
(2014) 02 BOM CK 0055
In the Bombay High Court
Case No : W.P. No. 1856 of 2004

Narendra Kesharao Meshram

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 4, 4(6), 5, 9

Citation : (2014) 4 ALLMR 224 : (2015) 1 BomCR 853 : (2014) 3 MhLj 881

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : A.Z. Jibhkate, Advocate for the Appellant; R. Deshpande, AGP for Respondent Nos. 1 and 4 and S.S. Murthy for Respondent Nos. 2 and 3, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R.K. Deshpande, J.—This petition takes exception to the judgment and order dated 30-7-2003, passed by the School Tribunal, dismissing the Appeal STN No. 48/2002, filed by the petitioner u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 (hereinafter referred to as "the MEPS Act"), challenging his termination of service by an order dated 9-7-2000. The School Tribunal has held that the appointment of the petitioner throughout was temporary on year to year basis and it came to an end on 30-4-2002 and thereafter no order of appointment was issued to the petitioner. The School Tribunal has held that the petitioner cannot get the benefit of deemed confirmation in service by treating him to have been appointed on probation for a period of two years in terms of sub-section (2) of section 5 of MEPS Act. It has further been held that the petitioner was not qualified as he did not possess the qualification of B.Ed., at the time of his initial appointment.

2. Shri Jibhkate, the learned counsel appearing for the petitioner-employee relying upon the decision of this Court in W.P. No. 1727/2007, Shri Sant Gajanan

Maharaj Bahuuddesihya Shikshan Prasarak Mandal and another vs. Devendra Bhagwani Matode and others, decided on 8-10-2008; decision in case of Dr. S.R. Ambedkar Samiti and Another Vs. Ku. M.L. Lonkar and Others, and decision in case of Pralhad Vitthalrao Bhusari Vs. New Ideal Education Society and Others, , has urged that this Court has set aside the orders of termination of untrained teachers because of the Government Resolutions issued from time to time extending the period of obtaining training qualification.

3. Relying upon the provisions of section 4(6) of the M.E.P.S. Act read with Rule 28 of the M.E.P.S. Rules, he has urged that the services of a temporary employee cannot be terminated except in accordance with the provisions of the Act and the Rules framed thereunder. The requirements of sub-rule (1) of Rule 28 are (a) issuance of one month's notice of termination or payment of one month's salary in lieu of notice, and (b) that, termination cannot be during vacation. He submits that such provisions are mandatory. He submits that there is neither any notice issued nor salary of one month is given. He further submits that in the present case, the order of termination dated 9-7-2002 was issued within a period of one month from the end of sessions on 26-6-2002 and it was during the period of vacation.

4. The undisputed factual position is that the minimum qualification for appointment to the post of an Assistant Teacher were graduation and training i.e. B.Ed. The petitioner was possessing the qualification of B.Com., but was not possessing the training qualification of B.Ed., when he was initially appointed by an order dated 15-7-1999 or even subsequent to it till his termination. The order of appointment was on purely temporary basis for a period of one Session from 19-7-1999 to 7-5-2000. The second order of appointment was issued on 25-6-2000, purely on temporary basis for a period of one session from 1-7-2000 to 7-5-2001. Although, there is no third order of appointment issued, it seems that the petitioner was continued in service till the issuance of an order of termination dated 9-7-2002. The School Tribunal has held that the appointment of the petitioner on both these occasions and its continuation cannot be termed as appointment and continuation on probation in terms of sub-section (2) of section 5 of M.E.P.S. Act for the reason that the petitioner was not qualified to be appointed to the said post.

5. Sub-sections (1) and (2) of section 5 of M.E.P.S. Act being relevant, are reproduced below.

5. Certain obligations of Management of private Schools.-- (1) The Management shall, as soon as possible, fill in, in the manner prescribed every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy:

Provided that unless such vacancy is to be filled in by promotion, the management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay, the Education Officer, Zilla Parishad or as

the case may be, the Director of the officer designated by the Director in respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools; and in the event of such person being available, the Management shall appoint that person in such vacancy.

(2) Every person appointed to fill a permanent vacancy except Shikshan Sevak shall be on probation for a period of two years. Subject to the provisions of sub-sections (4) and (5), he shall on completion of this probation period of two years, be deemed to have been confirmed.

Provided that, every person appointed as Shikshan Sevak shall be on probation for a period of three years.

(2A) Subject to the provisions of sub-sections (3) and (4), Shikshan Sevak shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.

The requirements of sub-section (1) of section 5 are threefold. The permanent vacancy has to be filled in by making appointment (i) as soon as possible; (ii) by a duly qualified person, and (iii) in the manner prescribed. It is only if all the three requirements are shown to have been fulfilled, sub-section (2) of section 5 shall come into operation.

6. Rule 6 of M.E.P.S. Rules deals with the qualification of teachers and hence, it is reproduced below.

6. Qualification of Teachers.-- The minimum qualifications for the post of teachers and the non-teaching staff in the primary schools, secondary schools, Junior Colleges and Junior Colleges of Education shall be as specified in Schedule "B".

Provided that, the Education Officer may allow Management to appoint untrained Science graduate teachers for teaching Mathematics and Science subjects or untrained Arts or Commerce graduates for teaching other subjects in secondary schools in exceptional circumstances, such as non-availability of trained graduates. Such appointments shall, however, be allowed on an year to year basis, on the clear understanding that they shall have to obtain training qualification at their own cost and further subject to the condition that their services shall be liable for termination as span as trained graduate teachers become available.

Provided further that the untrained graduate appointed as a teacher after obtaining the permission from the Education Officer before the commencement of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and who continues to be in service in any school on the date of commencement of the Maharashtra Employees of Private Schools (Conditions of Service) (Amendment) Rules, 1984, shall be continued in service on the condition that he obtains the prescribed training qualifications at his own cost before 1st June, 1987, unless he has already obtained such qualifications, failing

which his services shall be terminated.

In terms of second proviso above, if an untrained graduate is appointed as a teacher after obtaining the permission from the Education Officer before the commencement of the M.E.P.S. Rules, 1981 and is continued in any school on the date of commencement of the M.E.P.S. Rules, 1984, on the condition that he obtains prescribed training qualification at his own costs before 1st June, 1987, unless he has already obtained such qualification, shall be terminated.

7. The petitioner was not duly qualified for appointment to a permanent vacancy as he was not having B.Ed. Qualification on the dates of his appointment. It is apparent that the initial appointment of the petitioner on 15-7-1999 or even the appointments subsequent thereto were as a untrained graduate teacher. Thus, there was non-compliance of sub-section (1) of section 5 as the petitioner was not qualified. Hence, his appointment cannot be termed as one on probation for two years, as stipulated in sub-section (2) of section 5. The appointment of petitioner on every occasion has to be treated as on purely temporary basis, having no right to the post.

8. The petitioner was not in service on the date of commencement of 1984 Rules, as specified in proviso to sub-rule (1) of Rule 6. Apart from this, there is nothing brought on record to show that the date of 1st June, 1987, specified in the proviso has been amended or extended beyond it. In view of this, the proviso to Rule 6 above does not come to the help of the petitioner in seeking continuation in service on the ground of acquiring B.Ed. Qualification.

9. There is no Govt. Resolution brought to the notice of this Court permitting the untrained teachers appointed during the year 1999 to 2001 to be continued in service and should be granted time to acquire B.Ed., qualification. The deputation of the petitioner for acquiring B.Ed., training qualification for 2001 to 2003 and his acquiring B.Ed. qualification pursuant to such training will not help the petitioner in claiming an appointment or continuation in the post. The judgments relied upon do not apply to the facts of this case. So far as the question of non-compliance with the provisions of sub-section (6) of section 4 read with Rule 28 is concerned, sub-section (6) states that no employee of the private school shall be suspended, dismissed or removed or his services shall not be otherwise terminated and he shall not be reduced in rank by the Management except in accordance with the provisions of the Act and the Rules made in that behalf. Rule 28 which deals with the termination of services of temporary employee is reproduced below;

28. Removal or Termination of Service.-- (1) The services of the temporary employee other than on probation may be terminated by the Management at any time without assigning any reason after giving one calendar month's notice or by paying one month's salary (pay and allowances, if any) in lieu of notice.

In the case of an employee entitled to vacation, the notice shall not be given during the vacation or so as to cover any part of the vacation or within one

month after vacation.

....

....

Sub-rule (1) of Rule 28 is an enabling provision and the termination without notice or salary in lieu of notice, would at the most give rise to payment of one month's salary to the employee and/or damages for wrongful termination. There are no consequences provided for non-compliance of this provision and hence non-compliance will not vitiate the order of termination of a temporary employee who has no right to post and his continuation on temporary basis is at the discretion of the employer. There is no foundation laid in the memo of appeal to insist for compliance of later part of sub-rule (1) of Rule 28.

In the result, there is no substance in the petition. The same is dismissed. No orders as to costs.