
(2003) 08 BOM CK 0091

In the Bombay High Court

Case No : Writ Petition No. 4417 of 2003

J.H. Podar High School and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Constitution of India, 1950 — Article 30

Citation : (2004) 2 ALLMR 207 : (2004) 3 BomCR 901 : (2004) 2 MhLj 713

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

Bench : Single Bench

Advocate : R.S. Apte and D.K. Ailawadi, for N.R. Bubna, for the Appellant; M.H. Solkar, A.G.P. for respondent Nos. 1 and 2, Shaikh Nazir Matin and Ambar Joshi, for the Respondent

Judgement

A.M. Khanwilkar, J.—Heard. Rule. Rule made returnable forthwith by consent.

2. Respective Counsel waive notice for respective parties.

3. As short question is involved, this petition is taken up for final disposal forthwith, by consent.

4. This petition takes exception to the judgment and order passed by the School Tribunal, Mumbai, dated April 19, 2003, in Appeal No. 128 of 1999. Respondent No. 3 herein was appointed as Head Mistress in the School run by the petitioners on 23rd June 1997. The services of respondent No. 3 came to be terminated by notice dated 26th March 1999 with effect from 30th April 1999. Respondent No. 3 challenged that order before the School Tribunal by way of statutory appeal. The Tribunal has allowed the appeal and set aside the termination order. The Tribunal has further awarded full backwages to respondent No. 3. Respondent No. 4 was appointed on 21st September 1999 after the respondent No. 3 ceased to hold the office by virtue of order dated 26th March 1999. As mentioned earlier, respondent No. 3 challenged the action of the petitioners in terminating her services.

5. The first contention raised on behalf of the petitioners Management is that the petitioner is a minority institution and had complete prerogative to appoint and remove the person of its choice on the post of head master. It is next contended that the appointment of respondent No. 3 was purely on probation and that the termination was simpliciter termination without attaching any stigma. In the circumstances, such an order could not be interfered with, as the Management had terminated the services as it was of the opinion that the performance of respondent No. 3 was unsatisfactory. It is then contended that the Education Officer had not accorded approval to the appointment of respondent No. 3 and the School Tribunal has completely overlooked this aspect. In fact, contends learned Counsel for the petitioners, that it was imperative for the School Tribunal to frame preliminary issue as to whether the appointment of the respondent No. 3 has received approval from the Education Officer and failure to do so has vitiated the impugned order. Reliance is placed on the Division Bench decision of this Court reported in Anna Manikrao Pethe Vs. The Presiding Officer, School Tribunal and others, . It is lastly contended on behalf of the Management that the order directing giving of full backwages to respondent No. 3 cannot be sustained for more than one reason. In the first place, the Tribunal has not indicated any reason as to why it was satisfied to grant relief of full backwages to respondent No. 3. It is also contended that it has been now reliably learnt that respondent No. 3 was actually working during the relevant period in another school as Principal, and which fact has not been disclosed to the Tribunal by respondent No. 3. This fact is asserted on affidavit of the Administrative Officer of the petitioners.

6. Respondent No. 4 has adopted the arguments of the learned Counsel for the petitioners and further contends that she was appointed after the services of respondent No. 3 came to be terminated and before respondent No. 3 had actually challenged that action by filing appeal before the Tribunal. It is, therefore, contended on behalf of respondent No. 4 that as the appointment of respondent No. 4 has been approved by the Education Officer, the same cannot and ought not to be disturbed, as that would be the consequence of the impugned order passed by the Tribunal.

7. On the other hand, the learned Counsel for respondent No. 3 contends that there is no merit in either of the aforesaid contentions. He submits that insofar as the assertion made by the petitioners on affidavit of the Administrative Officer that the respondent No. 3 was working during the relevant time is incorrect. He submits that, in fact, respondent No. 3 was working only for one year and was paid salary at the rate of Rs. 8,000/- per month. He submits that this plea has been taken by the petitioners for the first time before this Court. He further submits that in any case, if this Court was inclined to maintain the order of reinstatement passed by the Tribunal, the respondent No. 3 would give up her claim for backwages. This statement has been made on instructions of respondent No. 3, who is personally present in the Court.

8. Having considered the rival submissions, I find no substance in the argument of Mr. Apte that the petitioners being minority school had complete prerogative to appoint and terminate any person appointed on the post of head master at any time and substitute by some other person. There can be no dispute that insofar as the minority institutions are concerned, they have the prerogative to appoint person of their choice to the post of head master; but once such appointment is made, the institution obviously has exercised that option and cannot undo it merely because it has prerogative to appoint any person of its choice on the post of head master. If the minority management wants to remove such person, then, obviously, it is incumbent upon the management to follow due process of law once appointment has been made. Therefore, I find no substance in the argument of Mr. Apte that the minority institution can, not only appoint but also remove any person appointed on the post of head master at any time and replace him by some other person.

9. The next contention of Mr. Apte that respondent No. 3 was appointed on probation and before the expiry of the probation period, her services have been terminated on account of unsatisfactory performance. This argument clearly overlooks that the Tribunal has found that no such stand is reflected from the record produced by the Management. On the other hand, the petitioners wanted to do away with the services of the respondent No. 3 and favour respondent No. 4 with appointment in her place. The Tribunal has observed that there is nothing on record to show that the management dispensed with the services of respondent No. 3, because of unsatisfactory working or behaviour of respondent No. 3. Even though the termination order issued by the management is not in the nature of attaching any stigma, but as it is not on account of unsatisfactory performance or behaviour of respondent No. 3, the question of terminating the services of respondent No. 3 does not arise; inasmuch as it is only when the management is of the opinion that the performance of the incumbent or his behaviour is unsatisfactory or questionable, that the management could have terminated the services of such person before the completion of the probationary period. Understood thus, as has been found by the Tribunal in the present case, the termination is neither on account of unsatisfactory working or behaviour of respondent No. 3, the question of terminating her services even before the probationary period expired could not be sustained in law, simpliciter notwithstanding.

10. That takes me to the third contention canvassed before this Court on behalf of the petitioners management. According to the learned Counsel for the petitioners, the Education Officer did not accord approval to the appointment of the respondent No. 3. Reliance has been placed on the decision of Division Bench of this Court (cited supra) to contend that the Tribunal has not adverted to that aspect in the impugned judgment at all. To my mind, there is no substance in this argument. In the first place, the appointment of respondent No. 3 was against the post of head master. Indubitably, the post of Head Master in any school is imperative and can be presumed to have been sanctioned. Besides, it is

not in dispute that the petitioner institution is an unaided school. In such a case, the question of taking approval of the Education Officer to the appointment on the post of head master does not arise. In any case, the right of the respondent No. 3, which would have crystallised on completion of the probation period, cannot be interdicted only on account of the fact that there has been no approval to her appointment from the Education Officer. Reliance was also placed by the learned Counsel for the petitioners on the decision of the Apex Court in the case of *Bharatiya Gramin Punarrachana Sanstha Vs. Vijay Kumar and Others*, . That was a case where the appointment was only for a fixed period and not on probation; whereas the present case is one of appointment on probation. The ratio laid down in the said decision is, therefore, not applicable to the facts situation of the present case. Understood thus, there is no substance in the grievance made that no approval was granted in respect of appointment of respondent No. 3, so as to deny benefit of continuation to the respondent No. 3 after successful completion of the probationary period. Reliance placed on the decision of Division Bench of this Court, cited *supra*, is of no avail to the petitioners.

11. That takes me to the last aspect canvassed before this Court on behalf of the management as to the relief of backwages. As observed earlier, respondent No. 3 has conceded through her Counsel before this Court that in the event this Court was to uphold the order of reinstatement passed by the School Tribunal, in that case, she would not press for the relief of full backwages. Rather, she would give up that relief. In the circumstances, the petitioners would succeed only to this limited extent.

12. Insofar as the claim of respondent No. 4 is concerned, it cannot be disputed that respondent No. 4 was appointed only after the services of respondent No. 3 came to be terminated. The fact that she was appointed before respondent No. 3 had instituted statutory appeal would make no difference, inasmuch as the appointment of respondent No. 4 would be obviously subject to the outcome of the challenge to the action of the management terminating the services of respondent No. 3. The fact that the Education Officer has since accorded approval to the appointment of respondent No. 4 would make no difference. That cannot be the basis to abridge the indefeasible right enured to the respondent No. 3 on successful completion of the probation period. In other words, as the respondent No. 3 has succeeded in establishing that her termination was inappropriate and illegal, she was obviously entitled for all consequential reliefs flowing from such a declaration; and, in any case, of reinstatement in services. If that relief was to be granted to respondent No. 3, obviously, respondent No. 4 cannot be permitted to question that relief, merely because now, she is holding the post of head mistress, after the termination of respondent No. 3. In the circumstances, there is no substance in the grievance made on behalf of respondent No. 4.

13. Accordingly, this writ petition partly succeeds. The impugned judgment and

order passed by the School Tribunal, Mumbai, is set aside only to the limited extent of relief of full backwages. In other words, the order of reinstatement passed by the School Tribunal, for the reasons recorded by it, and which have been confirmed in this order, would remain as it is, Rule made absolute on the above terms. No order as to costs.

Authenticated copy of this order, duly signed by the Court Stenographer, may be supplied to the parties.