
(2007) 07 BOM CK 0076

In the Bombay High Court

Case No : L.P.A. No. 82 of 2000 in Writ Petition No. 1040 of 2000

Mula Education Society and Another

APPELLANT

Vs

Haribhau Kardile and Others

RESPONDENT

Date of Decision : 05-07-2007

Acts Referred:

Citation : (2008) 116 FLR 475 : (2007) 6 MhLj 492

Hon'ble Judges : N.V. Dabholkar, J;M.G. Gaikwad, J

Bench : Division Bench

Advocate : V.P. Latange, for the Appellant; G.R. Sayeed, holding for P.R. Katneshwarkar and V.B. Ghatge, A.G.P. for respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Dabholkar, J.—By this appeal under Clause 15 of the Letters Patent, appellants (henceforth referred to as the "management" for the sake of brevity) desires to challenge order dated 12-7-2000 passed by learned Single Judge of this High Court in Writ Petition No. 1040/2000. The learned Single Judge was pleased to reject the writ petition filed by the management at the threshold. The writ petition was filed by the management thereby challenging the order passed by Pune/Shivaji University and College Tribunal, in Appeal No. 21/1998 (P). By the said order, the learned Member of the Tribunal held that termination of respondent No. 1 (henceforth referred to as the "teacher" for the sake of brevity) with effect from 17-1-1998 was otherwise i.e. otherwise than due process of law or procedure as prescribed by university statutes. Consequently, the learned Member ordered the management to reinstate the teacher and pay the arrears of salary from 17-1-1998 till the date of reinstatement. This judgment and order passed by the learned Member of the University Tribunal is upheld by the learned Single Judge by the impugned order.

2. Following facts are undisputed. The respondent No. 1 - teacher was initially selected by a duly constituted selection committee in the month of July/August,

1994. However, at that time, he was recommended for a post, which was reserved for scheduled caste. Consequently, he was issued appointment order only for one academic year 1994-95. His termination at the end of that academic year was not challenged by the teacher. He was again selected by duly constituted selection committee in the month of May, 1995. This time, it was advertisement by the management for 2 posts for open category candidates for teaching "Physics". The teacher, on selection, is said to have been issued an appointment order dated 28-6-1995. It is the contention of teacher that he was never issued any appointment orders, but he resumed on the basis of selection and oral directions. It appears that teacher continued to serve till 17-1-1998 whereafter he was not allowed to sign the Muster roll and, thus, was terminated otherwise than due process.

3. Heard respective counsel for respective parties.

4. Advocate Shri Latange has propounded following propositions in order to justify termination of the teacher.

(1) His appointment was on a post, which was reserved for scheduled caste;

(2) His appointment was purely temporary and, therefore, he stood terminated by efflux of time;

(3) He had not passed NET/SET examinations; and

(4) There was no workload for his continuation.

5. The lawyers have strenuously taken us through judgment of the University Tribunal as also order passed by the learned Single Judge and we find that the learned Member of the University Tribunal, by recording elaborate reasons, has squarely met all the submissions advanced before us by Advocate Shri Latange.

6. As already pointed out by us hereinabove, the teacher was appointed in a post reserved for scheduled caste during academic year 1994-95. But in view of his fresh selection, second time by duly constituted selection committee and in response to the advertisement, which advertised 2 posts for Lecturers in Physics for open category, it is not open now for the management to claim that appointment of teacher was in a post reserved for scheduled caste. From academic year 1995-96, he was appointed in a post available for open category and he belongs to open category.

So far as the claim of management that his appointment order was not on probation, but it was only for one academic year, it must be said that by advancing such a submission, the management is trying to stand and gain upon its own wrong. Since the selection of the teacher was by duly constituted selection committee, we can presume that the college must have obtained permission from the University for issuing advertisement after giving details of the teaching staff and the vacancies, the posts available for reserved category and open, and only thereafter duly constituted selection committee must have

been made available by the University to the management for selection of suitable candidates. The action on the part of the management of issuing an appointment order for one academic year must be deprecated and condemned as a room created by the management for its arbitrary actions in future and what was the arbitrary action, we shall demonstrate little later while dealing with the contention that there was no enough workload and hence the teacher was terminated.

7. We must say with emphasis that whenever any management gets the candidate selected by a duly constituted selection committee, it is not open for the management to indulge into arbitrariness and treat the institution as their monarchy as if they can appoint the candidate only for one year and then accommodate somebody else of their choice during the next academic year. If a candidate is selected by following due procedure according to University statutes, it is incumbent on the management to appoint him on probation. The only manner in which their services can be terminated is by termination due to unsatisfactory performance during the probation, otherwise by superannuation unless there is termination earlier as a result of departmental disciplinary action or by resignation of the teacher so appointed. That teacher was appointed on temporary basis for every academic year is not a ground available to the management to stand upon, because that is part of their arbitrariness nay mal-practice.

The issue regarding teacher not having passed NET/SET examinations is dealt with by the learned Member of the Tribunal by relying upon the Government resolutions dated 22-12-1995 and 22-5-1998. By the first Government resolution, liberty was given to the management to stop the increments and by the second, even that action was not available to be taken against the Lecturers, who had been appointed earlier without having passed NET/SET examinations. The Government resolutions clearly indicated that the Lecturers already appointed could not be terminated on the sole ground that they have not passed NET/SET examination.

8. Lastly, it was contended by Advocate Shri Latange that teacher was terminated because there was no workload. We intend to quote few observations by the learned Member of the University Tribunal:

The appellant has also stated in para 6 to 14 that it was suggested to him that his services were not required as there was reduction in workload. The respondent No. 1 & 2 have not terminated the services of appellant on the ground of reduction in workload by passing any written order of termination and respondent No. 1 & 2 have not produced any record to show that there was reduction in workload and, therefore, there is no force in the contention of learned Advocate Shri M. M. Kothari for respondent No. 1 & 2 that appellant was juniormost teacher and, therefore, his termination on the ground of reduction in workload cannot be said as illegal.

Advocate Shri Latange tried to make out a case by taking us to the record, which is produced by the Government along with its reply. However, this is the record furnished by the management to the department and, therefore, in fact it is record of the management. Unfortunately, the record of the management, which is tried to be relied upon by the learned Counsel, exposes the management. The relevant record is at paper book pages 83 and 84 of the Letters Patent Appeal. In the year 1994-95, there were 32, 16 and 6 students respectively for first year; second year and third year B.Sc. and there were 3 Professors namely P. K. Walunj; Smt. M. R. Shinde and H. J. Kardile (present respondent No. 1). They were allotted 20; 22 and 20 Lectures and their appointment was as Full Time Teachers. During the academic year 1995-96, there were 35; 6 and 9 students in the three years of science faculty. The same three teachers were allotted the same workload as in the previous academic year as Full Time Lecturers. In the years 1996-97, there were 38; 10 and 2 students. The same set of teachers is indicated in the last column. The workload of Shri Walunj and Smt. Shinde was shown to be 18 and 12 lectures. They were shown full timers and as against respondent No. 1, there is only entry of date 15-6-1997 in the column of workload.

Academic year 1997-98 is crucial. There were 35; 8 and 6 students for the three years in the science faculty. Professor Mr. Walunj was given workload of 18 periods. The second Lecturer appears to be one Smt. S.M. Adik, who is given workload of 8 lectures and she is shown as part time. For the year T.Y. B.Sc, there are 6 students and it is not open for the management to say that there were no enough students and there was no enough workload in the light of guidelines referred to by Advocate Shri Latange, which are at page 99. It says that there should be atleast 15 students in the metropolis and 5 students in the other (rural) area for each class on special/optional subjects. Even in the year 1997-98, there were 6 students for T.Y. B.Sc. against which respondent No. 1 is shown Lecturer. In fact, in the same guidelines, it is stated that there should be 5 students at the entry point and for the third year, even if there is one student, that becomes a grantable classroom. The falsity in the record by the management to the Government is obvious. The absence of Professor Mrs. Shinde for the academic year 1997-98 is explained to us by Advocate Shri Sayeed informing that she had resigned and the management has not been able to explain as to how did Smt. Adik replace Smt. Shinde when respondent No. 1 was there in the academic year 1997-98 till 17-1-1998. In fact, in this chart of the information furnished, the name of respondent No. 1 does not find place at all. Smt. Adik seems to have resumed with effect from 18-2-1998 exactly one month after "otherwise termination" of respondent No. 1. In view of this record, it is not open for the management to say that there was no workload and hence respondent No. 1 was terminated. In fact, January is not the month when the management can claim to have taken an assessment and arrive at a conclusion that there is no workload. This eventuality can occur only in the month of June i.e. at the beginning of the academic year when the college knows as to how

many students have secured admission in each classroom.

In this table, we find one more thing, which is curious. Although it is claimed that respondent No. 1 is juniormost and, therefore, he was to go out first as and when workload was not available for all the years, he is shown against T.Y. B.Sc. as a Lecturer for the students at higher level of the course. The record clearly indicates that for the purpose of accommodating Smt. S.M. Adik in February, 1998, respondent No. 1 was ceremoniously dismissed a month earlier in January, 1998.

9. For the reasons discussed hereinabove, we feel that the Member of the University Tribunal as well as the learned Single Judge have rightly upheld the contentions of the teacher that he was terminated otherwise than due process and ordered his reinstatement with backwages.

There are no merits in the Letters Patent Appeal. The same is dismissed.