
(1998) 04 BOM CK 0029

In the Bombay High Court

Case No : Writ Petition No. 1851 of 1994 with C.A. No's. 5978/97, 5064/97, 4098/97 and 728/95 with Contempt Petition No. 1 of 1995

Mangala

APPELLANT

Vs

Shreyas Shikshan Prasarak Mandal and others

RESPONDENT

Date of Decision : 03-04-1998

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 2, 28(1), 9

Citation : (1998) 4 ALLMR 157 : (1998) 5 BomCR 374 : (1999) 81 FLR 407 : (1998) 3 MhLj 384 : (1988) 3 MhLj 384

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : S.R. Barlinge, for the Appellant; Sunil A. Kulkarni, D.R. Irale Patil and S.V. Chillarge, A.G.P., for the Respondent

Judgement

D.G. Deshpande, J.—Heard Mr. Barlinge, learned Advocate (or the petitioner, Shri Sunil A. Kulkarni, learned Advocate for respondent No. 1 & 2, Shri Patil, learned Advocate for respondent No. 3 & Shri Chillarge, A.G.P. for respondent 4.

2. The petitioner, by this writ petition, has challenged the order of the School tribunal, Aurangabad Division, Aurangabad dated 10-5-1994 by which the appeal of the petitioner was dismissed and ex parte ad-interim stay was vacated.

3. It is the case of the petitioner that she is a trained teacher within the meaning of Rule 2(k) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 having passed S.S.C. and C.T.C. Examinations. She was appointed as an "Assistant Teacher" by the respondent No. 1 by order dated 19-6-1989. That her appointment was approved by the Education Officer. That her services came to be terminated on the ground that she was surplus. She, therefore, challenged the order of termination dated 16-7-1993 or (14-6-1993) before the Presiding Officer of the School tribunal. However, her appeal was dismissed.

4. The petitioner raised the different contentions in support of her case and while challenging the order of the School tribunal and the action of the respondent in terminating her services. According to her she is a trained teacher within the meaning of Rule 2(k) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred as "the Rules, 1981" for short). Further, according to her, her appointment was approved by the Education Officer. That she worked for about four years till her termination. She also contended that since the appointment order did not specify whether she was appointed on permanent post and she has worked for two years, she was deemed to have completed her probation period. So far as the condition imposed upon her at the time of employment that she should complete the D.Ed, training successfully on or before academic year 1995 because it was contended that firstly, she was not required to undergo the training and obtained D.Ed. qualification because she was already qualified as she had passed C.T.C. examination. Secondly, according to her she appeared for the D.Ed. examination, but only one subject remained to be cleared by her. It is further the case of the petitioner that having once approved her appointment the Education Officer had no powers to revoke his order and cancel the approval.

5. It is the case of the petitioner that she filed Appeal before the School Tribunal challenging her termination and while this appeal was pending respondent tried to fill up the post by issuing advertisement and by appointing one P.C. Deo, she raised grievance about that before the School Tribunal but, admittedly, her Appeal came to be dismissed by the School Tribunal by its order dated 10-5-1994 and consequently she was constrained to file this writ petition.

6. On the other hand, it is contended by the respondent that the petitioner did not possess the necessary qualification, that her having certificate of C.T.C. was not a recognised qualification, that she was appointed initially only on temporary basis and as such she had no right of continuation, that she was never on probation nor she can be deemed to be on probation. Further, according to the respondent the management, the petitioner did not fulfil the condition of acquiring D.Ed. qualification within the time granted to her and even till today she could not pass examination successfully. That the Education Officer was justified in cancelling her approval as it was passed on incorrect and improper representation of facts, and that the School tribunal was perfectly justified in dismissing the appeal.

It is contended by the respondent's Advocate that order of the School tribunal does not suffer from error of jurisdiction, nor it is perverse and, hence no interference is called for with the said order.

7. Apart from the questions raised in the dispute, one more question is involved in the matter i.e. as to who should bear the burden of paying the salary of the petitioner for the period for which years continued in service from the date of the ad interim order granted to the petitioner on 23-9-1994 by this Court in terms of prayer Clause (D) of the petition. It is the fact on record that the Education

Officer (Primary) Zilla Parishad, Aurangabad was directed to deposit Rs. 1,75,000/- towards the petitioner's salary and that the same amount is deposited by the Zilla Parishad. It is also a fact on record that the petitioner has applied for withdrawal of this amount, whereas the Education Officer Zilla Parishad has filed civil application for vacating this order or for effecting this order or for operation of this order, because according to Zilla Parishad, the salary of the petitioner during the period referred to above does not exceed more than Rs. 65,000/- so far as this point is concerned, it is the case of the respondent that if at all the petitioner is to be granted her salary, she can get at the most Rs. 500/- per month which was being paid to her during her service, as a primary school teacher.

It was lastly contended by Mr. Barlinge that before terminating petitioner's services, the respondent No. 1 was required to give one month's notice or salary in lieu of notice and since this has not been done the termination order is illegal. To counter this argument the Counsel for the respondent relied upon a judgment of this Court reported in Akbar Peerbhoy College and others Vs. Mrs. Pramila N. Kutty and others, .

In this judgment it is clearly held by Mr. Justice Lodha that where appointment of a temporary employee made for a fixed period and services of a temporary employee come to an end on the expiry of that period, then giving of notice under Rule 28(1) of the 1981 Rules is not required. In the instant case, the petitioner was appointed on a temporary basis for a fixed period and her services came to an end on the expiry of her period and, therefore, she was not entitled to any notice under Rule 28(1) nor salary of one month in lieu of notice. Hence, the contention raised by Mr. Barlinge in this regard has to be rejected.

8. Each claim and contention of the petitioner is required to be rejected as the same is either baseless or contrary to the legal provisions. Firstly, the petitioner does not possess necessary qualification for being appointed as a teacher for primary school. The discussion of Schedule "B" made above clearly shows that C.T.C. certificate examination is not equivalent to passing D.Ed. examination. A perusal of the certificate filed at page 19 of the petition shows that the same is granted to the petitioner for period work and book binding regular teacher course i.e. completing such course in April, 1989. No serious interpretation of law is necessary to conclude that primary students are never taught any craft like book-binding. This course is taught to secondary school students and, therefore, possession of C.T.C. certificate or certificate of C.T.C. examination does not clothe the petitioner with necessary qualification for appointment as primary school teacher and C.T.C. examination certificate is not equivalent to D.Ed.

9. So far as the appointment of the petitioner is concerned by no stretch of imagination it can be said to be on a permanent vacancy. She has filed four appointment orders at Exhibit "B" record page 20, Exhibit "C" record page 21, Exhibit "D" record page 22 and Exhibit "E" record page 23. All these appointments are clearly temporary appointments as is seen from each of these

appointment letters. The period of her service was upto 30-4-1990, in Exhibit "C" her period of service was upto 30-4-1991, and Exhibit "D" it was upto 1-5-1991, Exhibit "E" is the letter issued by the Education Officer Zilla Parishad to Head-Mistress of the respondent No. 1. The petitioner is trying to take maximum advantage of this letter, because in the 4th column of this letter under the title the date of appointment it is written as 1-5-1992

"Permanent from 1-5-1992". According to her, this is a recognition by the Education Officer that she was made permanent from 1-5-92. This contention of the petitioner is required to be rejected outright. Because, none of the earlier appointment orders Exhibit B, C, D, anywhere show that she was appointed permanently. Exhibit "D" shows that her appointment is valid upto 1-5-1991 only and there is no other appointment order in favour of the petitioner from 1-5-1991 onwards. Further, at two places in Exhibit "E" it is written by the Education Officer that "temporary approval is being given to the appointment of the petitioner, and at the second place Rule No. (9) of Rules 1981 is quoted, under which approval is given temporary. Therefore, all these documents Exhibit B to E do not support the case of the petitioner that she was permanently appointed as a primary school teacher."

10. When admittedly, the petitioner was not duly qualified to be appointed as a primary school teacher and when she was appointed temporary and when only temporary approval was given to her she has no right to claim permanency to the post or right to be continued in service. There is absolutely no substance in the contention of the petitioner that since she has got more than two years she should be deemed to have been on probation and after completion of two years she should be deemed to be made permanent. None of the appointment orders referred to above show that the petitioner was appointed on probation at any time. She could not have been so appointed on probation, because she was not at all qualified and, therefore, the claim of the petitioner in this regard is also required to be rejected.

11. It was further contended by the petitioner that if she was terminated on the ground of being surplus, then respondent No. 1 had no right to issue advertisement for filling up the post and consequently their appointments in that regard by issuing advertisement as per exhibit "L" on record page 32 and by appointing one Mrs. Deo was illegal. There is no force in this contention firstly because as a temporary employee, respondent had a right to discontinue the petitioner from her services. Secondly, it was obligatory on the part of the respondent No. 1 to appoint trained teacher for temporary school and, therefore, even if the termination is on the ground of the petitioner being surplus there was absolutely no illegality on the part of the respondent No. 1 to appoint a trained teacher and for that purpose issue advertisement and fill in the said post.

12. In this regard it was further contended by the petitioner that even if her services were terminated on 14-6-1993 she continued to serve in the school and for this purpose she is relying upon the letter of The Zilla Parishad at Exhibit "K"

dated 21-7-1993. which shows that petitioner was working in the school in spite of her termination dated 14-6-1993. I do not find any force in the contention. The termination was dated 14-6-1993 is very clear and, thereafter there is no appointment order in favour of the petitioner from 14-6-1993 to 21 -7-1993. In the absence of appointment orders after 14-6-1993 it cannot be accepted that the petitioner was working in the school further if at all respondent terminated petitioners service from 14-6-1993 there was no plausible reason for them to continue the petitioner in service from 14-6-1993 till 21-6-1993, or subsequent thereafter.

13. Regarding the condition of acquiring D.Ed. qualification as imposed by the Education Officer and the time being granted till 1994-95 it was contended by the petitioner that she was not liable to be terminated till 1994-95. In this regard it is pertinent to note that even till today the petitioner has not successfully completed the D.Ed. Course and has not passed the exam, as she has yet to clear one subject. Apart from this, when the Education Officer by his letter dt. 21-6-1993 clarified that the approval given to the petitioner by the Education Officer the letter dated 12-3-1993 was cancelled there was no question of respondent No. 1 giving any opportunity to the petitioner to complete the training upto 1994-95 and for that purpose to retain her in service.

14. The School tribunal has rejected all the claims and contentions of the petitioner. After considering all the submissions made by the petitioner, there is no perversity in the order of the School tribunal nor the impugned order contains any jurisdictional error and, therefore, the petition is liable to be dismissed.

15. However, the question that remains is regarding payment of salary or wages to the petitioner for the period for which she is continued in service from the stay order granted by this Court on 23-9-1994 till this date. As stated above, according to the Education Officer, Zilla Parishad is not liable to pay the salary though it has deposited Rs. 1,75,000/- in this Court pursuant to the Court's order. According to the respondent No. 1 it is also not liable to pay the salary, because the petitioner was continued in service pursuant to the orders of the Court. In addition, respondent No. 1 contended that while in service petitioner was being paid maximum amount of Rs. 500/- or so and, therefore, at the most she will be entitled to Rs. 500/- per month if at all she is to be paid salary for the intervening period. The Counsel for the Education Officer, Zilla Parishad contended that the petitioner has calculated her claim at Rs. 1,75,000/- on the basis of salary which is given to a trained teacher but since petitioner was admittedly an untrained teacher she cannot be paid salary which is paid to the trained teacher.

16. In this regard there is one Civil Application No. 4098/1997 so far as the order for deposit of Rs. 1,75,000/- is concerned the order dated 16-12-1996 in Civil Application No. 728/1995 it appears that it was passed when Mr. Irale Patil, learned Counsel for the Education Officer, Zilla Parishad (Primary) was absent. It is further clear from the submissions made by Mr. Irale Patil that the calculations

made by the petitioner at Rs. 1,75,000/- are wrong and if the salary of the untrained teachers are considered, her dues comes to Rs. 65,000/- or so.

The two questions arise in this regard. Firstly, i.e. how much monthly salary the petitioner is entitled to receive and who should be made liable to pay the salary, whether the respondent No. 1 or the Education Officer, (Primary) Zilla Parishad, Aurangabad.

17. Admittedly, the respondent No. 1 gets 100% grant from the Zilla Parishad. The primary responsibility is, therefore, of the Zilla Parishad. The mistake was committed by the Education Officer, Zilla Parishad in Exhibit "E" showing the petitioner "permanent from 1-5-1992" "1-5-1992 iklu dk;e

It is this mistake that was responsible for giving an opportunity to the petitioner to assert the claim regarding permanency in service. In view of this fact it will have to be held that the Zilla Parishad is liable to pay the salary of the petitioner from the date of the said order till the disposal of the petition and consequent vacating the ad-interim order in terms of prayer clause "D" of the petition.

The second question is regarding the quantum of salary to be paid to the petitioner. Because even though it is held that the petitioner is not entitled for continuation as a teacher it is the fact that she worked as a teacher consequent upon the stay order granted by this Court. In fact when it is held that she is not a trained teacher and has no legal right to work as a teacher she is not entitled for any backwages. However, since she has worked pursuant to the Court's order she has to be paid on humanitarian grounds for the work done by her. In this regard the petitioner has alternatively claimed that she should at least be paid the salary of an untrained school teacher whereas the respondent No. 1 contended that she has been paid Rs. 500/- per month and, therefore, she cannot get anything more and cannot get at all the salary of untrained teacher.

In my opinion, considering the facts and circumstances an amount of Rs. 650/- p.m. or the salary of an untrained primary school teacher whichever is less should be paid to the petitioner.

I, therefore, pass the following order.

(i) The writ petition is dismissed.

(ii) The interim relief order granted in terms of prayer clause "D" is vacated.

(iii) The Zilla Parishad to pay salary to the petitioner @ Rs. 650/- per month or the salary of an untrained teacher of primary school whichever is less from the date of stay order of this Court till today. Calculation in this regard are to be made by the Zilla Parishad and the amount to be paid to the petitioner within one month from this order, from out of the amount of Rs. 1,75,000/- (Rs. One Lakh Seventy Five Thousand) deposited in this Court and thereafter the Zilla Parishad will be at liberty to withdraw the balance amount.

18. Petition dismissed.