

(2002) 07 BOM CK 0096

In the Bombay High Court

Case No : Writ Petition No. 2979 of 1998

Nehru Jankalyan Bahu-Uddeshiya Shikshan Sanstha and
Another

APPELLANT

Vs

Mohan Suryabhan Wanjari and Another

RESPONDENT

Date of Decision : 09-07-2002

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 5(1), 5(2)

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule
26(2)

Citation : (2003) 1 BomCR 785 : (2002) 4 BOMLR 37 : (2003) 1 MhLj 425

Hon'ble Judges : D.D. Sinha, J

Bench : Single Bench

Advocate : Anand Parchure, for the Appellant; Z.A. Haq and S.J. Jichkar,
Assistant Government Pleader, for the Respondent

Judgement

D.D. Sinha, J.—Heard Shri Parchure, learned Counsel for the petitioners, Shri Haq, learned Counsel for the respondent No. 1, and Shri Jichkar, learned Assistant Government Pleader for the respondent No. 2.

2. The petition is directed against the order dated 11-9-1998 passed by the School Tribunal in Appeal No. SEN/138/1995 whereby appeal preferred by the respondent No. 1 employee was allowed.

3. Shri Parchure, learned Counsel for the petitioner, states that the petitioner Sanstha runs various educational Institutions, one of which is Nehru Vidyalaya and Junior College. The respondent No. 1 was appointed on 13-12-1990 as part time Lecturer in the Junior College. On 1-7-1991 two posts, of Lecturer in Commerce Faculty were sanctioned in the Junior College. The respondent No. 1 was appointed as a part time Lecturer on clock hour basis. At the relevant time, the petitioner was holding qualification, i.e. M. Com., M.A. in Sociology and B.Ed. The said appointment was till the end of academic session, i.e. till 30-6-1992.

The petitioner was again appointed in the post of Junior College Lecturer on 30-6-1992 on purely temporary basis for the academic session 1992-93. It is contended that on 9-8-1993 the respondent No. 1 was appointed for the academic session 1993-94 on temporary basis for the period from 9-8-1993 till end of the academic session. The petitioner was again appointed as a Junior College Lecturer on 3-8-1994 for one academic session subject to approval by the Deputy Director of Education. It is further contended that the Deputy Director of Education rejected the proposal for approval of the petitioner vide order dated 30-11-1994 on the ground that the petitioner did not obtain prior permission of the Education Department in view of Sub-section (1) of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act (hereinafter referred to as "the Act" for the sake of brevity).

4. Learned Counsel Shri Parchure submits that since the Education Department refused to grant approval, to appointment of the respondent No. 1, petitioners gave notice of termination dated 31-3-1995 and services of the petitioner were terminated with effect from 13-5-1995. It is contended that being aggrieved by the said order of termination, respondent No. 1 filed an appeal before the School Tribunal and the School Tribunal vide order dated 1-12-1995 granted interim stay to the effect and operation of the order of termination dated 31-3-1995, with the result, the respondent No. 1 was reinstated in the School on the post of Junior College Lecturer on 9-12-1995 and was permitted to join his duties. However, respondent No. 1 on his own abandon the services as a Junior College Lecturer after the academic session 1995-96 and since then, he did not report and was gainfully employed in another establishment, i.e. Swargiya Indira Gandhi Vidyalaya and Junior College, Hinganghat. It is further contended by the learned Counsel for the petitioners that the School Tribunal finally allowed the appeal by the impugned order and hence, present petition is filed by the petitioners against the same.

5. The learned Counsel for the petitioners assails the impugned order on the short ground that the respondent No. 1 was appointed since 1991 on a year to year and clock hour/part time basis. It is contended that respondent No. 1 was appointed initially in the year 1991-92 on clock hour/part time basis and for the first time was appointed as a Junior College Lecturer for one year vide order dated 9-8-1993. Thereafter in the academic session 1994-95, the respondent No. 1 was re-appointed as a full time Lecturer. However, there is no question of deemed permanency as contemplated under the provisions of the Act.

6. Another limb of argument advanced by the learned Counsel for the petitioners is that the appeal filed by the respondent No. 1 against the order of termination dated 31-3-1995 is barred by limitation since same was filed on 17-6-1995. The respondent No. 1 did not file any application for condonation of delay along with the said appeal nor this aspect was considered by the School Tribunal. On the other hand, the observations made by the School Tribunal in para (17) of the impugned order show that the School Tribunal has misconceived the whole

aspect and, therefore, the finding recorded by the School Tribunal in this regard is also not sustainable in law. It is contended that in View of the above referred facts, the impugned order passed by the School Tribunal cannot be sustained.

7. On the other hand, Shri Haq, learned Counsel for the respondent No. 1, supports the impugned order passed by the School Tribunal and states that order of appointment of respondent No. 1 dated 9-8-1993 issued by the petitioners was on probation for a period of two years and by virtue of Section 5(2) of the Act, after completion of period of two years on probation, respondent No. 1 got deemed permanency on the post of Junior College Lecturer and to terminate services of a permanent employee, departmental enquiry is required to be conducted as per provisions of the Act and Rules, which admittedly has not been done in the present case and, therefore, order of termination is bad in law.

8. It is contended by learned Counsel Shri Haq that since respondent No. 1 assumed permanency in service and merely because petitioner Management did not obtain necessary permission contemplated u/s 5(1) of the Act, the Deputy Director of Education should not have refused approval to the appointment made by the petitioners vide order dated 9-8-1993. It is submitted that it is a mistake of the petitioner Management, for which respondent No. 1 should not be penalised. It is further contended that all these aspects were considered by the School Tribunal and the School Tribunal was justified in passing the impugned order.

9. Shri Jichkar, learned Assistant Government Pleader for the respondent No. 2, states that respondent No. 1 was initially appointed on clock hour basis on 15-12-1990 for the academic session 1991-92. The respondent No. 1 was again appointed during academic sessions 1991-92, 1992-93 and 1993-94 on clock hour basis as well as temporarily for a period of one year respectively and approval was accordingly accorded, i.e. on clock hour basis as well as for a period of one year, i.e. for the academic session 1993-94. It is submitted that in the academic session 1993-94, respondent No. 1 was re-appointed as a full time Teacher to teach subject secretarial practice. It was necessary for the petitioners to obtain prior permission of the Education Officer while filling up full time post as per provisions of Section 5(1) of the Act. However, respondent No. 1 was appointed by the petitioner Management without obtaining such permission and, therefore, Education Department did not grant approval to the said post. It is further contended that there were 60 Junior College Lecturers, who were already declared surplus and were to be absorbed and, therefore, in view of above referred provisions of Section 5(1) of the Act, it was necessary for the petitioner Management to obtain permission for making appointment of the respondent No. 1 in the year 1994-95 and in absence thereof, the Education Department was justified in refusing approval to appointment of the respondent No. 1, which was made by the Management in the year 1994-95.

10.1 have considered the contentions canvassed by the learned Counsel for the parties. From the above referred facts, it appears that initial appointment of the

respondent No. 1 made in the year 1991 was on clock hour basis and was till 30-6-1992. Similar is the situation in respect of second appointment of respondent No. 1, which was made in the year 1992. The respondent No. 1 was thereafter appointed temporarily on 9-8-1993 for a period of one year and Education Department accorded approval to this appointment as a part time Lecturer. The respondent No. 1 was thereafter appointed in the year 1994-95 vide order dated 3-8-1994 purely on a temporary basis for a period of one year. Perusal of the appointment order dated 9-8-1993 shows that appointment of the respondent No. 1 was purely on temporary basis for a period of one academic session, i.e. from 9-8-1993 till end of the said academic session. Though it is mentioned in the said order that it is in a clear vacancy, the words "clear vacancy" need to be understood in a right perspective and are required to be given appropriate meaning. The original order of appointment shows that it was on probation for a period of one year. It is, therefore, clear that this order of appointment cannot be said to be an appointment in a clear vacancy on a permanent post and on probation for a period of two years and, therefore, this appointment order does not confer any right of permanency - deemed or otherwise contemplated u/s 5(2) of the Act.

11. Similarly, another appointment order dated 3-8-1994 was till end of the said academic session. This order of appointment also shall not create any right of permanency, even if word "probation" is finding place in the order since Management violated the mandate of Sub-section (1) of Section 5 of the Act. Subsection (1) of Section 5 contemplates that Management shall as soon as possible fill in, in the manner prescribed, every permanent vacancy in a private School by appointment of a person duly qualified to fill such vacancy and proviso to sub-section (1) of Section 5 further contemplates that before filling up such vacancy by appointment, the Management is required to ascertain from the Education Department whether there is any suitable person available on the list of surplus persons maintained by it for absorption in other Schools and in the event of such person being available, the Management is required to appoint that person in vacancy. The above referred provision has a rationale behind it as Teachers/Lecturers, who are permanent and declared surplus because of certain contingencies are entitled to be absorbed in some other School or Junior College in view of provisions of Sub-rule (2) of Rule 26 of the M.E.P.S. Rules and, therefore, it is made incumbent on the Management to obtain prior permission from the Education Department before filling up the permanent vacancy. However, in the instant case, no such permission was sought by the Management before issuing order of appointment dated 9-8-1993 or 3-8-1994 and, therefore, procedure adopted by the Management is inconsistent with the above referred provisions and hence, the said appointment of respondent No. 1 cannot be treated as a valid appointment for the purpose of grant of permanency in the post of Junior College Lecturer.

12. For the reasons stated hereinabove, the impugned order passed by the School Tribunal is misconceived and illegal and hence, the same is quashed and

set aside.

On the backdrop of above referred facts, it is undoubtedly clear that conduct of the petitioner Management in not obtaining prior permission from the concerned Education Authority before appointing respondent No. 1 is inconsistent with Sub-section (1) of Section 5 of the Act and entire fault lies with the Management. It is no doubt true that such appointment being inconsistent with the provisions of the Act is not valid. However, this is due to sheer negligence of the Management in not acting as per provisions of the Act and, therefore, it would be appropriate that respondent No. 1 is adequately compensated by the Management. Hence, petitioner Management is directed to pay rupees thirty thousand as compensation to the respondent No. 1 within a period of six weeks either by a cheque or Demand Draft.

13. The rule is made absolute in the above terms. No order as to costs.