

(2022) 04 BOM CK 0081
In the Bombay High Court
Case No : Writ Petition No. 1519 Of 2019

Sachin

APPELLANT

Vs

President Shahu Maharaj Shikshan Sanstha And Others

RESPONDENT

Date of Decision : 20-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 21A
Maharashtra Employees Of Private Schools (Condition Of Service) Rules, 1981 — Rule 28, 28(1)
Maharashtra Employees Of Private Schools (Conditions Of Service) Regulation Act, 1977 — Section 4(6), 5, 5(3), 9

Citation : (2022) 04 BOM CK 0081

Hon'ble Judges : Prithviraj K. Chavan, J

Bench : Single Bench

Advocate : V. D. Gunale, Ameya N. Sabnis, V. M. Vibhute

Judgement

Prithviraj K. Chavan, J

1. Rule.

2. Rule, returnable forthwith. Taken up for final disposal at the stage of admission with the consent of the learned counsel for the parties.

3. The petitioner questions the legality, propriety and correctness of the impugned judgment and order dated 14.08.2018 rendered by the Presiding Officer by which petitioner's appeal came to be dismissed, which was preferred under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 [for short "MEPS Act"].

4. Facts essential for disposal of this petition can be summarized as follows :

5. Respondent nos. 1 and 2 are the President and Secretary of an educational institution namely, Shahu Maharaj Shikshan Sanstha, Tal. Tuljapur, Dist. Osmanabad. Respondent no. 3 is the Headmaster of the said educational institution while respondent no. 4 is the Education Officer (Primary), Zilla

Parishad, Osmanabad. The said institution is registered under the provision of the Bombay Public Trusts Act, 1950 as well as Societies Registration Act, 1960.

6. One Mr. S. R. Karande was working as an Assistant Teacher with the said educational institution. However, due to his continuous and unauthorized absence from the duties, after conducting a disciplinary proceedings, he was removed from the post of Assistant Teacher. Admittedly, he belongs to Nomadic Tribe Category [hereinafter referred to as "N.T. category"]

7. Since students of the school were at a loss in their education due to the absence of a teacher and, therefore, respondent nos. 1 to 3 decided to fill up the said post from the same category.

8. Respondent nos. 1 to 3 addressed a communication to respondent no. 4 to accord permission to appoint a person from the N.T. category or, in the alternative, requested to forward name of any surplus teacher, if available on it's waiting list for filling up the post from the same category. It was inter alia informed to the respondent no.4 that due to absence of Mr. S. R. Karande from 20.04.2013, students have been put to hardship due to loss in the education. It is informed to respondent no. 4 that, therefore, the management has decided to appoint another person from the same category.

9. Respondent no. 4 had duly received the said communication on 20.05.2014. Respondent no. 3, simultaneously on 20.05.2014 itself, published an advertisement in a newspaper inviting applications from eligible candidates from N.T. category, inter alia directing the prospective applicants to remain present before the Selection Committee on 18.05.2014 with all original documents.

10. It is the contention of the petitioner that since he was appointed on a clear, vacant and permanent post reserved for N.T. category on a probationary period of three years as "Shikshan Sevak", as per the provisions of sub-section 6 of Section 4 of the MEPS Act his services should not have been terminated except in accordance with the provisions of the Act and rules made in that behalf'.

11. The petitioner is, therefore, aggrieved with the high handed action of respondent no. 3 to issue an order of termination dated 28.12.2015 without following the due procedure of law as provided in Rule 28 of the Maharashtra Employees of Private Schools (Condition of Service) Rules, 1981 [for short "MEPS Rules"]. He contends that sans prior notice or any opportunity of being heard, he was, all of a sudden, terminated by communication dated 28.12.2015.

12. Being aggrieved, petitioner approached the Tribunal by preferring an appeal under Section 9 of the MEPS Act by raising several grounds, however, the learned Tribunal by the impugned judgment dismissed the appeal.

13. The learned counsel for the petitioner has invited my attention to a fact that the learned Presiding Officer of the Tribunal, instead of deciding the legality of the termination order dated 28.12.2015, misdirected herself in returning findings which are not the issues before the Tribunal under Section 9 of the MEPS Act.

The learned counsel would invite my attention to provisions of Rule 28(1) of the MEPS Rules by emphasizing that the services of a temporary employee can be terminated by issuing one month's prior notice or in lieu of notice, one month's salary. The respondents, according to learned counsel, had not followed the procedure prescribed under provisions of Section 5 of the MEPS Act or Rule 28(1) of the MEPS Rules.

14. He assailed the impugned judgment on the ground that the learned Presiding Officer of the Tribunal committed a grave error in law in holding that the appointment of the petitioner itself was not in consonance with the Section 5 of the MEPS Act. The Presiding Officer committed grave error by ignoring the fact that the petitioner was appointed on a clear, vacant and permanent sanctioned post as per the approved staffing pattern. The post was filled up as per the roster of reservation of the said post which was reserved for N.T. category.

15. The counsel would argue that it was incumbent on the part of the learned Presiding Officer to decide the legality of the termination order when the appeal was filed challenging the termination order. He would argue that insofar as the issue of appointment of the petitioner in accordance with law or otherwise is concerned, it is altogether a different aspect. The challenge is not as regards the appointment of the petitioner. Nobody has challenged the issue of appointment of the petitioner. The issue before the Tribunal was only limited to the extent, whether the termination is legal or otherwise?

16. As such, the learned counsel has prayed for quashing and setting aside the impugned judgment and order of the Tribunal inter alia seeking relief of reinstatement of the petitioner in service as a 'Shikshan Sevak' with full back wages and other consequential benefits. The learned Counsel has placed reliance upon certain precedents, which shall be referred hereinafter.

17. Per contra, the learned counsel for respondent no. 4 has supported the impugned judgment and order. The learned counsel for respondent nos. 1 to 3 spoke in tune with the learned counsel for the petitioner.

18. At the outset, it is apparent from the record that despite a communication dated 20.05.2014 by respondent no. 3 to respondent no. 4 which had been duly received by the latter, there was neither a reply nor any steps appeared to have been taken by the respondent no. 4 – Education Officer to forward any name of surplus teacher to be appointed in the vacant post, and, as a result, the school management proceeded to advertise for the said post in a newspaper in respect of the said vacancy. When the school management informs the Education Officer about the vacancy in it's school seeking latter's permission for appointment, respondent no. 4 – Education Officer was expected to either forward names of suitable persons from the list of surplus teachers maintained by him or if no surplus teachers are available for absorption, give permission to the management to appoint a teacher from N.T. category following regular appointment procedure.

19. Respondent nos. 1 and 2, therefore, simultaneously published an advertisement in a newspaper calling for names of suitable candidates from N.T. category having qualification as HSC D.Ed. to be appointed as a teacher in the vacant post after removal of said Mr. Karande. When there was no reply or communication from respondent no. 4, respondent no. 3 issued an appointment order dated 16.06.2014 to the petitioner as a Shikshan Sevak on a probationary period of three years. It can, thus be seen that despite duly receiving a communication from the management / respondent nos. 1 and 2, respondent no. 4 – Education Officer did not take any steps till the appointment of the petitioner as a Shikshan Sevak. The management could not have waited indefinitely, for, it would have resulted in educational loss of the students of the said school.

20. It is also apparent from the record that even on the date of appointment of the petitioner as a Shikshan Sevak on 16.06.2014, there was one more communication addressed to respondent no. 4 by respondent no. 3 informing the latter that due to unauthorized absence of Mr. Karande from 20.04.2013, students were suffering in their studies and, therefore, they were constrained to appoint the petitioner having requisite qualification who also belongs to N.T. category. Respondent no. 3 inter alia sought approval of respondent no. 4 to appoint the petitioner as a Shikshan Sevak. Thereafter, respondent no. 3, by another communication dated 20.12.2014 again reminded respondent no. 4 about its earlier communication dated 16.06.2014, however, there was no response from respondent no. 4.

21. Since there was no approval received from the respondent no. 4, the management/respondent nos. 1, 2 and 3 by a communication dated 28.12.2015 terminated the services of the petitioner without following due process of law or without giving any opportunity of being heard.

22. It is apparent from the record that the petitioner was appointed on a clear, vacant and permanent post reserved for N.T. category on a probationary period of three years as a Shikshan Sevak. Sub-section 6 of Section 4 of the MEPS Act provides thus;

“No employee of a private school shall be suspended, dismissed or removed or his services shall not be otherwise terminated or he shall not be reduced in rank, by the management, except in accordance with the provisions of this Act and the rules made in that behalf”.

23. What is contemplated is that an employee of a private school shall not be suspended, dismissed or removed by the management except in accordance with the provisions of this Act and the rules made in that behalf.

24. Rule 28(1) of the MEPS Rules reads thus;

(1) The services of a temporary employee other than on probation may be terminated by the Management at any time without assigning any reason after giving one calendar month's notice or by paying one month's salary (pay and

allowances, if any) in lieu of notice.

In the case of an employee entitled to vacation, the notice shall not be given during the vacation or so as to cover any part of the vacation or within one month after vacation.

25. Even if it is presumed for the sake of argument that the petitioner was a temporary employee of the institution, he could not have been terminated without giving a month's notice or by paying him one month's salary in lieu of notice in view of Rule 28(1) of the MEPS Rules.

26. Insofar as the Government Resolution dated 02.05.2012 is concerned, the learned Presiding Officer of the School Tribunal had not only committed grave error in law and facts but also committed a serious flaw in construing that in view of the Government Resolution dated 02.05.2012 there is a ban on recruitment of teaching and non-teaching candidates. It appears that the learned Presiding Officer has failed to consider the further development as has been noted by this Court in a group of Writ Petition bearing No. 8587 of 2016 in case of Smt. Munoli Rajashri Karabasappa vs. State of Maharashtra through Secretary and others, with connected Writ Petitions decided on 10 th July, 2017 [2017 MhLJ Online 131] (Coram: Hon'ble B. R. Gavai, the Lordship as he was then, now the Hon'ble Judge of the Supreme Court and Riyaz I. Chagla, J.). It would be apposite to reproduce paragraphs 6, 7 and 8 of the judgment which read thus;

"6. We find that if the Education Officers do not send the surplus teachers within reasonable time, the schools cannot be expected to run without teachers for years together. Undisputedly, finding it difficult to send surplus teachers for the subjects of English, Maths and Science, the State Government itself has relaxed the rigour of government resolution dated 2nd May 2012 vide GR dated 4th September 2013. It could further be seen that State Government also vide that GR relaxed the ban where the selection process has already commenced on 6th September 2012.

7. In that view of the matter, we find that in view of subsequent GRs and in view of the view taken by Division Bench of this Court, the ban would not be applicable to three categories, one where the recruitment process is already commenced prior to GR dated 2nd May 2012, second, in so far as the appointment made for the subjects of English, Maths and Science are concerned and third, where the recruitment is made to fulfill the backlog of reserved category candidates.

8. We find that at the same time the State should take into consideration, that such situations arise on account of inaction of its own Education Officers. If Education Officers act promptly and ensure that the surplus teachers are absorbed in the schools wherever there is a vacancy, such a situation would not arise. However, as already observed herein above on account of inaction on the part of Education Officers, right which has become fundamental, in view of amendment to the constitution by which Article 21A brought in the Constitution,

cannot be permitted to be frustrated. The schools are not expected to run without teachers for years together. The State would always be at liberty to take appropriate action against its officers, on account of who's inaction the State exchequer will be burdened".

. The ratio laid down herein above is squarely applicable in this case.

27. The Government had already relaxed the ban where the selection process has already commenced on 06.09.2012. The case in hand squarely falls within the third category namely, the recruitment is made to fulfill the backlog of reserved category candidates as the petitioner came to be appointed from N.T. category due to the vacant post in the said category after removal of earlier candidate namely Mr. Karande from N.T. category.

28. The learned Presiding Officer has also failed to appreciate sub-section (3) of Section 5 of the MEPS Act as regards the obligation of Management of private Schools, which contemplates that only in case the work or behaviour of a probationer is unsatisfactory, then the Management may terminate his services at any time during the period of probation after giving him one month's notice or salary of one month in lieu of notice.

29. A bare look at the termination order dated 28.12.2015 demonstrates that neither there was any notice of a month nor salary in lieu of notice had been given to the petitioner and he came to be relieved from the services without following due process. What was challenged before the Tribunal was the termination of the petitioner and not the legality of his appointment. The learned Presiding Officer of the Tribunal has, therefore, committed a grave error by entering into an arena of legality of the appointment of the petitioner which was not the issue in an appeal under Section 9 of the MEPS Act.

30. Consequently, the impugned judgment and order dated 14.08.2018 warrants interference and as such, is quashed and set aside. Respondent no. 4 is directed to grant approval to the petitioner's appointment with effect from 16.06.2014 to 28.12.2015 and also as a Shikshan Sevak in the pay scale with effect from 20.05.2014.

31. Respondent no. 4 shall release grant-in-aid for the payment of monthly honorarium for three years and thereafter monthly salary in the pay scale together with arrears.

32. The entire exercise shall be completed within a period of six weeks from today.

33. Rule is made absolute in the aforesaid terms.