

(2009) 04 BOM CK 0119
In the Bombay High Court
Case No : Writ Petition No. 106 of 2002

Rahmania Taleemi Society

APPELLANT

Vs

Khan Arza Khantoon Mohammed Osman Nawab Khan and
Others

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 2(1), 28(1), 6

Citation : (2009) 5 BomCR 318

Hon'ble Judges : Kingaonkar V.R., J

Bench : Single Bench

Advocate : V.D. Gunale, for the Appellant; S.V. Warad and P.O. Rodge for respondent No. 1 and D.V. Tele, A.G.P. for respondent No. 3-State, for the Respondent

Judgement

Kingaonkar V.R., J.—Challenge in this petition is to judgment and Order dated 6th December, 2001, rendered by learned Presiding Officer, School Tribunal, in an Appeal (App. No. 46 of 1999) whereby the respondent No. 1 was directed to be reinstated in the service alongwith full backwages and also for recommendation of her case to the postal D.Ed. course.

2. There is no dispute about the fact that respondent No. 1 Smt. Azra Khantoon was appointed on temporary basis as an assistant teacher in the primary school run by the petitioners. Admittedly, she is not a trained teacher. She is S.S.C. The Education Officer granted approval to her appointment for the academic years 1993-94 and 1994-95 subject to her completion of D.Ed. course.

3. The respondent No. 1 filed an appeal in the School Tribunal, Aurangabad, alleging that her services were orally terminated on 27th January, 1999. She asserted that no termination notice was served on her. She had filed Writ Petition No. 3010/1996 in the High Court when it was apprehended that her services would be terminated due to her being untrained teacher. A Division Bench of this

Court finally disposed of a group of similar writ petitions including the petition filed by the respondent No. 1 wherein it was directed that those untrained teachers who were in service should not be terminated and their names may be recommended for the postal D.Ed. course. The respondent No. 1 contended that she was prevented from signing the muster roll though she had attended the duties. When she informed the Head Master about orders passed by this Court in Writ Petition No. 3010/1996, then she was compelled to give an application dated 7-10-1998. She was thereafter shown to have resumed the duties for the purpose of record. She was actually in service at material time. In spite of allowing her to show on record that she had resumed the duties, she was prevented from signing the muster roll. Eventually, the Head Master and office Bearers of the petitioners - Education Society-orally terminated her services on 27th January, 1999.

4. The petitioners disputed the date of appointment of the respondent No. 1. According to the petitioners, her services were purely temporary uptil end of April, 1995. There was no further approval to her services. So, her services came to an end w.e.f. 30th April, 1995 in accordance with the terms of the appointment Order dated 1-7-1995 because she had not acquired D.Ed. qualification during the relevant period. The petitioners contended that though the Division Bench of this Court protected services of the untrained teachers, who were in continuous service, yet, the respondent No. 1 was not covered by such directions because she was not in service at all when the Writ Petition No. 3010/1996 was allowed amongst the other petitions in the group. The direction of the High Court was that those school teachers who were in service may be permitted to appear for the postal D.Ed. course if they would fulfil the three (3) conditions enumerated in the Government Resolution dated 5-11-1997 during the academic year 1998-99 or 1999-2000. Indeed, the respondent No. 1 did not fulfil such conditions because she was not in service in the year 1998-99 or 1999-2000. The petitioners contended that the respondent No. 1 submitted application dated 7-10-1998 containing incorrect and false statement so as to mislead the Head Master of the school. She obtained the endorsement on her application under duress. She was out of service w.e.f. 30th April, 1995 and as such, there was no legal basis for her claim to resume the duty. Her name was not shown in the inspection report for period after 30th April, 1995 nor she ever signed the muster roll. She could not have claimed continuation of the services, yet, under misrepresentation, she got endorsement of the Head Master that she was allowed to join the duty. Even so, she was not allowed to render the services and, therefore, there was no question of the oral termination w.e.f. 27th January, 1999. The petitioners, therefore, sought dismissal of the appeal.

5. On consideration of the relevant material, the School Tribunal held that the respondent No. 1 was in continuous service uptill 1995 and she had filed Writ Petition No. 3010/1996 challenging the circular which was issued in 1995 whereby direction was given to discontinue the services of untrained teachers. The Tribunal held that she desired to seek protection of her services because she

was untrained teacher. The Tribunal further held that she was appointed on 2nd July, 1993 as claimed by her and her appointment was approved for the two (2) academic years. The School Tribunal came to the conclusion that the petitioners were unfair to the respondent No. 1. The Tribunal held that the oral termination of her services was illegal. Hence, the appeal was allowed.

6. Heard learned Counsel for the parties.

7. Question involved in the petition is whether the respondent No. 1 was in continuous service as an untrained teacher after 30th April, 1995 and was entitled to the benefit of the directions given by this Court, and, therefore, her services could not be discontinued without adopting legal recourse.

8. The main thrust of the petitioners is on the ground that after 30th April, 1995, the respondent No. 1 was not in service and there was no direction by the High Court in Writ Petition No. 3010/1996 to grant continuity to her services. According to the petitioners, they came to know about orders rendered in the writ petition filed by the respondent No. 1 for the first time when she had personally served the final order rendered by the Division Bench of this Court alongwith her application seeking permission to resume the duty. The appointment of the respondent No. 1 was on a vacant post though temporary made. The approval letter received by the petitioners indicated that the Education Officer approved appointment of the respondent No. 1 for the year 1993-94 on the post which was to fall vacant on 1-1-1994 and on condition that she would acquire D.Ed. qualification. Copy of the letter dated 12-10-1994 reveals that in the academic year 1994-95, similar approval was granted for continuation of her services. It is important to note that the services of the respondent No. 1 were temporary and conditional. The copy of the appointment letter reveals that she was temporarily appointed from 1-7-1994 for the concerned academic year ending on 30th April, 1995. It is manifest that her appointment was only for the academic year 1994-95. Needless to say, by end of that academic year, her appointment was to come to an end unless specifically continued by any further order.

9. The respondent No. 1 was not given any further appointment letter for the academic year 1995-96. Her name is not shown, admittedly, in the muster roll w.e.f. 1st May, 1995. The School Tribunal noticed that original muster roll produced by the petitioner indicated that the respondent No. 1 had signed the muster roll only uptill 29th April, 1995. It has also come on record that the respondent No. 1 though was appointed for the academic year 1993-94, yet, her actual services had commenced from 1-1-1994 i.e. in the midst of the academic year 1993-94. Needless to say, the respondent No. 1 was not appointed on 1-7-1993 as claimed by her. Her such a statement made before the School Tribunal is untrue. There is absolutely nothing on record to show that she was appointed in the beginning of the educational year 1993-94. Thus, she had not completed two (2) years continuous service uptill end of April, 1995. In the above fact situation, there was no question of termination of her services by any

specific order.

10. Under Rule 28(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, "the MEPS Rules"), a temporary employee would be entitled to receive one (1) month's notice or one month's pay in lieu of such notice, if the services are to be terminated before the end of the period contemplated in the appointment order. However, no notice is required under Rule 28(1) of the MEPS Rules, when the services of such temporary employee are brought to an end on expiry of the period stated in the appointment order. In a case where the appointment of temporary employee is for a fixed period and the services of such temporary employee come to an end on the expiry of that fixed period, giving of notice enumerated under Rule 28(1) is not required. Nor any specific termination order is required to be passed. Such an appointment comes to an end automatically on expiry of the period for which the appointment was made. This Court in Akbar Peerbhoy College and others Vs. Mrs. Pramila N. Kutty and others, , clarified the legal position in this behalf. It has been held that Rule 28(1) of the MEPS Rules is attracted in a situation where either there is no period stated in the appointment order of a temporary employee and his services are sought to be brought to an end, or where the period is stated in the appointment order of such temporary employee and the Management is intending to terminate the services of such temporary employee earlier than the period stated in the appointment order. It is held further that in a case where the appointment of temporary employee is for a fixed period and the services of such temporary employee come to an end on the expiry of that fixed period, giving of notice as contemplated under Rule 28(1) is not required. Nor any specific termination order is required to be passed because in the appointment order itself, the period of appointment is fixed and on expiry of that period, the appointment comes to an end automatically.

11. It need not be reiterated that the respondent No. 1 was a temporary appointee for the academic year 1994-95 and the period of her appointment came to an end on 30th April, 1995. The inspection report and the muster roll for the period after 30th April, 1995 never indicated continuity of her services. It is true, no doubt, that the respondent No. 1 had filed Writ Petition (W.P. No. 3010/1996). There is no interim order, however, brought to my notice about grant of ex post facto continuity to her service after 30th April, 1995. What transpires from the record is that a bulk of similar writ petitions including the writ petition filed by the respondent No. 1 came up before the Division Bench for consideration and all of them were decided together by a common judgment. The Division Bench directed that the writ petitioners be permitted to appear for the postal D.Ed. course if they fulfil the three (3) conditions indicated in the Government Resolution dated 5-11-1997, during the academic year 1998-99 or 1999-2000. So far as the question of payment of salary was concerned, the direction was thus:

On the question of payment of salary, we direct the respondents to consider the

said question only in case of untrained teachers who are continuously in service.

12. The three (3) conditions which were stated in the Government Resolution dated 5-11-1997 are thus:

- (i) That the applicant should have been appointed in a recognized school;
- (ii) His appointment should have been approved atleast for a year by the Competent Authority;
- (iii) He should be in service on the date when he applied for permission to appear for the postal D.Ed. course from his initial appointment.

So far as the respondent No. 1 is concerned, she was not in the service to take benefit of the Government Resolution dated 5-11-1997 due to automatic termination of her services on expiry of period of appointment by the end of April, 1995. Nor she had submitted any application for permission to appear for the postal D.Ed. course. It is obvious, therefore, that she did not fulfil the criteria No. (iii) envisaged in the Government Resolution dated 5-11-1997 and as such, was ineligible to get benefit of the common order rendered by the Hon'ble Division Bench of this Court in the group of writ petitions. The copy of application filed by the respondent No. 1 on 7-10-1998 goes to show that she submitted an application to the Head Master to allow her to join the duty. She stated in her application that she was removed from service because she was untrained teacher. She further represented that the High Court, Bench at Aurangabad had directed her reinstatement. She submitted copy of the order passed in Writ Petition No. 3010/1996. The Head Master endorsed on her application that on 8-10-1998, as per directions of the High Court, she was allowed to join the duty. On the same day, he sought guidance from the Education Officer, Latur. A copy of his letter dated 8-10-1998 is placed on record. It appears that the Head Master clearly stated in his letter that for the academic year 1995-96, the respondent No. 1 was not in service of the school. It is amply clear, therefore, that she was ineligible to get the benefit of the Government Resolution dated 5-11-1997 in as much as for the academic year 1998-99, she was not in service and moreover, there was no specific direction to extend such benefit to those school teachers who were not in service during the two (2) academic years between 1998-2000. It is conspicuous that the respondent No. 1 made misrepresentation vide her application dated 7-10-1998 and thereby sought the reinstatement.

13. The Writ Petition No. 3010/1996 was filed by the respondent No. 1 against the school in view of a circular issued by the Government in the year 1995 whereby termination of the services of untrained teachers had been directed. The interim relief granted by this Court on 22-4-1996 was in a group of similar, writ petitions. The interim relief was to the effect that the services of those untrained teachers, who were not continued to be in service, be not discontinued. As stated earlier, the respondent No. 1 was not covered by such an interim relief granted by the Division Bench. For, as on the date of the order dated 22-4-1996, she was already out of service since about one (1) year. It is conspicuous, therefore, that

she was not entitled to receive any benefit of the interim stay order.

14. The learned Presiding Officer of the School Tribunal did not consider the fact that the respondent No. 1 made untrue statements about her continuity of the service after 1st May, 1995 and the directions of the High Court in her writ petition. Though the Head Master passed an endorsement on her application dated 7-10-1998 to the effect that she was allowed to resume the duty, yet, she was not allowed to sign the muster roll. Her name did not appear in the service record or inspection report for any period after 8-10-1998. It is more probable, therefore, that the Head Master was unsure about the interpretation of the directions of this Court and, therefore, in order to avoid further complications, he endorsed her application to the effect that she was allowed to join the duty on 8-10-1998. Even assuming that she was allowed to join the duty on 8-10-1998, then also her appointment cannot be regularized in the absence of any legal sanctity for the same. The learned Presiding Officer of the School Tribunal held that oral termination of her services had been in breach of Rule 28(1) of the MEPS Rules. It is significant to note that there was no fresh appointment order issued to the respondent No. 1. She was not in service at all after 30th April, 1995 and hence, Rule 28(1) of the MEPS Rules was inapplicable to her case. Mere endorsement made by the Head Master on her application dated 7-10-1998 could not be treated as her fresh appointment for the relevant period. The learned Presiding Officer went to the extent of even directing the petitioners to consider the case of the respondent No. 1 for recommendation to the postal D.Ed. course without adhering to the legality of such recommendation. Unless the Government policy would permit continuity of the services of the untrained teachers and allow them to acquire the D.Ed. qualification for the academic year in question, such kind of direction could not have been issued by the School Tribunal.

15. Mr. Warad invited my attention to (Ashok S/o Sangram Kendre v. The State of Maharashtra and Ors.) Writ Petition No. 533 of 1996, which shows that interim relief was granted by general Order dated 11th June, 1996 whereby it was directed that no teacher who has been appointed in a recognized school, which was recognized at the time of his appointment, and who has been given an appointment on condition that he should pass the D.Ed. Examination within a particular time and who has applied for the postal D.Ed. course and whose appointment has been approved either by the deputy Director of Education or by the Education Officer (Primary), Zilla Parishad of the concerned district (fulfilling all the above conditions) should be discontinued from service until next date of hearing on the ground that they have not completed postal D.Ed. course. As stated before, by the said general order, the cases of those school teachers, who had applied for the postal D.Ed. course and were in service as on the date of such order, were covered. The respondent No. 1 was already discontinued from service and had not applied for postal D.Ed. course. So, she was not covered by the said direction. Mr. Warad seeks to rely on Shikshan Prasarak Mandal Vs. Presiding Officer, School Tribunal and Another, . A Single Bench of this Court held

that since the school teacher was continued for two (2) sessions, the inference drawn by the Tribunal that she was continued on probation, could not be faulted with. The fact situation in the given case is altogether different. Mr. Warad further seeks to rely on certain observations in *Ranjeet Singh Vs. Ravi Prakash*, . The Apex Court held that the writ of certiorari could be issued only when a patent error is noticed which does not require process of reasoning. He would submit that writ jurisdiction is unavailable for reappreciation of the evidence and, therefore, the impugned judgment may not be interfered with. In the present case, the Tribunal misinterpreted the general directions of this Court in the writ petition and wrongly concluded that the respondent No. 1 was continued to be in service after 30th April, 1995. The Tribunal committed patent error while holding that the petitioners were not fair with the respondent No. 1. The impugned judgment is based on perverse evaluation of the material and as such, is amenable to the writ jurisdiction of this Court.

16. Mr. Gunale referred to *Anna Manikrao Pethe Vs. The Presiding Officer, School Tribunal and others*, : 1997(3) Mh.L.J. 697. He also referred to *Mohd. Sartaj and Another Vs. State of U.P. and Others*, : 2006 (2) S.C.C. 315 *Mangala Vs. Shreyas Shikshan Prasarak Mandal and others*, : M.E.C. 849, (*State of Karnataka and Ors. v. Sri G.V. Chandrashekar*) 2009 DGLS (soft) 262 : 2009 (2) Supreme 479, and (*Maharashtra Seva Sangh Mashall Vasti, Jaykumar Nagar, Vijapur Road, Solapur and Anr. v. Shri Shaikh Jamalchand and Anr.*) Writ Petition No. 5556 of 1999. It is not necessary to elaborately set out the principles laid down in the above referred authorities. It would suffice to mention here that these authorities deal with termination of the services of employees who did not possess prescribed qualification. The appointee for post of primary teacher is required to possess Diploma in Education Examination or Diploma in Education (pre-primary of two years duration) as contemplated under Entry No. 1 below Schedule-B appended to Rules 2(1)(j) and 6 of the MEPS Rules. In this view of the matter, the respondent No. 1 was not entitled to seek continuity of the services nor was eligible for the post when the general directions were given by this Court in the bunch of writ petitions including the writ petition filed by her.

17. For the afore stated reasons, the impugned judgment is quite unsustainable. Hence, the writ petition is allowed. The impugned judgment is quashed. The appeal preferred by the respondent No. 1, before the School Tribunal, be deemed as dismissed. No costs.

18. In view of disposal of writ petition, the Civil Application No. 9345/2005 stands disposed of.