

(1982) 08 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No. 2158 of 1979

Management of the Deccan Education Societies running
Fergusson College

APPELLANT

Vs

Ramchandra Dattatraya Kodre and another

RESPONDENT

Date of Decision : 13-08-1982

Acts Referred:

Poona University Act, 1974 — Section 42B

Citation : (1983) MhLj 163

Hon'ble Judges : M.N. Chandurkar, J;M.H. Kania, J

Bench : Division Bench

Advocate : S.M. Dharap, for the Appellant; Mohan Pungliya, for the Respondent

Final Decision : Allowed

Judgement

M.N. Chandurkar, J.—This petition by the Management of the Deccan Education Society is directed against the order of the Presiding Officer of the Pune/Shivaji University College Tribunal, Pune, holding that the order of termination of the services of respondent No. 1 dated 24th May 1978 was liable to be set aside and respondent No. 1 was to be reinstated in the post of Lecturer in Botany in the Fergusson College.

2. The facts in this case are not in dispute. Respondent No. 1 was given an order of appointment as Lecturer in Botany in the Department of Botany, Fergusson College, Pune, on 20th July 1977. The appointment was to take effect from 1st August 1977. The appointment order specified that his services would be governed in accordance with the terms and conditions laid down by the University of Poona. The nature of the appointment was purely temporary and the relevant part of the appointment order read as follows:

Please note that your services are purely temporary and are likely to be terminated at any time without any notice.

By a letter dated 1st August 1977 respondent No. 1 informed the Principal of the

Fergusson College that he was accepting the appointment order and joining duties from 1st August 1977. The services of respondent No. 1 were terminated by a letter dated 24th May 1978 with effect from the next academic year which commenced from 15th June 1978 on the ground, as stated in the letter, that "it has not been possible for us to continue your services in your present post".

3. The validity of this termination was questioned by respondent No. 1 before the Grievance Committee. The Grievance Committee took the view, as appears from paragraph 3 of the impugned order, that respondent No. 1 had "no case under Statute 80-H" as the Initial appointment was purely on a temporary basis and terminable without notice.

4. We have, however, not been able to ascertain what was the nature of the jurisdiction which the Grievance Committee was exercising because no facts relating to its constitution or its powers appear anywhere on the record.

5. The Poona University Act, 1974, was amended by the Maharashtra Universities (Second Amendment) Act, 1977, which came into force on 11th August 1978. By section 3 of the Amending Act sections 42A to 42H were inserted in the parent Act. Section 42A provided for the constitution of College Tribunals for adjudication of certain disputes or differences between employees and management in private affiliated colleges and recognised institutions. Under sub-section (2) of section 42A the Tribunal was to consist of one person only to be appointed by the State Government after consultation with the University. Respondent No. 2 was the Presiding Officer of the Tribunal called Pune/Shivaji University College Tribunal. The exact date on which respondent No. 2 came to be appointed as the Tribunal is not available.

6. Respondent No. 1, however, filed an appeal on 27th April 1979 challenging termination of his employment u/s 42B of the Poona University Act, 1974 (hereinafter referred to as the "1974 Act"). In the appeal, respondent No. 1 challenged his termination mainly on the ground that the order of termination was in violation of Statute 80-H of the University of Poona. The Tribunal took the view that in view of the provisions of the Statute, it was not open to the Management to say that the services of a temporary teacher can be terminated without notice or without holding a formal enquiry. According to the Tribunal, clause (ix) of Statute 80-H is exhaustive of the grounds on which the services can be terminated and, therefore, the notice of termination was not legal and proper. The Tribunal did not accept the case of respondent No. 1 that the termination of employment was bad as the notice of termination was not of a month. With regard to the case regarding victimization, the Tribunal recorded a finding that no proper material had been placed on record to substantiate this plea. The Tribunal declined to accept the case of the petitioner that it was not entitled to disregard the decision of the Grievance Committee. Having held that the termination of the services of respondent No. 1 was not according to law, the Tribunal directed reinstatement of respondent No. 1. However, with regard to the arrears of emoluments payable to respondent No. 1, the Tribunal directed that

since at the material time respondent No. 1 was working on a consolidated scholarship of Rs. 500 per month as a Research Scholar, he should be given arrears of emoluments from 20th June 1978 to the date of reinstatement equivalent to the salary less the amount received by him on account of his scholarship. This order of the Tribunal is challenged by the petitioner in this petition.

7. At the outset, the learned counsel appearing on behalf of the petitioner contended that the appeal before the Tribunal filed by respondent No. 1 was itself incompetent firstly on the ground that the provisions of sections 42A to 42H relating to appeal were inserted in the parent Act with effect from 11th August 1978 and the appeal challenging the order of termination dated 24th May 1978 could not have been entertained by the Tribunal. The second limb of the argument was that the appeal filed on 27th April 1979 was itself beyond the period of 60 days prescribed in section 42B of the 1974 Act and was, therefore, barred by limitation and there is nothing in the order of the Tribunal to show that it had applied its mind to the question as to whether the delay in filing of the appeal should be condoned as contemplated by section 42B (3) of the 1974 Act. The third ground with regard to the maintainability of the appeal was that the Grievance Committee having finally rejected the representation or complaint of respondent No. 1, no appeal against the order of the Grievance Committee was contemplated and consequently, the original order of termination could not be subjected to scrutiny without overlooking the fact that the Scrutiny Committee had gone into the legality of the termination of the services of respondent No. 1.

8. These three contentions relating to the maintainability of the appeal necessitates a reference to the provisions of section 42B of the 1974 Act. The relevant provisions are in sub-sections (1), (2) and (3) of section 42B, which read as follows:

"(1) Notwithstanding anything contained in any law or contract for the time being in force, any employee (whether a Teacher or other employee) in any affiliated College or Recognised Institution (other than that managed and maintained by the State Government or the University), who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the Management and who is aggrieved shall have a right of appeal and any appeal against any such order to the Tribunal constituted u/s 42A:

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court or Tribunal of competent jurisdiction or is pending before such Court or Tribunal on the date of commencement of the Maharashtra Universities (Second Amendment) Act, 1977, or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st day of July, 1974.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal,

otherwise termination of service or reduction in rank, as the case may be:

Provided that, where such order was made before the date of commencement of the Maharashtra Universities (Second Amendment) Act, 1977 such appeal may be made within sixty days from the date of commencement of the said Act or from the date of appointment of the Presiding Officer of the Tribunal, whichever is later.

(3) Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

9. Now, the scheme of section 42B appears to be to provide a right of appeal to an employee in any affiliated college or recognised institution other than that managed and maintained by the State Government or the University, who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the Management and who is aggrieved, and such appeal against the order of the Management of the nature referred to above lies to the Tribunal constituted u/s 42A. Whether we consider the termination, as contended by respondent No. 1, as one in the nature of a disciplinary action or whether we treat it as termination simpliciter, there is no doubt that respondent No. 1 was one of the persons who would squarely fall within section 42B. The proviso to section 42B provides for certain cases in which no appeal shall lie to the Tribunal. These cases are: (1) where the matter has already been decided by a Court or Tribunal of competent jurisdiction or is pending before such Court or Tribunal on 11th August 1978, which is the date of commencement of the Amending Act, and (2) where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st day of July 1974. These are the cases in which the right of appeal is not available to the concerned employee.

10. It is proper at this stage to consider the contention raised on behalf of the petitioner that the Grievance Committee must be considered as a Tribunal of competent jurisdiction within the meaning of the proviso and, therefore, the Grievance Committee having already rejected the complaint of respondent No. 1, the appeal before the Tribunal was barred under the proviso.

11. Now, apart from a bare statement that the grievance of respondent No. 1 was considered by the Grievance Committee and the extract of the operative order of the Grievance Committee of the University reproduced in paragraph 3 of the order of the Tribunal, we have no material on record on which we can determine the nature of the jurisdiction of the Grievance Committee; under what law or authority it was constituted and what were the powers which the Grievance Committee was entitled to exercise in regard to a complaint by an employee of the University. In the absence of proper material with regard to these aspects, it would not be possible for us to decide whether the Grievance

Committee fell within the phrase "Tribunal of competent jurisdiction" referred to in the proviso. It is not, therefore, possible for us to hold that the appeal filed by respondent No. 1 was incompetent because his complaint was rejected by the Grievance Committee.

12. Now, so far as the second category of cases referred to in the proviso is concerned, it is clear that orders passed by the Management with regard to dismissal, removal, termination of service or reduction in rank of an employee prior to 1st July 1974 are kept outside the purview of the powers of the Tribunal constituted u/s 42A of the 1974 Act. There is also no dispute that the termination order in the instant case is made after 1st July 1974 because it is made on 24th May 1978. If the first proviso is read by itself, apparently it would appear that the contention that respondent No. 1 did not have a right of appeal in view of the terms of the proviso would have to be rejected.

13. This would bring us to the consideration of the provisions of Sub-section (2) and the proviso thereto. Sub-section (2) fixes the period of limitation within which an appeal has to be filed by the concerned employee. The limitation prescribed is 30 days from the date of receipt by the employee of the order of dismissal, removal, otherwise termination of service or reduction in rank. Clearly sub-section (2) is prospective in operation and it obviously contemplates that the order complained of or appealed against is made after 11th August 1978. Now, if that was the only provision, then the termination order dated 24th May 1978 having been made prior to 11th August 1978 would not be one in respect of which sub-section (2) would operate. The Legislature has, however, made a special provision in the proviso expressly dealing with cases where orders of the nature specified in sub-section (2) are made prior to 11th August 1978. The proviso clearly mentions that where an order is made before the date of commencement of the Maharashtra Universities (Second Amendment) Act, 1977, the date being 11th August 1978, such appeal may be made within 60 days from the date of commencement of the said Act or from the date of appointment of the Presiding Officer of the Tribunal, whichever is later. The proviso, therefore does two things. By prescribing a limitation for appeal in respect of orders made prior to 11th August 1978, the proviso makes it clear that a right of appeal is also available against an order of any of the kinds specified in subsection (1) if the order is made after 1st July 1974 but prior to 11th August 1978. Then so far as limitation is concerned, there are two starting points of limitation. If an order by the Management is made prior to 11th August 1978, then the right of appeal could be exercised by filing an appeal within 60 days from 11th August 1978 or from the date of the appointment of the Presiding Officer of the Tribunal, whichever is later. The proviso, therefore, contemplates cases where Presiding Officers, who were expected to deal with appeals u/s 42A have been appointed on 11th August 1978 and where the appointments of Presiding Officers of the Tribunal are made after 11th August 1978. What was the starting point of limitation in a given case where orders of termination are made prior to 11th August 1978 would, therefore, depend on when the Presiding Officer was already

appointed. Having regard to the very clear provisions in the proviso to sub-section (2), it is clear that respondent No. 1 had a right of appeal and that right of appeal could be exercised within the period of 60 days provided by the proviso. It is no doubt true that the question of limitation has not been dealt with by the Tribunal. But at the same time it was not possible for Mr. Dharap appearing on behalf of the petitioner to show that the appeal before the Tribunal was filed beyond 60 days from the date of appointment of the Tribunal. If the order of the Tribunal was to be attacked on the ground of limitation, the burden lay on the petitioner to substantiate the ground on which the infirmity in the order could be established. In view of this, we must reject the argument of the learned Counsel that the termination of the services of respondent No. 1 having taken place prior to 11th August 1978, he did not have a right of appeal. Since it is not established that there is any delay in filing of the appeal, the question as to whether the Tribunal was in error in not considering the provisions of sub-section (3), which vests a discretion in the Tribunal to condone the delay in filing of the appeal, does not arise. The appeal must, therefore, be held to have been validly filed before the Tribunal.

14. The only other and the more substantial point which then arises is whether the Tribunal was justified in taking the view that the Management could not enter into special contract of employment with a temporary teacher. As already pointed out, the Tribunal has taken the view that "in view of Statutes it is not open to the management to say that the services of a temporary teacher can be terminated without notice or without holding a formal enquiry." This finding is arrived at by the Tribunal on a reading of clause (ix) of Statute 80-H and the note to clause (xvi) of the said statute. It is, therefore, necessary to refer to clause (ix) of Statute 80-H which reads as follows:

"The services of a teacher who is confirmed in service can be terminated on the following grounds:

- (i) Wilful and persistent neglect of duty,
- (ii) Misconduct,
- (iii) Breach of any of the terms of contract,
- (iv) Physical or mental unfitness,
- (v) Incompetence,
- (vi) Abolition of the post:

Provided, firstly that the ground of incompetence shall not be used after the teacher concerned has served the college for a period of five years or more; and secondly, that no post in a college shall be abolished without the previous approval of the Executive Council.

The services of a teacher shall not be terminated or his pay reduced without holding a full enquiry in the matter.

In such a case the teacher concerned shall be given in writing a statement of the charges made against him and afforded every reasonable opportunity of defending himself. His previous record of service shall also be taken into account.

If a teacher feels aggrieved by the result of such an enquiry, he may within a period of one month refer the matter to the Vice-Chancellor whose decision shall be final.

The note relied upon by the Tribunal, which appears below clause (xvi) and which appears at the end of the Statute, reads as follows:

"N.B.:--(1) All clauses mentioned above, with the exception of clauses (iv) and (v) will apply to the members of the staff appointed temporarily.

(2) Clauses (i), (vii), (viii) and (ix) will not apply to the employees of the Government of Maharashtra.

Plainly read, clause (ix) by itself deals with the grounds on which the services of a teacher, who is confirmed in service, can be terminated. Clause (ix) refers to six grounds; one of the grounds is incompetence. However, with regard to incompetence, it is expressly provided that that ground shall not be used after the teacher concerned has served the college for a period of five years or more. With regard to the termination on the ground of abolition of post, it is provided that a post shall not be abolished without the previous approval of the Executive Council. Then it is provided that the services of a teacher shall not be terminated or his pay reduced without holding a full enquiry in the matter and what is the nature of this enquiry is also specified in clause (ix). The Note at the end of Statute 80-H states that all the clauses in the Statute with the exception of clauses (iv) and (v) will apply to members of the staff appointed temporarily. Clause (iv) refers to the period of service which a person appointed as a teacher in a college or institution is required to put in as a probationer before he is confirmed. Obviously putting in a satisfactory probationary period is not relevant in the case of a temporary employee. Then clause (v), which relates to contribution to provident fund, is also made inapplicable in the case of temporary employees. None of these two clauses (iv) and (v) is relevant for our purpose.

15. What the Tribunal has done is that the Note having said that all the clauses except clauses (iv) and (v) would apply to members of the staff appointed temporarily, it took the view that the provisions in clause (ix), which relate to termination of services on any of the six grounds specified therein, are made applicable in the case of a temporary employee. Now, if that was the only view of the Tribunal, it would be difficult to find any fault with that view. As in any case between a master and a servant or an employer and employee, even in the case of a temporary employee, his services can be terminated on disciplinary grounds and clause (ix) in Statute 80-H is nothing more than a recital of the grounds on which disciplinary action can be taken against the employee by making it permissible to terminate the services of a temporary employee on the ground of misconduct or other grounds specified in clause (ix). It is, however, difficult for

us to see how on this an inference will necessarily follow that it is not open to a management to enter into an independent contract of employment with a person who is on a temporary basis and how such an action will be contrary to the provisions of Statute 80-H. The Tribunal seems to have completely overlooked the provisions in clause (xi) which reads as follows:

Where a member is appointed on a specified contract, the period and conditions of such contract will not be inconsistent with the conditions as laid down herein and will be clearly defined beforehand. On the expiry of contract, parties may enter into a further contract, or if they agree, the member may be admitted to the cadre of persons confirmed in service.

It is no doubt true that this provision in clause (xi) is made with a view to safeguard the interest of the employee and the only effect of clause (xi) is that the period and conditions of the contract are not to be inconsistent with the conditions laid down in the Statute. To say that a period and conditions for the contract should not be inconsistent with the conditions as laid down in the Statute is not the same thing as saying that no person can be appointed on a temporary basis. As a matter of fact if the scheme of Statute 80-H is properly considered, the Statute itself contemplates different kinds of employment such as a confirmed employment, an appointment on probation, appointment in a leave vacancy and a temporary appointment. Therefore, merely because a person is temporarily appointed, the contract does not become bad. Such a temporary appointment is not contrary to any of the provisions in the Statute. It is difficult to see how the stipulation in the contract of employment that his services are likely to be terminated at any time without notice will be contrary to the provisions in clause (x). That clause deals only with the termination of services of a teacher who is on probation and a teacher who is confirmed. It merely provides that the services of a teacher shall not be terminated without giving him one month's notice or one month's salary including allowances, if he is on probation, and three months' notice or three months' salary with allowances, if he is confirmed, subject to clause (ix). The stipulation that respondent No. 1's services are likely to be terminated at any time without notice does not even otherwise invalidate the appointment itself because if the appointment itself is invalidated, then respondent No. 1 may not have any locus standi to challenge his termination. The maximum that can, therefore, be said in favour of the teacher is that if the term with regard to the termination of employment at any time is contrary to the Statute, though we do not find so, the employee will be entitled either to one month's notice or salary in lieu of notice, which again is not nude a condition precedent even in the Statute so as to introduce any infirmity in the termination if the salary is not paid prior to termination. We are, therefore, unable to accept the view of the Tribunal that the petitioner was prohibited from entering into a contract of temporary employment with respondent No. 1.

16. It was, however, contended by Mr. Pungliya appearing on behalf of

respondent No. 1 that this was a clear case of victimization of respondent No. 1 and in any case, the termination was on the ground of incompetence and, therefore, an enquiry should have been made as required by clause (ix) and the termination must, therefore, be held to be illegal. Unfortunately for respondent No. 1, the case of victimization has not been proved before the Tribunal and we will not be justified in going into that question in this petition filed by the petitioner. Secondly, so far as incompetence is concerned, it is also not the finding recorded by the Tribunal that the termination of services of respondent No. 1 is on the ground of incompetence. The order on the face of it does not refer to any incompetence. It is wholly an innocuous order which in the most modest possible terms says that it has not been possible for the petitioner to continue the services of respondent No. 1 in his present post. It appears that it was only when the petitioner was called upon to disclose the reason for such termination that it was explained that the petitioner had failed as a teacher. Now, if the order on the face of it does not refer to this reason--and we do not see why the services of a temporary employee could not be terminated simpliciter if his services were not satisfactory, it would not be possible to entertain a challenge to the order of termination on the ground that it was made because of incompetence. Incompetence has not even been referred to by anybody as a ground for termination. It is clear on the face of the order that the termination was not by way of a punishment or a disciplinary action.

17. Having regard to the view which we have taken, it is not possible for us to sustain the order of the Tribunal. Consequently the order of the Tribunal is quashed and we must hold that there was no substance in the challenge made by respondent No. 1 to his termination of employment which must be held to be good. The petition is thus allowed. Rule absolute. However, we make no order as to costs of the petition.