

(2000) 07 BOM CK 0003
In the Bombay High Court
Case No : Writ Petition No. 174 of 1991

Dr. S.R. Ambedkar Samiti and Another	APPELLANT
Vs	
Ku. M.L. Lonkar and Others	RESPONDENT

Date of Decision : 28-07-2000

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 16(2), 28(1)

Citation : (2001) 1 BomCR 503 : (2001) 89 FLR 829 : (2000) 4 MhLj 507

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : R.V. and A.R. Patil, for the Appellant; Parsodkar and Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This writ petition is directed against the judgment passed by the School Tribunal, Nagpur Region, Nagpur, dated 13th November, 1990 in Appeal No. 117/1989.

2. Briefly stated, the respondent No. 1 was appointed on purely temporary basis for one academic session 1985-86. At the relevant time the respondent No. 1 was an untrained teacher. However, the services of the respondent No. 1 were continued on year to year basis upto the academic year 1988-89. In the meantime with the permission of the petitioner the respondent No. 1 joined the D.Ed. Course for acquiring the requisite qualification. The petitioner had permitted the respondent No. 1 to pursue the said course during the vacation and also for requisite training. However, it appears that the respondent No. 1 was on medical leave from 6-10-88 to 6-5-89. There is no dispute that this medical leave was sanctioned by the petitioners. Before the medical leave was to the expire the respondent No. 1 sent a letter requesting for continuing the medical leave for a further period upto 25-6-89. The said request was made in writing and the copy of the letter was sent under certificate of posting alongwith the

medical certificate. Since the respondent No. 1 did not receive any intimation from the petitioners, she presumed that the medical leave was extended as prayed for. Accordingly, when the respondent No. 1 went to report duty on 26-6-89, she was not allowed to join, instead she was told that her services stood terminated. By this attitude of the petitioners, the respondent No. 1 was shocked and made representation to the petitioners on 4-7-89. In response to the said representation, the petitioners have replied vide letter dated 17-7-89. In the said reply the petitioners have taken a stand that the services of the respondent No. 1 have been terminated since the respondent No. 1 had abandoned her services as she failed to report the duties even after the medical leave expired on 25-6-89.

3. Thereafter, respondent No. 1 made further representation on 24-7-89. Eventually, the matter went to the Tribunal by way of Appeal No. 117/89 at the instance of the respondent No. 1. The only point which was argued by the parties before the Tribunal was, whether the respondent No. 1 had failed to comply with the requirements of Rule 16(2) of the Rules and in the circumstances had abandoned the services. In this context respondent No. 1 relied upon the letter dated 6-5-89 sent under certificate of posting alongwith the medical certificate to contend that respondent No. 1 had made representation which was never rejected and therefore, it could be safely presumed that the petitioners had extended the medical leave as prayed for.

4. The Tribunal accepted the stand taken by the respondent No. 1 by holding that since the letter dated 6-5-89 was sent by certificate of posting, there was presumption that same was duly served upon the petitioners and since the petitioners did not take any decision on the said application, it was held that, the medical leave was deemed to have been granted till 25-6-89 and as such respondent No. 1 continued in service. Having taken this view the Tribunal rejected the stand taken by the petitioners. The Tribunal has further held that the petitioners further failed to issue one month's notice to the respondent No. 1 before terminating the services as required under Rule 28(1) of the Rules. The Tribunal has also faulted the decision of terminating the services of respondent No. 1 on the ground that it was by the order passed by the Headmaster who was not the competent authority to issue the order of termination.

5. Against the aforesaid decision the present writ petition has been filed under Article 226 of the Constitution. The learned Counsel for the petitioners submits that there cannot be any presumption that the letter sent by respondent No. 1 dated 6-5-89 was duly served on the petitioners. According to the petitioners, the said presumption stood rebutted and in that case there was no request for extending the medical leave in which case there was no infirmity in the action of the petitioners in terminating the services of the respondent No. 1 on the ground that she had abandoned the services. It is further pointed out that it was not necessary to give any notice to the respondent No. 1 of one month under Rule 28(1) of the Rules, as there was no requirement or condition agreed between the

parties in the present case. With regard to the third issue decided by the Tribunal regarding the competence of Headmaster to terminate services, it is contended that the letter which was impugned before the Tribunal dated 17-7-89 was not the letter of termination, but the service of the respondent No. 1 stood terminated by end of the academic session of 1988-89; as that was the condition on which the respondent No. 1 was appointed. It is thus contended that neither any notice was required nor the letter issued by headmaster can be treated as termination order, but the termination of the services was a condition mentioned in the appointment order dated 25-6-88 for the academic session 88-89.

6. On the other hand, the learned Counsel for respondent No. 1 contends that under Rule 28(1) it was incumbent upon the petitioner to give one month's notice to respondent No. 1 and failure to do so, by not giving such a notice, would vitiate the action of the petitioner. It is further contended that the respondent No. 1 was continuously in service from year 1984-85 except small breaks during the vacations and she was reappointed in the successive academic years. It is further contended that during this intervening period, the petitioners permitted respondent No. 1 to pursue D.Ed. Course during the vacation, so as to enable her to acquire requisite qualification for being appointed as a Trained Teacher. Reference has been made to the policy laid down by the State Government in the circulars that services of untrained teacher shall not be terminated and instead they should be permitted to pursue D.Ed. Course so as to acquire necessary qualification within the prescribed period. It is therefore stated that the respondent No. 1 was one such employee, who had pursued the course to acquire the necessary qualification and was successful in passing the examination in March 1989. It is therefore submitted that since the respondent No. 1 had acquired the necessary qualification in March 1989, there was no reason for the petitioner to terminate the services of the respondent No. 1 on any count. In support of this submission reliance has been placed on the decision of the Division Bench of this Court reported in *Shri Baburao Amrutrao Kharekar Vs. The State of Maharashtra and Others*, , to contend that even if initial appointment is on a temporary basis, but if the same is continued on year to year basis, that would amount to appointment made on probation against the permanent vacancy and such an employee can not be deprived of being appointed on a permanent basis within the meaning of section 5(3) of the Act.

7. After having considering the rival submissions I am of the view that the Tribunal has rightly held that the respondent No. 1 sent letter requesting for extending the medical leave on 6-5-89 which was duly supported by medical certificate. The Tribunal was, therefore, right in concluding that there was presumption that the said letter had reached the petitioners herein. There is no evidence brought on record except bare denial by the petitioners about the service of the notice. No attempt was made even to examine any witness or assert that the letter was not received though sent by under certificate of posting. Ordinarily, the letter sent by under certificate of posting on the known address of the addressee, it could be presumed that the same has reached the

addressee on the given address; unless the contrary is proved. Mere denial in the written statement can be of no avail. In the circumstances, the Tribunal was right in proceeding on the assumption that the said letter was duly served upon the petitioners and it was therefore incumbent upon the petitioner to either accept the request or reject it, but nothing of that sort has been done by the petitioners in the present matter. In the circumstances, the respondent No. 1 was justified in assuming that the petitioners have accepted the request and leave was extended upto 25-6-89 which was till end of academic session of 1988-89. In view of this finding it cannot be said that the respondent No. 1 had abandoned her service as contended by the petitioners.

9. In so far as the second point made by the learned counsel for the petitioners that no one month's notice prior to termination was necessary, the same deserves to be rejected for the simple reason that Rule 28(1) clearly provides that the manner in which the services of any employees could be terminated. Sub Rule (1) of Rule 28 reads thus :

"28(1) Removal or Termination of service.---(1) The services of a temporary employee other than on probation may be terminated by the Management at any time without assigning any reason after giving one calender month's notice or by paying one month's salary (pay and allowances, if any) in lieu of notice.

In the case of an employee entitled to vacation, the notice shall not be given during the vacation or so as to cover any part of the vacation or within one month after vacation."

In view of the said provision it is not open to contend that no notice ought to have been served on the respondent No. 1. Besides that, the appointment letter is clearly silent with regard to this condition unlike the appointment letter which was issued on 11-5-1985 which stipulated that the services of the respondent No. 1 would stand terminated without any notice. No such condition has been imposed in the present appointment order dated 25-6-88 for the academic session 1988-89. In no case, condition can be imposed which would be contrary to the requirements of the rules. In the circumstances, the respondent No. 1 is right in contending that her services could not be terminated without giving prior one months notice.

10. Coming to the next contention advanced by the learned Counsel for the petitioners that the letter issued on 17-7-89 was not a termination order. In view of the finding recorded on the aforesaid issue, it is really unnecessary to consider the same. Even assuming that it is not a termination letter, the fact remains that we will have to refer to the appointment order dated 25-6-88 which provides that the services would be continued for the one academic session w.e.f. 25-6-88. It is not in dispute that the academic session ended in the present case in June 1989. In other words, during the academic session the respondent No. 1 acquired the requisite qualification and, therefore, in the light of the decision of the Division Bench of this Court referred to above, it was not open for the

petitioners to treat that the services of the respondent No. 1 stood terminated. In any case this is not the ground on which the petitioner had contested the matter before the Court below. The only contention raised before the Tribunal was that the respondent No. 1 had abandoned the services, which the contention stood negatived by the Tribunal. Since I have already affirmed the findings recorded by the Tribunal as regards to the service of letter dated 6-5-89, as a natural corollary it will have to be held that the respondent No. 1 was continued in service and had not abandoned the services at any point of time till 25-6-89. On the other hand respondent No. 1 had admittedly attempted to report for duties on 25-6-89. In the circumstances, the stand taken by the petitioner before the Court below cannot be accepted and the Tribunal was therefore right in allowing the appeal preferred by the respondent No. 1. I find no infirmity in the final order passed by the Tribunal. Therefore, the writ petition should fail and the same deserves to be dismissed.

11. However, at this stage, learned Counsel for respondent No. 1 has fairly pointed out that the respondent No. 1 is no more interested in continuing in the services of the petitioners - institution and in fact has tendered resignation some time in May 1994. Since the respondent No. 1 has already resigned, no further orders would be necessary.

12. For the aforesaid reasons the writ petition is dismissed with no orders as to costs. Rule stands discharged.