
(1981) 08 BOM CK 0048
In the Bombay High Court
Case No : Writ Petition No. 500 of 1975

M.I. Masih

APPELLANT

Vs

Peoples" Welfare Society and others

RESPONDENT

Date of Decision : 10-08-1981

Acts Referred:

Bombay General Clauses Act, 1904 — Section 16
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 200

Citation : (1982) MhLj 271

Hon'ble Judges : V.V. Joshi, J;A.A. Ginwala, J

Bench : Division Bench

Advocate : K.H. Deshpande and D.K. Deshmukh, for the Appellant; S.G. Kukday for Respondents Nos. 1 to 3 and S.K. Sanyal, for the Respondent

Final Decision : Allowed

Judgement

V.V. Joshi, J.—By this writ petition under Article 226 of the Constitution, the petitioner has challenged the order dated 19th June, 1973, terminating the services of the petitioner as Lecturer in English in the People's Welfare Society College, Nagpur.

2. The People's Welfare Society, Nagpur (Respondent No. 1) is running a College at Nagpur known as the Peoples" Welfare Society College of Arts and Commerce, Nagpur. This College is affiliated to the Nagpur University. The respondent No. 2 is the Chairman of the Peoples" Welfare Society, as also the Chairman of the Governing Body of the College, while the respondent No. 3 is the Principal of the College and also the Secretary of the Governing Body of the College.

3. By an order dated the 18th July 1969, the petitioner was appointed temporarily as a Lecturer in English in the People's Welfare Society College for one academic year i.e. from 1st July, 1969 to 31st March, 1970 on a salary of Rs. 200 P.M. In March, 1971, the petitioner's appointment was terminated. Then, by an order dated 5th July, 1971, the Governing Body of the People's Welfare

Society College appointed the petitioner as a Lecturer in English on probation of one year with effect from 6th July, 1971 in the scale of pay Rs. 300-25-600 with D.A. By the order dated 25th July, 1972, the respondent No. 3 (Who is the Principal of the College as also the Secretary of the Governing Body of the College) informed the petitioner that the Governing Body of the College had decided to extend the period of probation of the petitioner "for one session with effect from 7th July, 1972." Then by the impugned order dated 19th June, 1973, the respondent No. 3 informed the petitioner that his services were terminated with effect from 19th June, 1973 as no longer required. This order was received by the petitioner on 20th June, 1973. This order is in the following terms:

I am directed by the Chairman of the Governing Body of this College to inform you that your services in this College are no longer required with effect from 19th June, 1973. You are being paid one month's salary in lieu of one month's notice.....

The petitioner made a representation dated 9-7-1973 against this termination. The respondent No. 3 informed the petitioner by a letter dated 9th October, 1973, "that the Governing Body which met on 22nd July, 1973 did not accept your letter referred to above." The petitioner then made a grievance against this termination to the Nagpur University, and the said representation was considered and enquired into by a Grievance Committee appointed by the Executive Council of the Nagpur University, under the provisions of the Nagpur University Act, 1963, then in force. The respondent No. 5 was the Chairman of the Grievance Committee, while respondents Nos. 6 and 7 were members of the said Committee. The Grievance Committee, vide its report dated 8-2-1974, found no substance in the complaint of the petitioner, and so it advised the Executive Council of the Nagpur University to file the petitioner's complaint. The Nagpur University, accordingly, filed the representation of the petitioner and communicated this decision to the petitioner by its letter dated 14-2-1974. The petitioner then filed this writ petition challenging the termination of his services.

4. Shri K.H. Deshpande for the petitioner has pressed two contentions before us. The first contention is that the petitioner is deemed to have been confirmed in his post of Lecturer in English prior to the termination of his services and so his services could not be terminated simply as no longer required. The second contention is that the decision to terminate the services of the petitioner was not taken by the Governing Body of the People's Welfare Society College, which alone, being the appointing authority, could validly terminate his services.

5. It is not disputed now that in view of the decisions of this Court in *Shreekanth Rajeshwarrao Kshirsagar v. G.S. College of Commerce, Wardha* Spl C Appln. No. 2544 of 1976 decided on 24-12-1976 (1978 Mh. LJ Note 22) and *Premlata Sudhakar Sathe v. Governing Body of G.S. Tompe College* 1981 Mh. LJ 332, two positions emerge (1) The College Code (Ordinance No. 24) which was framed under the provisions of the Nagpur University Act, 1963, which Act came to be repealed by the Nagpur University Act, 1974 continues to be in force in spite of

the above repeal, by virtue of the provisions of section 91(1)(xiii) of the Nagpur University Act, 1974, and that the provisions of the College Code are enforceable as provisions having the force of law. (2) These provisions are enforceable between the Teacher and the Management, irrespective of the fact whether the written contract in the proforma given in Schedule A appended to the College Code is or is not executed between the Teacher and the Management.

6. Article 38 in Chapter V of the College Code is as follows :

38.(1) The appointments of the teachers of a College, other than temporary teachers for a period not exceeding one Academic year shall be made by the Governing Body of the College, after inviting applications for the posts by public advertisement, and after considering the recommendations of the Selection Committee as per Article 39.

The letter of appointment of a temporary teacher shall specify the period of notice of termination on each side, but it shall not be less than one month.

A temporary teacher who resigns his services after giving notice shall not be entitled to his summer vacation salary.

(2) Such teachers shall be appointed on a written contract in the form prescribed in Schedule-A.

Clause 2 of the agreement under the form prescribed in Schedule-A appended to the College Code is as follows:

2. That the party of the first part is employed in the first instance, on probation for a period of one year and shall be paid monthly salary of Rs....., the period of probation may be extended by such further period as the party of the second part may deem fit, but the total period of probation shall, in no case, exceed two years.

Provided during the probation period, of the benefit of normal increment which falls due after completion of one year's service is given.

Clauses 8 and 9 of the agreement prescribed in Schedule A are as follows:

8. After confirmation the services of the party of the first part can be terminated only on the following grounds:--

- (a) Wilful and persistent neglect of duty,
- (b) Misconduct,
- (c) Breach of any of the terms of contract,
- (d) Physical or mental unfitness,
- (e) Incompetence,
- (f) Abolition of the posts,

Provided, firstly that the plea of incompetence shall not be used against the party of the first part after he has served the party of the second part for five years or more.

Provided secondly, the services of the party of the first part shall not be terminated under clause (c) or (f) without the previous approval of Nagpur University.

9. Except when termination of service has taken place under sub-clause (a) or (b) of clause (8), neither the party of the first part nor the party of the second part shall terminate this agreement except by giving to the other party three calendar month's notice in writing or by paying to the other party a sum equivalent to thrice the monthly salary, which the party of the first part is then earning.

Notice period of termination of service by or of the staff on temporary or probationary appointment should be restricted to one month only.

7. Since the maximum period of probation of a teacher is provided under clause 2 of the Agreement in Schedule A as two years, by reason of the principle enunciated by the Supreme Court in *State of Punjab Vs. Dharam Singh*, a teacher appointed on probation would have to be treated as a confirmed teacher on the expiry of the maximum probation period of two years. In the instant case, the petitioner was appointed on probation with effect from 6th July, 1971. That would mean, the petitioner would be entitled to be treated as confirmed from and after 6th July, 1973. In that view, it would seem to us, the respondents No. 1 to 3 could terminate the petitioner's services with one month's notice any time till 5th July, 1973, treating the petitioner as a probationer till then. The impugned notice dated 19th June, 1973 was served on the petitioner on the 20th June, 1973, from which date it could be effective, and on which date the petitioner could, upon the previously mentioned calculation of time, be still treated as being on probation. But the contention of Shri K.H. Deshpande for the petitioner is that the period of two years mentioned in clause 2 of the Agreement under Schedule A is to be reckoned as two academic years. The first academic year of probation was the year 1971-72 starting from 6th July, 1971 and the second academic year 1972-73 commenced on 7th July, 1972 and ended on 19th June, 1973, inclusive of the summer vacation. Thus on the expiry of 19th day of June, 1973, i.e. on the commencing zero hour of 20th June, 1973, the petitioner got automatically confirmed and, therefore, on 20th June, 1973, the date on which the impugned notice was served on him, the petitioner was already a confirmed teacher, and his services could not be terminated with one month's notice as no longer required.

8. The further contention of Shri K.H. Deshpande in this respect is that the words "one year" and "two years", as used in clause 2 of the Schedule A appended to the College Code, have to be read and interpreted in the context of the purpose of appointing a teacher initially on probation. A teacher is appointed for the

purposes of teaching. The object of appointing a teacher on probation initially for one or two years is to judge his suitability in relation to the duty he is required to perform. Therefore, according to Shri K.H. Deshpande, the terms "one year" and "two years" used in clause 2 of Schedule A have to be interpreted as meaning "one academic year" and "two academic years", and not the period of years as understood in common parlance as signifying a period covered by twelve calendar months.

9. It is not possible to accept this interpretation. The proviso below clause 2 speaks of the benefit of the normal increment which falls due "after completion of one year's service". This clearly shows that the expressions "one year" and "two years" are used in this clause in the ordinary sense of these terms meaning a year as comprising twelve calendar months. In contradiction in clause 4 of Schedule A, the term "academic year" is used specifically when it was necessary to indicate the period of an academic year. Clause 4 is as follows:

4. That the age of superannuation will be sixty years, the actual time of retirement for the party of the first part to be last day of the academic year in which he attains the age of sixty.

This clearly indicates that the terms "one year" or "two years" and "sixty years" used in Schedule-A are all used in the same sense of indicating by the term "a year" a period of 12 calendar months, as against the use of the term "academic year" used to specify the academic year starting in June or July and ending in March, April or June (inclusive of vacation). Schedule-A is itself a part of the College Code. In several articles of the College Code, the expressions "one year" or two years" are used, while in several articles, the term "academic year" is also used to clearly distinguish the same from the terms "one year" or "two years". Article 24 contains the words "two years", while Article 26 uses the words "one year". Article 38(1) uses the term "one academic year". That term also appears in Article 48. Article 48(1)(a) uses the expression "an academic year", while Article 48(1)(b) contains the term "for every completed twelve months on duty", whereas Article 48(1)(c) contains the expression "three years". The term "academic year" appears also in Article 50. It is thus clear that wherever the intention is to specifically indicate an academic year that expression has been used. In that view, it would be quite incorrect to assume that in Clause 2 of Schedule-A, the term "two years" could have been used to indicate "two academic years". We are, therefore, unable to accept this contention of Shri K.H. Deshpande. In our view the petitioner stood to be confirmed only on 6th July, 1973 and not on 20th June, 1973, as contended by Shri K.H. Deshpande.

10. That takes us to the second contention of Shri K.H. Deshpande. It is clear, in view of the provisions of Article 38(1) of the College Code, the teachers are to be appointed by the Governing Body of the College. The initial letter of appointment of the petitioner on probation i.e. the letter dated 5th July, 1971 specifically stated that the Governing Body of the P.W.S. College had decided to appoint the petitioner as lecturer in English. Since the Governing Body of the College is the

appointing authority under the provisions of Article 38(1) of the College Code which has a statutory force that Body alone could decide to terminate the services of the petitioner. That would follow even by reason of the implications of section 16 of the Bombay General Clauses Act, 1904. The impugned letter dated 19th June, 1973 shows that the Principal of the College (i.e. Respondent No. 3) informed the petitioner that it was the Chairman of the Governing Body of the College who had directed the Principal of the College to inform the petitioner that the latter's SERVICES were terminated. So, the decision to terminate the services of the petitioner was taken by the Chairman of the Governing Body of the College and not by the Governing Body itself. The termination of services of the petitioner was effected thus by an authority not competent to terminate the petitioner's services and, therefore, the impugned order requires to be quashed. That is the contention of Shri K.H. Deshpande for the petitioner on this second point.

11. It appears, the Meeting of the Governing Body of the P.W.S. College was held on 21st April, 1973. The original records of the minutes of the Meetings of the Governing Body, the Agenda and the decisions taken thereon have been made available to us by Shri S.G. Kukday appearing for respondents Nos. 1 to 3 and true copies of the same have been placed on record. Item No. 3 on the Agenda for that meeting of the Governing Body of the P.W.S. College held on 21-4-1973 was as follows :

3. After examining the work load for next session the reports and other confidential for previous year, as well as results, the Governing Body has to decide the number of lecturers (probationers and temporary) to be retained or otherwise in every department of subject. Governing Body also has to sanction the appointment of additional staff if needed in next session.

The decision taken in that meeting of the Governing Body on 21-4-1973 on Item No. 3 on the Agenda is recorded in following terms:

(3) Decision on item No. 3 on the Agenda was postponed after general discussion on the request of Shri S.G. Suradkar who talked to the Chairman on telephone from Chanda. The consensus of all members was in favour of terminating services of Prof. Masih. The Governing Body requested the Chairman to take final decision in this case.

It appears, it was thereafter that the Chairman of the Governing Body took that decision and directed the Principal (respondent No. 3) to inform the petitioner that his services were terminated, which the Principal (Respondent No. 3) did by the impugned letter.

12. It is at once clear that the decision to terminate the services of the petitioner was not taken by the Governing Body of the College in its meeting held on 21-4-1973. The members of the Governing Body discussed the matter regarding termination of the services of the petitioner, they even expressed their opinion on this matter, and the consensus of all members was in favour of terminating the

services of the petitioner. But the Governing Body did not take any decision in that matter it requested the Chairman to take the final decision. It was the Chairman of the Governing Body who took that final decision thereafter Shri Kukday for respondents No. 1 to 3 emphasizes that the members of the Governing Body had already indicated their opinion in the matter and that the consensus of all the members was in favour of terminating the services of the petitioner. We feel that was not enough. The Governing Body had itself to take the final decision. It did not do that, but delegated the taking of final decision to the Chairman. We asked Shri Kukday, if after all this, it could not have been possible for the Chairman of the Governing Body to take the final decision of not terminating the services of the petitioner, in spite of the consensus expressed by the members of the General Body. Shri Kukday very fairly conceded that that possibility could not be ruled out. Then, it is clear, the final decision was taken by the Chairman of the Governing Body and not by the Governing Body itself.

13. Shri S.G. Kukday has not been able to show us any bye-law of the respondent No. 1 Society under which the Chairman of the Governing Body had the power to perform such functions as might be entrusted or delegated to him by the Governing Body of the College. If a Statue requires a decision regarding terminating the services of an employee to be taken by a specific authority, the decision, if it has to have its legal effect, has to be taken by that particular authority, and it cannot be delegated to some other authority. In our view, therefore, the decision to terminate the petitioner's services, as communicated to the petitioner on 20-6-1973 by the impugned letter dated 19-6-1973, was not a legal and valid decision and so the impugned letter could not validly terminate the services of the petitioner with effect from 20-6-1973.

14. Here, it may be contended that in the absence of any prohibition for the Governing Body to delegate the taking of the final decision to the Chairman, the Chairman could take that decision as an agent of the Governing Body, when particularly asked by the Governing Body to take that decision. We do not think, this contention can be valid. It would amount to abdication by the proper authority of the function to take the decision itself and the decision taken even by an agent, who was himself not authorised to take the decision, would be a void one. In this respect, we may refer to the observations of the Supreme Court in Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another, .

15. It is further contended by Shri S.G. Kukday for respondents No. 1 to 3 that in its subsequent meeting held on 22nd July, 1973, the Governing Body of the P.W.S. College ratified and confirmed the decision taken by the Chairman earlier, and rejected the representation of the petitioner. The decision taken by the Governing Body of the College on 22-7-1973 is recorded in following terms:

It is resolved to ratify and confirm the earlier decisions taken by the Governing Body, the Chairman and the Principal pertaining to the termination of services of Shri Masih. It is further resolved to reject the letter of Mr. Masih requesting the

Chairman to re-consider his termination.

Shri S.G. Kukday contends that this ratification validates retrospectively the decision taken by the Chairman of the Governing Committee earlier to terminate the services of the petitioner.

16. Before proceeding to consider the merit of this contention, it is necessary to clarify one point. The Resolution of the Governing Body of the College passed in its meeting dated 22nd July, 1973 speaks about "the earlier decision taken by the Governing Body....." We have already seen that the Governing Body had not taken any decision in its earlier meeting held on 21-4-1973, it had delegated the taking of decision to the Chairman. If, in fact, a decision had been taken in the matter by the Governing Body itself in its meeting held on 21-4-1973, there could hardly have been any necessity to "ratify and confirm the earlier decision taken by the Governing Body....."

17. Now, in this line of reasoning adopted by Shri S.G. Kukday, we find, there are several difficulties. If the earlier decision taken by the Chairman of the Governing Body and communicated to the petitioner by the impugned letter terminating his services was itself a decision taken not by the competent authority, then, it was necessarily a void action and had not the effect of terminating the services of the petitioner. That would follow from even the observations of the Supreme Court in the earlier referred case in *Mysore State Road Transport Corporation v. Mirja Khasim Ali Beg* and another cited supra. If that decision was a void one, it would seem to us, it could not be ratified subsequently. We may refer here to Halsbury's Laws of England, Third Edition, Volume I at page 173--Paragraph 408 :

408. General Rule. A ratification may be of one act or a series of acts; and as a general rule every act may be ratified, whether legal or illegal, if it was not void in its inception, provided that it was capable of being done by the principal himself.

18. Even accepting for a moment that the principle of ratification can be invoked to ratify the earlier defective termination, we find certain other difficulties in this respect. We have already observed that on 20th June, 1973, when the impugned order dated 19th June, 1973 terminating the services of the petitioner was communicated to the petitioner, the petitioner was still a Lecturer on probation. He stood to be confirmed automatically on completion of two years' probationary period and this was to occur on 6th. July, 1973. The termination of the petitioner's services on 20th June, 1973 by the impugned letter was invalid, for want of proper authority to terminate the petitioner's services in the Chairman of the Governing Body who had taken that decision. By the time the Governing Body passed the so called ratifying and confirming resolution on 22nd July, 1973, the petitioner stood already confirmed from 6th July, 1973. Therefore, on 22-7-1973, the Governing Body of the College had no right to decide to terminate the petitioner's services as no longer required, by giving only one

month's notice. In the circumstances, can it be said that the Resolution dated 22-7-1973 passed by the Governing Body of the College ratifying the earlier decision of the Chairman, has the effect of relating back and validating the decision retrospectively as on 20th June, 1973. We have come to the conclusion that the answer to that question has also to be in the negative.

19. We may refer to Halsbury's Laws of England, Third Edition,, Volume I, Para 415 at Page 177 which is in the following terms:

415. Time for ratification. As to the time within which ratification may take place, the rule is that it must be either within a period of fixed by the nature of the particular case, or within a reasonable time, after which an act cannot be ratified to the prejudice of a third person. Thus an unauthorised notice to quit can only be ratified by the landlord within the period for giving notice the payment of a debt to a creditor of another cannot be ratified after the money has been returned to the unauthorised agent; the entry of an unauthorised agent upon lands barred by fine and proclamation, could not be ratified after the time for entry had elapsed; an unauthorised stoppage in transitu cannot be ratified after the transit is ended; and the exercise of an option must be ratified within the time for Which the option was open.

(Emphasis supplied)

We may refer further to paragraph 422 in the same Volume at Page 181:

422. Vested Rights. A ratification cannot divest or otherwise prejudicially affect third parties' rights which have vested prior to such ratification.

We may also refer to Corpus Juris Secundum, Volume LXXV at page 608 dealing with the question of ratification, where the following observations appear:

RATIFICATION. While it has been said that the word "ratification" cannot be accurately defined, as a legal term generically the word always expresses the same idea. It is equivalent to a previous authorization, and relates back to the time when the act ratified was done, except where intervening, rights of third persons are concerned.....

(Emphasis supplied)

We may also refer to Stroud's Judicial Dictionary, Volume 4 at page 2248, where the following passage occurs:

RATIFY. (1) Ratification of a contract "must be by an existing person on whose behalf a contract might have been made at the time....

(2) Ratification requires: (a) That the agent's act must be one in the doing of which he purports to act for his principal; (b) the act must be of a kind which the agent was at the time empowered to do for his principal; (c) at the time of the ratification the principal must have had the" legal capacity of doing the act himself

(per Wright J., *Firth v. Staines* 1897 2 QB 70 cited approval.

(Emphasis supplied)

20. The same principle, we find, has been embodied in the Indian Law of Contracts in section 200 of the Indian Contract Act, which runs as follows:

200. An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

The illustration (b) below that section makes the position further clear:

(b) A holds a lease from B terminable on three month's notice. C, an unauthorised person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

In the Commentary of Pollock and Mulla on Indian Contract and Specific Relief Acts, Ninth Edition, at Page 739, the following observations appear:

This is the converse of the principle that a voidable transaction cannot be rescinded to the third persons' rights acquired under it in good faith. Rights of property cannot be changed retrospectively by ratification of an act inoperative at the time. The rule is also stated in the form that ratification, to make an act rightful which otherwise would be wrongful, must be at a time when the principal could still have lawfully done it himself.....

(Emphasis supplied)

21. Shri S.G. Kukday for respondent No. 1 to 3 placed reliance on a decision of this Court in *Abdul Rahim Khan v. Municipal Committee, Khamgaon* 1958 NLJ 111. In that case, the Secretary of the Municipal Committee, Khamgaon had held an enquiry against the petitioner in that case without prior order of the Municipal Committee. The employee had not raised any objection in the inquiry. The Municipal Committee had subsequently ratified the Secretary's action. It was observed in paragraph 5 of the judgment:

5. It is next urged by Shri Padhye that the inquiry held in the instant case by the Secretary was without jurisdiction. He has referred us to sub-section (7) of section 25 and the rules made thereunder appearing at page 184 of the Municipal Manual. This contention, though well founded, does not carry the petitioner's case any further. True, before the Secretary entered upon the enquiry there should have been an order to that effect made by the Municipal Committee. In the instant case, no such order was made prior to the holding of the enquiry, but this lacuna, in our view, is not fatal to the dismissal of the petitioner in the instant case. It is not that the Secretary was not competent at all to hold an enquiry. The only objection is to the want of prior order from the Municipal Committee directing him to hold an enquiry. The direction in the instant case was not given by a resolution of the Municipal Committee as such

but by the President. No objection was raised before the Secretary as to his competence to hold an enquiry, further the entire case was considered by the Municipal Committee in its meeting held on 17-7-1956 and the findings of the Secretary were accepted by the Municipal Committee. This shows that the action taken by the President in ordering the Secretary to hold an enquiry and the action of the Secretary in holding the enquiry were ratified by the Municipal Committee. The requirements of the rules framed u/s 25 (7) have been substantially complied with. Also, it has not been shown to us that any real prejudice has been caused to the petitioner on account of this lacuna in the enquiry held by the Secretary. It is also not the case of the petitioner that the Secretary in holding the enquiry had not followed the procedure prescribed by these rules. This contention, therefore, also, in our view, is without substance.

22. This case is clearly distinguishable. Between the dates of enquiry held by the Secretary and its subsequent ratification by the Municipal Committee, there had been no enlargement of the rights of the petitioner in that case. There was, therefore, no question of prejudice to the rights of third parties that had come into existence and intervened prior to ratification of the earlier defective action so as to validate the same. On the date of ratification, the Municipal Committee still had the power to order an enquiry against the petitioner in that case. The ratification could, therefore, in that case, relate back.

23. In our view, therefore, the services of the petitioner have not been validly terminated by the impugned order dated 19th June, 1973, which was void.

24. This writ petition is allowed. The impugned order dated 19th June, 1973, terminating the services of the petitioner, is hereby quashed, and the respondents No. 1 to 3 are directed to continue the petitioner as a teacher in the College and pay the necessary emoluments to him. There shall be no order as to costs of this writ petition. At this stage, Shri S.G. Kukday for respondents No. 1 to 3 orally prayed for leave to appeal to the Supreme Court. Leave is refused. Shri S.G. Kukday prays for two month's stay for preferring an appeal to the Supreme Court. We direct that the implementation of this order shall not take place for two months from today.