
(2015) 04 BOM CK 0049

In the Bombay High Court

Case No : Writ Petition No. 4492 of 2007

Rajani Wamanrao Hemke

APPELLANT

Vs

Vidya Vikas Mandal and Others

RESPONDENT

Date of Decision : 18-04-2015

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5, 5(3), 9

Citation : (2015) 5 ALLMR 148 : (2016) 1 BomCR 183 : (2015) 4 MhLj 319

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

Bench : Single Bench

Advocate : A.R. Patil, for the Appellant

Final Decision : Partly Allowed

Judgement

R.K. Deshpande, J.—The challenge in this petition is to the judgment and order dated 25.04.2007, passed by the School Tribunal, dismissing Appeal No. STN 123 of 1992 filed under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act (hereinafter referred to as "the MEPS Act), challenging the termination of the petitioner as a probationer from the post of Assistant Teacher. The School Tribunal has held that the Management has found the work and behavior of the petitioner to be unsatisfactory and hence, the termination as probationer during the period of probation cannot be faulted with.

2. The petitioner was appointed on probation for a period of two years by an order dated 19.06.1990 as an Assistant Teacher. There is no dispute that her appointment was in a clear and permanent vacancy and that she was fully qualified for being appointed as an Assistant Teacher. By one month's notice of termination dated 05.05.1992, the respondents proposed to terminate the services of the petitioner with effect from 05.06.1992 as a probationer. The petitioner filed Appeal No. STN 123 of 1992 before the School Tribunal under Section 9 of the MEPS Act challenging the notice of termination.

3. The question before the School Tribunal was whether such termination was in conformity with sub-section (3) of Section 5 of the MEPS Act read with Rules 14 and 15 of the MEPS Rules. The petitioner specifically raised a contention in the memo of appeal that during the period of probation she was not served with any show cause notice calling her explanation, either orally or in writing. The termination was, therefore, not on the ground of her unsatisfactory service. The Management filed reply to the memo of appeal and has taken a stand that the services of the petitioner were found to be unsatisfactory and she was accordingly informed orally as well as in writing, but she has never furnished an explanation, nor has shown any improvement. The reference is made in the written statement to the notices dated 16.02.1991, 19.02.1991, 16.10.1991 and 17.03.1992. In the reply, the Management has pointed out several acts of indiscipline and dereliction of duties. The Management has also made reference to certain results of the students and the discrepancies found therein.

4. The School Tribunal has relied upon the stand taken in the written statement and the finding is specifically recorded that the Management has filed on record written notices issued to the petitioner on 16.02.1991, 19.02.1991, 16.10.1991 and 17.03.1992. The School Tribunal has also referred to the discrepancies and some mistakes in the results of the students arising out of miscalculations. It also referred to certain leave applications submitted by the petitioner and non-submission of the medical certificate in support of her claim for medical leave. The School Tribunal has held that there has been an objective assessment of performance of the petitioner in terms of Rule 15 of the MEPS Rules and the termination cannot, therefore, be faulted.

5. The power of the Management to terminate the services of the probationer is contained in Section 5(3) of the MEPS Act, which is reproduced below.

"5. Certain obligation of Management of private school.

(3) If in the opinion of the Management, the work or behavior of any probationer, during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving him one month's notice [or salary [or honorarium] of one month in lieu of notice]]."

Rules 14 and 15 of the MEPS Rules regarding assessment of employee's work and writing of confidential report etc., are also relevant and hence, the same are reproduced below.

"14. Assessment of employees work.

(1) At the beginning of each term, the teacher shall prepare the plan of his academic programme and at the end of the academic year, prepare a report of the work done by him and submit it to the Head.

(2) Each employee on the teaching and non-teaching staff of the School shall submit the report of self-assessment in the respective Form in Schedule "G" within one month after the end of a year.

15. Writing of confidential reports etc.

(1) The confidential reports shall be written annually in the respective Form in Schedule "G". The reporting authorities in respect of the employees and the Head shall be the Head and the Chief Executive Officer respectively. Confidential reports shall be written in respect of the employee or the Head who had worked for six months or more during an academic year commencing from June. If the Head or a teacher is the Secretary of the Management, the Confidential report in his respect shall be written by the President of the Management.

(2) The Confidential reports so written in respect of the employees and the Head shall be reviewed by the Chief Executive Officer and the President of the Management, respectively. The Confidential report of the Head or a teacher written by the President shall be reviewed by the Managing Committee.

(3) The respective reporting authority shall arrange to Communicate confidentially in writing adverse remarks, if any, to the concerned employee or the Head, as the case may be, before the end of August every year.

(4) Representation, if any, from an employee against the adverse remarks communicated to him in accordance with sub-rule (3) above shall be decided by the School Committee. Similar representation, if any, from the head shall be decided by the Managing Committee.

(5) Failure to write and maintain Confidential reports and to Communicate adverse remarks to the employees within the period prescribed in sub-rule (3) shall have the effect that the work of the employee concerned was satisfactory during the period under report.

(6) Performance of an employee appointed on Probation shall be objectively assessed by the Head during the period of his probation and a record of such assessment shall be maintained.

The power of the Management terminating the services of an employee on the ground of unsatisfactory services during the period of probation, as contemplated by sub-section (3) of Section 5 of the MEPS Act, cannot be disputed. The assessment of employee's work has to be in terms of Rule 14 of the MEPS Rules, reproduced above. The teacher concerned has to prepare the plan of his academic programme on the beginning of each term and at the end of academic year, he has to prepare a report of the work done by him and submit it to the Head. Each employee on the teaching staff has to submit the report of his assessment in respect of work in Scheduled "G" within a period of one month after the end of the year. It is not the stand taken by the Management in the present case before the School Tribunal that the petitioner has failed to comply with the provisions of Rule 14 of the MEPS Rules.

6. In terms of sub-rule (3) of Rule 15, the reporting authority has to arrange to communicate confidentially in writing adverse remarks, if any, to the concerned employee before the end of August every year, so that he gets an opportunity to

make report thereon in terms of sub-rule (4) therein. The requirement is mandatory as it uses the words "shall arrange to communicate". Sub-rule (5) of Rule 15 creates a presumption of satisfactory service rendered by an employee, where there is failure to write and maintain the confidential report, and to communicate adverse remarks to the employee concerned within a period stipulated in sub-rule (3). The creation of presumption in such a situation is also mandatory as the provision states that it "shall have the effect that the work of the employee concerned was satisfactory during the period of probation". Sub-rule (6) of Rule 15 states that the performance of an employee appointed on probation shall be assessed by the Head during the period of his probation and a record of such assessment shall be maintained.

7. In the decision of the Apex Court in the case of Progressive Education Society and Another Vs. Rajendra and Another, AIR 2008 SC 1442 : (2008) 1 CLT 668 : (2008) 116 FLR 1021 : (2008) 2 JT 500 : (2008) 2 SCALE 537 : (2008) 3 SCC 310 : (2008) 1 SCC(L&S) 617 : (2008) AIRSCW 1469 : (2008) 2 Supreme 7 , it is held that the requirement of sub-rule (6) of Rule 15 would be a factor which the School Management has taken into consideration while exercising the powers which it undoubtedly has and is recognized under sub-section (3) of section 5 of the said Act. In the said decision, the Apex Court has maintained the decision of the School Tribunal as well as this Court, holding that the provisions of Rule 15(6) and 14 have not been complied with prior to invocation by the School Management of the powers under sub-section (3) of Section 5 of the said Act. In view of this, the Tribunal is required to find out as to whether there is compliance of Rule 14 and 15(6) of the MEPS Rules before invoking the powers under sub-section (3) of Section 5 of the said Act.

8. In the present case, the petitioner has specifically averred in the memo of appeal that she was not communicated with any adverse remark during the period of probation. It was, therefore, in the present case, for the Management to establish the fact that any adverse remarks were communicated to the petitioner before the end of August every year as stipulated under sub-rule (3) of Rule 15. There is nothing placed on record to show that any adverse remarks were so communicated to the petitioner during the entire period of probation of two years. There is nothing on record to show that the confidential report of the petitioner was written and maintained as required by sub-rule (3) of Rule 15. Therefore, the presumption is required to be drawn as contemplated by sub-rule (5) of Rule 15 to the effect that the work of petitioner was satisfactory during the period, as there is no report of assessment of performance of the petitioner, done by the Head of the School placed on record. Thus, there is total non compliance of the mandatory requirement of Rule 15 of the MEPS Rules and hence the power under sub-section (3) of Section 5 of the MEPS Act could not have been invoked for terminating the services of the petitioner.

9. With the assistance of the learned counsel appearing for the petitioner, I have gone through the entire record of the School Tribunal. Though the School

Tribunal has referred the communications dated 16.02.1991, 19.02.1991, 16.10.1991 and 17.03.1992 said to have been issued to the petitioner, I could not find any such document placed on record of the School Tribunal. The finding that these documents were placed before the School Tribunal is factually erroneous. The School Tribunal has also referred to certain other deficiencies on the part of the petitioner and also to the leave applications and failure to submit medical certificate in support of such application. But, there is nothing on record to show that any such document constitute the part and parcel of any assessment report. In fact, there is no such report of assessment placed on record and hence, the School Tribunal has committed an error in holding that the termination was based on objective assessment of performance of the petitioner during the period of probation. The judgment and order of the School Tribunal cannot, therefore, be sustained.

10. Since the appeal filed by the petitioner itself was dismissed, the School Tribunal has not gone into the entitlement of the petitioner for payment of backwages. The relevant pleadings are also not there and hence, for that purpose, the matter will have to be remitted back to the School Tribunal to decide the said question by permitting the parties to amend their pleadings or to file an additional affidavit and if required, to lead oral evidence. After such opportunity is given to the parties, the Court shall proceed to decide the question of backwages.

11. In the result, writ petition is partly allowed. The judgment and order dated 25.04.2007 passed by the School Tribunal, dismissing Appeal No. STN 123 of 1992 is hereby quashed and set aside along with the notice of termination dated 05.05.1992. The petitioner is directed to be reinstated within a period of 30 days from today. The matter is remitted back to the School Tribunal to decide the question of payment of backwages in accordance with law keeping in view the observations made by this Court.

Rule is thus made absolute in these terms. No order as to cost.

R and P be sent immediately to the School Tribunal.