
(2006) 06 BOM CK 0013
In the Bombay High Court
Case No : Writ Petition No. 983 of 1998

Pipla Education Society

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 20-06-2006

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 9
Secondary School Code — Section 97.2

Citation : (2007) 1 BomCR 410 : (2006) 111 FLR 942 : (2006) 5 MhLj 558

Hon'ble Judges : R.C. Chavan, J; D.D. Sinha, J

Bench : Division Bench

Advocate : A. Shelat, for the Appellant; Joshi, Assistant Government Pleader for respondent Nos. 1 to 3, for the Respondent

Judgement

D.D. Sinha, J.—Heard Mr. Shelat, the learned Counsel for the petitioner and Mrs. Joshi, the learned Assistant Government Pleader for respondents No. 1 to 3.

2. This writ petition is directed against the order dated 31-12-1997 whereby respondent No. 2/ the Deputy Director of Education has exercised the power under clause 97.2 of Secondary School Code and imposed 25% penal cut on non-salary grant payable to the petitioner/society for the year 1997-98.

3. Mr. Shelat, the learned Counsel for the petitioner has contended that in the instant case one Shri D. C. Karvekar at the relevant time was Headmaster. The school was derecognized and thereafter the services of Mr. Karvekar came to be terminated by the Management. It is further contended that against the order of termination Mr. Karvekar has filed appeal u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. It is contended that Mr. Karvekar has also made an application for grant of stay to the order of termination, however, that request has not been accepted by the Tribunal. It is contended that during the pendency of the appeal the Deputy Director of Education only on the basis of the communication by the State Government,

without any authority of law, directed the petitioner to allow Mr. Karvekar to join his duties as headmaster. It is submitted that under clause 97.2 of the Code it is the Deputy Director who alone is entitled to exercise power and is further entitled to issue directions to the Management. However, in the instant case, even as per the averments in the submissions filed on behalf of the State it is clear that though the direction is issued by the Deputy Director of Education, same is only on the basis of the communication of the State Government and therefore, the direction is not that of the Deputy Director of Education himself but issued at the behest of State Government which is impermissible in law.

4. Mrs. Joshi, the learned Assistant Government Pleader, on the other hand, supported the impugned order and has contended that under clause 97.2 of the Secondary School Code, the Deputy Director of Education is entitled to issue direction to the Management in case of gross mismanagement, serious deterioration of standard of efficiency and discipline as well as other contingency mentioned in clause 97.2 of the Code. It is contended by the learned Assistant Government Pleader that in the instant case enquiry was conducted by the flying squad of the State Government and it was revealed that in spite of the order given by the Education Department to the petitioner/Management to allow Mr. Karvekar to join his duties, he was not permitted to do so because of the internal dispute between Management and therefore, the Deputy Director of Education has passed the impugned order which is sustainable in law.

5. We have considered the contentions canvassed by the respective counsel. Perused the provisions of Section 97.2 of the Secondary School Code as well as perused the impugned order.

6. It is no doubt true that as per provisions of clause 97.2 of the Secondary School Code, in cases of gross mismanagement, serious deterioration of standard of efficiency and discipline and in cases of breach of instruction or order issued by the Department or infringement of the provisions of a rule or rules in the Code which in the opinion of the Deputy Director, is of a serious nature, the grant can be reduced or withdrawn after following the rules of natural justice. However, in the instant case, in the backdrop of above referred undisputed facts the situation is altogether different. At the relevant time Mr. Karvekar was Headmaster of the school run by the petitioner/Society and his services came to be terminated by the Management. Mr. Karvekar approached School Tribunal against the order of termination u/s 9 of the M. E. P. S. Act and when the Deputy Director of Education issued impugned directions to the Management to allow Mr. Karvekar to join his duties, the appeal of Mr. Karvekar was pending before the School Tribunal and admittedly there was no interim order passed by the Tribunal staying the effect and operation of the order of termination of Mr. Karvekar, In view of this fact, it is evident that the School Tribunal was the only competent forum to set aside, alter, revoke the order of termination of Mr. Karvekar issued by the Management and neither the Deputy Director of Education nor the State Government were legally competent or vested with power under clause 97.2 of

the Secondary School Code to issue any direction to the petitioner/Management to allow reinstatement of Mr. Karvekar or allow him to join his duties as Headmaster. It is, therefore, implicitly clear that any direction or communication issued by the authority to the Management in such situation to reinstate or allow Mr. Karvekar to join duties is wholly misconceived and completely without jurisdiction and, therefore, non-compliance of such direction, in our considered view, does not entitle the Deputy Director of Education to impose 25% penal cut in respect of non-salary grant payable to the school run by the petitioner/Society for the year 1997-98. The order impugned is, therefore, devoid of substance and cannot be sustained in law.

7. For the reasons stated hereinabove, the order impugned is quashed and set aside.

Rule is made absolute in above terms.

No order as to costs.