
(1983) 02 MP CK 0005

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 8 of 1981 in M.P. No. 117 of 1978

Laxmi Kant Shukla

APPELLANT

Vs

President, Birla Educational Society, Satna and another

RESPONDENT

Date of Decision : 23-02-1983

Acts Referred:

Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965 — Section 28

Citation : (1983) JLJ 609 : (1983) MPLJ 657

Hon'ble Judges : G.P. Singh, C.J.; Faizanuddin, J

Bench : Division Bench

Advocate : P.S. Gothwal, for the Appellant; B. M. Lal, for the Respondent

Final Decision : Allowed

Judgement

G. P. Singh, C.J.

This is a Letters Patent Appeal against the order dated 27th January 1981 passed by a learned Single Judge by which Misc. Petition No. 117 of 1978 was allowed.

The facts, briefly stated, are that the Birla Education Society (Respondent No. 1 in this appeal) is a registered society which runs a Higher Secondary School at Satna., The school is affiliated to Madhyamik Shiksha Board constituted under the Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965. The appellant Laxmi Kant Shukla was appointed as Principal of the School by the Society by appointment letter dated 7th April 1970. Shukla's appointment as Principal was confirmed by letter of the society dated 15th June 1971. In pursuance of a resolution passed by the Managing Committee of the Society on 24th August 1974, Shukla's services were terminated by letter dated 31st August 1974 after expiry of two months' notice period with effect from 1st November 1974. Shukla preferred an appeal to the Director, Public Instruction which was allowed by his order dated 6th February 1978 and the order of termination was set aside. The society then filed Misc. Petition No. 117 of 1978 challenging the order of the Director of Public Instruction. It is this petition which was allowed by the learned

Single Judge by the order under appeal.

The Madhyamik Shiksha Board has made regulations u/s 28. Chapter XIII of the Regulations made by Board deals with Staff in private educational institutions. The regulations apply to all non-government educational institutions which are admitted to the privileges of the Board. Regulation 71 provides for appointment of Principals, Headmasters, Lecturers etc. The appointment is initially on probation which can be extended upto two years. On confirmation the incumbent signs a contract of service in Form I meant for Principals/Headmasters or Form II meant for Lecturers/Teachers. Regulation 79 regulates the procedure for terminating the services or reducing the pay of Principal or Headmaster.

Regulations 71 and 79 are material for our purposes and are reproduced below: -

All Principals, Headmasters, Lecturers and teachers, except those appointed temporarily for a period of less than one year, shall be on probation for a term of one year which may be extended to two years. If after two years service any incumbent is continued in his appointment, he shall, unless the appointing authority, for reasons to be recorded in writing, otherwise directs, be deemed to have been confirmed in that appointment. On confirmation the incumbent shall sign a contract of service in the Form I or II (appended to these Regulations) as the case may be, as soon as practicable.

(1) The Managing Committee shall not terminate the services or reduce the pay of Principal or Headmaster appointed on written contract without first obtaining Director's sanction for holding a full enquiry into the charges against him. The incumbent shall be given in writing a statement of the charges against him, and also be afforded an opportunity of defending himself. His previous services and character with reference to his confidential file and service book shall also be taken into consideration before arriving at a decision.

(2) No decision as to the termination of services or reduction of a Principal or Headmaster shall be valid, unless passed at special meeting by a majority of two-thirds of the members of the Managing Committee. No such resolution shall be valid, if passed at an adjourned meeting.

(3) The Principal or Headmaster shall have a right of appeal to the Director against the decision of the Managing Committee. The decision of the Director shall be final.

We may also refer to clauses 3 and 4 of the contract in Form I which read as under :

The tenure of office of the party of the first part shall be terminable at any time-

(a) by three calendar months' notice in writing by him (party of the first part) without giving any reason therefor, or without, notice on payment to the party of the second part a sum equal to three months' salary of the party of the first part;

(b) when the post on which the party of the first part is working is abolished, the

party of the second part shall give three months" notice in writing to the party of the first part, or without any notice on payment to the other party a sum equal to three months" salary of the party of the first part:

Provided that Managing Committee may at any time dispense with the services of the party of the first part without notice after a full enquiry as provided in Regulation 79 (as the case may be) under Chapter XII;

(a) in the event of a wilful breach by him of any of the conditions herein contained;

(b) in the event of a wilful and persistent neglect of duty by him, in misconduct, or unsatisfactory work on his part, or his physical or mental unfitness for duty; or

(c) for any other sufficient cause which renders impossible for proper performance of his duties; and

(d) the right of terminating the tenure of office of the party of the first part by serving three months" notice under clause 3 (b) above shall not be exercised by the Managing Committee during the period from 1st January to 31st March following without the previous sanction in writing of the Board of Secondary Education, Madhya Pradesh.

The party of the first part shall retire from service on attaining the age of 62 years and, with the permission of the Chairman of the Board, 65 years and the exact time for such retirement shall be the last day of the academic year in which he attains that age.

Shukla's appeal to the Director was under Regulation 79 (3). Apart from other contentions which were raised by the society before the learned Single Judge, it was submitted that Regulation 79 would come into operation only when the Principal or Headmaster is appointed on written contract in Form I and as there was no written contract in that form, Shukla had no right of appeal to the Director. Shukla also raised many contentions before the learned Single Judge but the contention with which we are concerned in this appeal was that he had signed a contract in Form I on 16th April 1974 and that even in the absence of contract in Form I, Regulation 79 v as applicable. The learned Single Judge held that the case of Shukla that he signed a contract in Form I on 16th April 1974 was not true. He further held that Regulation 79 had no application if there was no written contract in Form I. On this finding the learned Single Judge held that Shukla had no right of appeal to the Director and the Director's order was without jurisdiction. The learned Single Judge, in the view he took, did not consider it necessary to decide other questions raised before him.

The finding reached by the learned Single Judge that Shukla did not execute any contract in Form I on 16th April 1974 as alleged by him is a pure finding of fact and must be accepted. Indeed the learned counsel appearing for Shukla did not seriously challenge that finding. The next question is whether the construction placed by the learned Single Judge on Regulation 79 that if there was no contract

in Form I the said regulation had no application, can be said to be correct. This is the only question which we are required to decide in this appeal.

A reading of Regulations 71 and 79 and the terms and conditions contained in Form I will go to show that these regulations were intended for the protection of Principals and Headmasters of non-Government educational institutions affiliated to the privileges of the Board and to confer upon them a reasonable security of tenure. The import of Regulation 79 must be understood in the light of Clause 3 of the contract in Form I. A perusal of Clause 3 will show that the Managing Committee of a college or school can terminate the services of a Principal only after full enquiry in the manner provided in Regulation 79 and only on the grounds mentioned in the proviso to Clause 3 of the contract except when the post is itself abolished in which case the Managing Committee can terminate the services of the Principal without any enquiry after giving him three months' notice or three months' salary. The Principal, on the other hand, can always leave by giving three months' notice or three months' pay to the Managing Committee. The Principal ordinarily continues in service till he retires at the age of 65 years as is provided in Clause 4. Regulation 79 requires that before holding an enquiry against a Principal a prior sanction of the Director should be obtained. The Principal concerned has to be given a statement of charges in writing and afforded an opportunity of defending himself. His previous services and character with reference to his confidential file and service book have also to be taken into account. A decision terminating or reducing him has to be passed by the Managing Committee by a two-third majority and no such resolution can be passed in an adjourned meeting. The Principal has a right of appeal against the decision of the Managing Committee to the Director.

Under Regulation 71 a Principal is appointed on probation which can be extended to two years. If the incumbent is retained in service after two years he is deemed to be confirmed unless the appointing authority for reasons to be recorded otherwise directs. On confirmation the incumbent has to sign a contract in Form I as soon as practicable. Regulation 79 obviously does not relate to a Principal who has not been confirmed or who is not deemed to be confirmed. It has no operation during the probationary period. The object behind Regulation 79 is to confer protection on confirmed Principals who are entitled to sign a contract in Form I as provided in Regulation 71. Regulation 79 should be construed to promote this object. Speaking generally, there will be a time gap between deemed confirmation or passing of an order of confirmation and signing of a contract in Form I for the contract is to be signed as soon as practicable after confirmation. Further, there may be cases in which the employer with a view to deprive the Principal of the protection may resort to unfair practice which prevents or delays the signing of the contract by the Principal. There may also be cases where the Principal is ignorant of his rights of signing the contract in Form I. Is it then correct that a confirmed Principal has no protection of Regulation 79 before he actually signs the contract? In other words, can it be said that although a Principal has been confirmed by an order of the Managing Committee or is

deemed to be confirmed because he continues in service after the period of probation of two years is over, yet the Managing Committee can terminate his services for any reason whatsoever and without any enquiry before he actually signs the contract in Form I. Such a construction of Regulation 79 would put the Principal, even after confirmation but before signing of the contract, entirely at the mercy of the Managing Committee which will not be consistent with the object of Regulation 79. In our opinion, therefore, the expression "appointed on written contract" as used in Regulation 79 (1) must not be confined to those cases where the Principal concerned has actually signed a written contract in Form I, but should be interpreted to cover also the cases where the Principal has earned the right of signing the contract in Form I. Putting it differently, the words "Principal appointed on written contract" should be construed to mean a Principal who is appointed or who ought to be appointed on written contract. By this liberal construction the protection of Regulation 79 (1) would also be available to all those Principals who become confirmed but who for some reason or the other have yet to sign the contract. Shukla was admittedly a confirmed Principal. He ought to have been appointed after confirmation on a written contract in Form I. It is not the case of the society that Shukla did not sign the contract intentionally or that he refused to sign the same. Indeed he was never called upon to sign the contract. The reasonable view to take is that Shukla did not know that he should sign a contract in Form I after his confirmation. Regulation 79 was, therefore, applicable to his case and Shukla had a right of appeal against the order of termination to the Director. It is true that Shukla took a false plea in the writ petition that he signed the contract in April 74, but that does not affect the true construction of Regulation 79. With great respect, the view taken by the learned Single Judge is too narrow and literal and we are unable to accept it. In this view of the matter, the appeal has to be allowed and the case has to be remitted back to the learned Single Judge for deciding other contentions raised before him.

The appeal is allowed. The order of the learned Single Judge is set aside. The case is remitted to him for fresh decision. Costs in this appeal will abide the result of the petition. Counsel's fee Rs. 200/-.