

**(2017) 08 BOM CK 0105**  
**In the Bombay High Court**  
**Case No : 6704 of 2013**

Panchsheel Shikshan Prasarak Samiti, Nandepara Through its President Dilip Jagannath Peche APPELLANT

Vs

The Presiding Officer, School Tribunal, Amravati, & Ors. RESPONDENT

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**Date of Decision :** 29-08-2017

**Acts Referred:**

[Maharashtra Employees of Private Schools \(Conditions of Service\) Regulation Act, 1977](#), [Section 5\(2\)](#), [Section 5\(3\)](#) - Certain obligations of Management of private schools - Certain obligations of Ma

**Citation :** (2017) 08 BOM CK 0105

**Hon'ble Judges :** S. C. Gupte

**Bench :** SINGLE BENCH

**Advocate :** S. D. Abhankar, S. J. Kadu, P. B. Patil, Lalit Limey

**Final Decision :** Dismissed

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## Judgement

1. This petition challenges an appellate order passed by the Presiding Officer of School Tribunal, Amravati.

2. The short facts of the case may be stated as follows : The petitioner is a Public Charitable Trust registered under the Bombay Public Trust Act, 1950, impleaded through its President. The trust run a School known as Panchasheel High School at Nandepara, Tahsil Wani, District - Yavatmal. Respondent No.2 was appointed as "Shikshan Sevak" in the school run by the trust. The appointment was made by a communication dated 29th April, 2010 and was said to be in pursuance of Government Circular dated 13th October, 2000. The appellant holds qualifications of B. A., B. P. Ed., M. A. and B. Ed.. She joined the services of the petitionerschool on the date of her appointment and taught the subjects of Marathi, Hindi, History and Geography alongwith physical education to 8th, 9th and 10th standards of the school. Respondent No.2 was terminated vide order dated 28th December, 2011 passed by the petitioner trust. This order was challenged by respondent No.2 by filling an appeal (Appeal No.01/2012) before

the School Tribunal, Amravati. The School Tribunal allowed the application of respondent No.2 for stay pending hearing and final disposal of the appeal. This interim order was challenged by the petitioner before this Court by filing Writ Petition No.6033 of 2012. This Court vide its order dated 2nd May, 2013 was pleased to stay the impugned stay order passed by the School Tribunal and direct the School Tribunal to decide the appeal as expeditiously as possible. The School Tribunal, thereafter, proceeded to hear the appeal and by its impugned order dated 13th November, 2013, partly allowed the appeal, and quashed and set aside the impugned termination order of 28th December, 2011, directing the petitioner to reinstate respondent No.2 in her post of "Shikshan Sevak" within a period of 40 days. The reinstatement was with continuity of service but without back wages. This order is challenged by the petitioner in the present petition.

3. It is mainly contended by learned counsel for the petitioner that respondent No.2 was on probation; her services, not having been found satisfactory, were duly terminated by the order of the petitioner trust; and such order did not cast any stigma on respondent No.2 for her future career and, being an order simpliciter for termination on account of unsatisfactory services during the period of probation, did not envisage any enquiry. Learned counsel relies on several documents in this behalf including the memos addressed by the headmaster of the school to respondent No.2. Learned counsel submits that the School Tribunal erred in holding that prior permission of Deputy Director of Education was necessary for termination of respondent No.2. Learned counsel also submits that the School Tribunal erred in holding that the headmaster of the school did not submit any report regarding unsatisfactory work of respondent No.2. Learned counsel relies on several judgments of our Court as well as the Hon'ble Supreme Court in support of his case that the termination of respondent No.2 was legal and proper and ought not to have been interfered with by the School Tribunal in the appeal.

4. There is no serious dispute between the parties that though respondent No.2 was appointed on the basis of the State Government Circular of 13th October, 2000, the appointment itself and all its incidents are governed by the provisions of Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act ("Act"). This Court in the case of Shivdutta Education Trust..vs..Harishchandra Rajabali Yadav, 2012 (4) ALL MR 664 has unequivocally held that after the amendment of the Act, the appointment of "Shikshan Sevak" was no longer to be treated as contractual but as a probationary appointment governed by the provisions of the Act and that all contrary provisions concerning such appointment contained in the government circular would have to be ignored.

5. The cases of Ashok s/o Pandurang Janjal ..vs.. Secretary, Tulsabai Kawale Vidyalaya Patur and Others, 2006(4) Mh. L. J. 759, Niraj Singh (Ms.) ..vs.. Shishu Vihar Mandal and Others, 2007(2) Mh. L. J. and Principal, B. K. M. High School Mumbai and another..vs..Keshab Achari, 2008(1) Mh. L. J. 438, do make it clear that if the probationer's work or behavior was found to be unsatisfactory,

the services could be terminated under the provisions of Section 5(3) of the Act by tendering one month's wages in lieu of notice at the time of such termination; such termination does not have to be preceded by any domestic enquiry.

6. Any order passed in the case of a probationer, which is a termination simpliciter and not punitive or in any way jeopardizing the employee's future career prospects, must satisfy two tests before it passes muster. The first is the test of form. It must be shown that as a matter of form, the order does not cast any stigma on the employee. The second is the substance test. It needs to be seen whether, prior to the termination, there was (i) a full scale formal enquiry in (ii) allegations of moral turpitude or misconduct which culminated in (iii) a finding of guilt. If all three factors are present, the termination would be held to be punitive, irrespective of the form of the termination. Conversely, if any one of the three factors is absent, the termination order would be upheld. These tests have been succinctly laid down in the judgment of the Hon'ble Supreme Court in the case of Pavanendra Narayan Verma ..vs.. Sanjay Gandhi PGI of Medical Sciences and Another, (2002) 1 Supreme Court Cases 520. It is submitted by learned counsel for respondent No.2 that though in the present case, the form test is satisfied, the substance test is not. It is submitted that considering the fact that there were memos issued to the employee proposing to hold a disciplinary enquiry, the termination is in effect for acts of misconduct, though termed as a termination simpliciter based on assessment of performance during the probation period. The substance test laid down by the Hon'ble Supreme Court in the case of Pavanendra Narayan Verma, requires the presence of all three factors, namely, a full scale formal enquiry; involvement of allegations of misconduct in such inquiry; and culmination of such inquiry in the finding of guilt. It is only when all three factors are present that the termination can be held to be punitive as a matter of substance, whatever to be the form in which the termination order is expressed. Having regard to these dicta, it cannot be said that the termination in the present case fails the substance test.

7. What, however, is important in the present case is that the appointment on probation and termination of service of the probationer in the present case are governed by the provisions of the Act and Rules framed thereunder. In particular, Sub Sections (2) and (3) of Section 5 of the Act and Rules 14 and 15 of the Rules elaborately set out the procedure for assessment of the probationer's performance. They provide for writing of a confidential report, review of that confidential report by the Chief Executive Officer and communication of the confidential report containing adverse remarks to the employee, opportunity to the employee to make representation against the adverse remarks and decision thereon by the school committee. When a special statute like the Act provides for a specific procedure to be followed for termination of employment of a probationer on the ground of unsatisfactory performance, that procedure is mandatory and noncompliance thereof would vitiate an order of termination. In such a case, the School Tribunal would be perfectly justified to interfere with the

termination order and set it aside by directing reinstatement of the employee. A Division Bench of our Court, in the case of Shri. Vinayak Vidhyadayini Trust & Anr. ..vs.. Smt. Aruna T. Prabhu & Ors. 2010(5) ALL MR 200, has clearly laid down this proposition of law. Our Court in that case has held that though as a matter of general principles in service jurisprudence, when an employee appointed on probation, it is with a view to test his or her performance and suitability for the post, and, if during the period of probation, the performance is found to be unsatisfactory, the employer has every right to discontinue the employee during, or after completion of, the probationary period without assigning any reason; if such order is not a stigmatic order, it ought not to be interfered with; the Act being a special piece of legislation providing for a specific procedure to be followed for termination of the employment of a probationer on the ground of unsatisfactory performance, it is mandatory to follow that procedure and any noncompliance would vitiate the termination.

8. The School Tribunal, in the present case, has found that there was no confidential report of respondent No.2 placed on record for the year 201011; that there was nothing to show that respondent No.2 was put to notice of the adverse remarks against her, if any, or was given any opportunity for improvement. Insofar as the memos issued to respondent No.2 are concerned, there was nothing to show that her explanations to the memos were not found to be satisfactory or were rejected. The School Tribunal, in the premises, found that the power of termination during the probationary period was exercised arbitrarily and in breach of various provisions of law referred to above.

9. No fault really can be found with either the approach of the School Tribunal or the findings arrived at by it. It is not brought on record either that the confidential reports containing any adverse remarks were brought to the notice of respondent No.2 or that any explanation was called for or any representation of respondent No.2 in that behalf was considered or decided against her by the School Committee. Insofar as the year 201011 is concerned, admittedly there is no confidential report. Failure to write or maintain such confidential report and failure to communicate adverse remarks, if any, to the employee before the end of August of 2011, would have the effect of treating her work up to that period as satisfactory. There is also nothing to show that any confidential report for the subsequent period upto 28th December, 2011 was ever communicated to respondent No.2 prior to her termination or her explanation on such report was called for. In the absence of this material, it is clear that the impugned order of termination passed on account of unsatisfactory work on the part of respondent No.2 was without following the mandatory procedure laid down in the provisions of the Act and the Rules.

10. The impugned order of the School Tribunal, accordingly, cannot be faulted. This Court is informed that in pursuance of the impugned order, respondent No.2 has been working in her original post till date without any blemish.

11. There is, accordingly, no merit in the petition. The petition is dismissed. No

order as to cost.