was filed by the Management Committee of Hanwant School, Jodhpur questioning the correctness of the order (Annexure-5) dated 20.4.1995 passed by Rajasthan Non-Government Educational Institutions Tribunal, Jaipur (for short "the Tribunal"). It was prayed that the order (Annexure-5) dated 20.4.1995 may kindly be quashed and it may be declared that the Standing Order No. 5/78 does not have any force of law and could not be enforced in any Court of law.

3. The main contention of the Management Committee was that the non-petitioner-appellant was appointed as Head Master in the School vide order (Annexure-1) dated 9.9.1991 on probation for a period of one year and since the services of non-petitioner-appellant were not found to be satisfactory, his services were terminated vide order (Annexure-2) dated 29.6.1992. Against the order (Annexure-2) dated 20.6.1992, the non-petitioner-appellant filed an appeal before the Director, Primary and Fondary Education. According to the Management Committee, the Rajasthan non-Government Educational Institutions Act, 1989 came into force with effect from 1.1.1993 and, therefore, the appeal filed by non-petitioner-appellant came to be transferred to the Tribunal.

4. The Tribunal after hearing both the parties allowed the appeal filed by non-petitioner-appellant vide its Judgment (Annexure-5) dated 20.4.1995 holding that termination was punitive in nature.

5. It was contended before the learned single Judge as also before us by the learned Counsel appearing for the respondent Management Committee that alongwith the order (Annexure-2) dated 29.6.1992, the non-petitioner-appellant was also sent a cheque of two months salary, which was also encashed by the non-petitioner-appellant but however, the Tribunal has held that the impugned termination of the non-petitioner-appellant was punitive in nature and therefore, an opportunity of hearing ought to have been granted to him and since, the opportunity of hearing was not granted to the non-petitioner-appellant prior to passing of the order (Annexure-2) dated 29.6.1992, it is violative of principles of natural justice. The Tribunal has further held that there were non-compliance of the Standing Order No. 5/72 inasmuch as the Departmental nominee was not present in the meeting of the Management Committee when a decision was taken to terminate the services of the non-petitioner-appellant by the Management Committee. The Tribunal has also held that the Management Committee did not give any notice regarding non-satisfactory performance of the non-petitioner-appellant and, therefore, there was violation of Standing Order No. 5/72.

6. Mr. B.P. Mathur, the learned Counsel appearing for non-petitioner-appellant submits that the order of termination is punitive in nature and, therefore, the learned Single Judge has erred in interfering with the order passed by the learned Tribunal and as such, the order (Annexure-2) dated 29.6.1992 passed by the Management Committee terminating the services of the non-petitioner-appellant is liable to be set aside on the ground that it was not passed without giving any opportunity of hearing.

7. Our attention was drawn to Clause (8) of the Agreement (Annexure-6) dated 21.3.1991, which specifically provides that during probation, the Management Committee may terminate the services of the Head Master, after giving him two months notice or two months advance salary, which he was getting. It is not in dispute that two months salary was given to the non-petitioner-appellant as provided in Clause (8) of the Agreement (Annexure-6) dated 21.3.1991 and the cheque sent towards two months salary to the non-petitioner-appellant was also encashed by him. As already noticed, the non-petitioner-appellant was appointed as Head Master on probation for a period of one year. Therefore, it is clear from the perusal of Clause (8) of the Agreement (Annexure-6) dated 21.3.1991 that it was left open to the Management to terminate the services of the probationer if his services are not found to be satisfactory. In these circumstances, the Tribunal was wrong in holding that the impugned termination was punitive in nature.

8. We have perused the order (Annexure-2) dated 29.6.1992 whereby services of the non-petitioner-appellant were terminated by the Management Committee after giving him two months advance salary in lieu of two months notice in terms

of Clause (8) of the Agreement (Annexure-6) dated 21.3.1991. Alongwith this order Annexure-2, a cheque of Rs. 8294/- was also enclosed and even salary for the month of June was also enclosed. Thus, it is clear that it was termination simpliciter.

9. Mr. B.P. Mathur, the learned Counsel appearing for the non-petitioner-appellant cited before us a Judgment of the Supreme Court report in 1994 (4) SRJ 120 in support of the contentions raised by him before us that the order of termination of a Probationer contains an express stigma and that the impugned order of termination was passed with ulterior motive. In our opinion, the said Judgment has no application to the facts and circumstances of the case and is distinguishable on facts of the present case. As already seen, the services of the appellant were terminated since the Management was not satisfied with his performance and discharge of his duties as Head Master of the School and, as such, a simple order was passed by the Management Committee terminating the service of the probationer and, therefore, no stigma is attached to the said order.

10. For the reasons mentioned above, we find no merit in this appeal. The appeal, therefore, fails and is hereby dismissed with no order as to costs.