

(2007) 07 BOM CK 0145

In the Bombay High Court

Case No : Writ Petition No. 6437 of 1997

Mayur Mahila Shikshan Sanstha and Another

APPELLANT

Vs

Shri M.B. Mali and Others

RESPONDENT

Date of Decision : 05-07-2007

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5(3)

Citation : (2007) 5 BomCR 645 : (2007) 109 BOMLR 1345 : (2007) 114 FLR 1064 : (2007) 5 MhLj 894

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : S.S. Pakale, for the Appellant; A.P. Vanarse, AGP, for the Respondent

Judgement

Nishita Mhatre, J.—The petitioners challenge the order of the School Tribunal by which respondent No. 1 has been granted reinstatement to his original post as Assistant Teacher together with backwages. The Tribunal has held that the termination order dated 30.6.1995 was void ab initio.

2. Respondent No. 2 was initially appointed in the school run by the first petitioner of which the second petitioner was the Headmistress from 13.6.1993. His appointment order dated 8.6.1993 specified that Respondent No. 1's appointment was for a temporary period from 14.6.1993 to 30.4.1994. Clause 7 of the appointment order indicates that Respondent No. 2 who was a candidate belonging to the general category was taken in service against the vacancy for a Scheduled Caste candidate since there was a backlog for that period.

3. On 12.6.1995, a fresh appointment order was issued to Respondent No. 2 (for short, hereinafter referred to as the "teacher") indicating that this appointment from 13.6.1994 to 30.4.1996 was for a probation period of two years. It was found during this probationary period that the teacher was not working well and when the notebooks of the students of the 10th standard were inspected, it was found that incorrect English grammar was being taught by him to the students. It

was also found that the teacher was disobeying the orders of the Headmistress and his performance was unsatisfactory. A resolution was passed by the Petitioners deciding to terminate his services w.e.f. 29.4.1995. Accordingly, on 30.3.1995, a letter was issued to the teacher informing him that his services would stand terminated from 29.4.1995.

4. Aggrieved by this decision of the petitioners, the teacher approached the school Tribunal by filing an appeal under the MEPS Act. The School Tribunal has held that the petitioners had wrongfully terminated the services of the teacher without holding an enquiry against the teacher. The Tribunal held that the teacher had completed two years probation in the school and, therefore, was deemed to be permanent. The Tribunal took into consideration the service rendered by the teacher from 14.6.1993 upto the date on which his services were terminated and, therefore, held that he had been wrongfully terminated.

5. The learned advocate for the petitioners points out that the observation of the Tribunal that the teacher had completed two years of probation was incorrect. He points out that the initial appointment was on a temporary vacancy and against a post reserved for a Scheduled Caste candidate. The learned advocate further submits that u/s 5(3) of the MEPS Act, a probationer can be terminated from service at any time during the period of probation if it is found that his services were not satisfactory, whether in respect of his work or behaviour. The learned advocate submits that the entire reasoning of the School Tribunal is incorrect and perverse and, therefore, it has to be set aside. He relies on the judgment of the learned Single Judge of this Court (Chandrachud, J.) in the case of Secretary/ Rector, Hyderabad Sindh National College Board and Others Vs. Deepak Indar Ahuja and Others, .

6. A bare perusal of the evidence on record indicates that the initial appointment of the teacher was for a temporary period and was made against the post reserved for a Scheduled Caste candidate. The teacher worked in this leave vacancy on a temporary basis for the stipulated period after which his services came to an end. He was again appointed by a letter dated 12.6.1994 for a period of two academic years from 13.6.1994 to 30.4.1996. This appointment was on probation and was in the open category. Therefore, the appointments from 14.6.1993 to 30.4.1994 and from 13.6.1994 to 30.4.1996 cannot be clubbed together. The initial appointment was a temporary appointment and admittedly the second appointment was for a probationary period of two years.

7. Section 5(3) of the MEPS Act empowers the management of any school to terminate the services of a probationer if it is found that his work or behaviour is not satisfactory. The only stipulation required to be followed by the management is that the teacher must be given one month's notice prior to his termination from service or salary in lieu of one month's notice. Admittedly, the teacher has been given one month's notice prior to the termination of his services. There is evidence on record to indicate that his work and behaviour were not satisfactory. In these circumstances, the management of the school was well within its rights

to terminate the services of the teacher who admittedly was on probation. The Tribunal was incorrect in clubbing the two periods of service together and has, therefore, committed an error of law apparent on the face of the record. The judgment in the case of Secretary, Hyderabad Singh National College Board, Mumbai and Ors. v. Deepak Indar Ahuja and Ors. (supra), fortifies the contention of the learned advocate for the petitioner.

8. Hence, the order impugned is set aside. Rule made absolute. No order as to costs.