

(2007) 03 BOM CK 0062

In the Bombay High Court

Case No : Civil Revision Application No. 235 of 2003

Sanjay Gandhi Shikshan Prasarak Mandal

APPELLANT

Vs

Nivrutti Borkar

RESPONDENT

Date of Decision : 01-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 10(1), Order 7 Rule 11, 51
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 8, 9
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 36, 36(2), 37(4)

Citation : (2007) 3 ALLMR 45 : (2007) 2 BomCR 760 : (2007) 109 BOMLR 717

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : A.R. Tathod and V.S. Dhote, for the Appellant; A.M. Ghare and L.H. Kothari, for the Respondent

Judgement

C.L. Pangarkar, J.—This revision is preferred by defendant against whom a finding has been recorded on preliminary issue of jurisdiction by the Civil Judge (Sr. Dn.), Washim.

2. The facts giving rise to this revision are as under The plaintiff is a teacher and the defendant is the Management of the School. The plaintiff instituted three Civil Suits bearing Nos. 165 of 1996, 178 of 1996 and 224 of 1996. Before adverting to the reasons, it would be necessary to know the facts in each suit and reliefs claimed.

3. In Civil Suit No. 165 of 1996, the plaintiff has sought declaration and injunction. Paragraph No. 6 of the plaint in this suit reads thus

Thus, in fact it was mandatory on the part of defendant No. 1 to rejoin the plaintiff as Headmaster. However, the defendants in collusion had conspired to terminate the plaintiff from his service. That on 2/8/1996 the plaintiff received

one registered packet issued by the defendant No. 1. In the said packet the defendant No. 1 sent the conclusion of enquiry committee from that the plaintiff came to know that enquiry committee has been formed by the defendant No. 1 against the plaintiff wherein the defendant No. 1 is acting as Chief Executive Officer and the defendants No. 2 and 3 are acting as representatives of the Society. The defendant No. 1 called explanation from the plaintiff about the conclusion of the enquiry committee. It is brought to the notice of the plaintiff that in all 14 charges are framed against the plaintiff and the same are found to be proved. This conclusion of the Enquiry is as under Rule 37(4) of Maharashtra Employee of Private Schools (Conditions of Service) Rule, 1981, hereafter referred as rule.

4. The plaintiff claims relief that Inquiry Committee constituted be declared to be void and the defendant be restrained from conducting the inquiry.

5. In Civil Suit No. 178 of 1996, the plaintiff makes following averments in paragraph No. 6 of the plaint, which reads as follows

Thereafter, it is submitted that the plaintiff has also informed by the defendants by telegram about the order of temporary injunction immediately. In spite of that the defendant No. 1 by order dated 12/8/1996 informed to the plaintiff that he is removed from the service as a Headmaster and demoted as Assistant Teacher in the School in the meeting held on 12/8/1996. The act of the defendants are absolutely illegal. It is contrary to the law. The legality of the constitution of the Enquiry Committee is already subjudice, before the Hon'ble court in R.C.S. No. 165 of 1996, in spite of that knowing that the order is passed, the resolution dated 12/8/1996 and the order is also absolutely illegal. The plaintiff is having no idea about any charge against him made before Enquiry Committee. Whatever may be charges they are all false and concocted.

6. In this suit, the plaintiff prays that Resolution dated 12/8/1996 demoting him to the post of Assistant Teacher be declared as void and he be reinstated.

7. In Civil Suit No. 224 of 1996, following allegations are made in paragraph No. 3 of the plaint.

That, in the meantime the plaintiff was pressing to the President so as to compel him to join as Headmaster. President of the society did not allow the plaintiff to join and behind his back constituted enquiry committee under Rule 36 of Maharashtra Employees of Private School (Conditions of Services) Rules, 1981. It was illegal enquiry committee of two members only. It is violated of Rule 36(2). Besides this, this Enquiry Committee behind the back of the plaintiff made enquiry⁸ without calling him to appear before the Committee. As soon as the plaintiff came to know about the progress of the Enquiry Committee, the plaintiff has filed the suit for declaration and permanent injunction it is R.C.S. No. 165 of 1996, wherein the Hon'ble court has granted the stay to the work and operation of the Enquiry Committee.

In spite of stay the President of the society continued the enquiry and the plaintiff brought to the notice of defendant about the illegal act of the President. Therefore, on 14/8/1996, the defendant addressed letter to President and Secretary of the Society and directed them to join the plaintiff as Headmaster. President and Secretary of the society ignored this letter and at sudden communicated this plaintiff that as per Enquiry report he is reverted on the post of Assistant Teacher. The plaintiff challenged this order by filing the suit against the Management, it is R.C.S. No. 178 of 1996 pending on the file of this Hon'ble court. The Hon'ble court directed to the management to maintain the previous position till further orders. Therefore, it was incumbent for the President and Secretary to join the plaintiff as Headmaster, but they disobeyed the orders.

8. The prayer is to the effect that none else than plaintiff be authorised to act as Headmaster.

9. The defendant in all these suits had filed an application under Order 7 Rule 10 and 11 R/w Section 51 of C.P.C., contending therein that the suit is not maintainable in view of the provisions of the Maharashtra Employees of Private School (Condition of Services) Act. In view of this, the learned judge of the trial court framed issues and directed that issue No. 4 be treated as a preliminary issue. Accordingly, issue No. 4 was heard and decided by the trial court. The issue was to the following effect.

Whether this Court has jurisdiction to try the present suit?.

The finding was recorded in the affirmative. Being aggrieved by this finding, this revision has been preferred.

10. I have heard the learned Counsel for the applicant and the non-applicant.

11. The services of the teacher are governed by the provisions of the Maharashtra Employees of Private School (Condition of Services) Act and the Rules. It would be necessary to reproduce Section 9 of the Act.

9. Right of appeal to Tribunal to employees of a private schools:

(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management; or

(b) who is superseded by the Management while making an appointment to any post by promotion; and who is aggrieved, shall have a right to appeal and may appeal against any such order or supersession to the Tribunal constituted u/s 8

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July, 1976.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty

days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be : Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

(3) Notwithstanding anything contained in subsection (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

(4) Every appeal shall be accompanied by a fee of *[Five hundred] rupees, which shall not be refunded and shall be credited to the Consolidated Fund of the State.

Section 9 spells out the jurisdiction of the School Tribunal to deal with the disputes between the Management and the employees. Since the Section so spells out the nature of the dispute, any dispute falling outside the scope of Section 9 could certainly be taken cognizance of by a Civil Court. The Tribunal has jurisdiction to deal with the following matters alone, as are defined in Section 9 of the Act.

1) Dismissal, 2) Removal, 3) Termination otherwise 4) Reduction in Rank, and 5) Supersession in promotion. The Tribunal's jurisdiction is restricted to above disputes only and as such if it is a dispute outside the above disputes, the civil court can certainly assume jurisdiction.

12. The controversy in each such suit, therefore, has to be gone into on the above touchstone. We have seen from the pleadings in Civil Suit No. 165 of 1996 that the plaintiff seeks declaration that the Inquiry Committee constituted is void and defendant be restrained from holding any inquiry. Now, if this relief is seen, it would be clear that this relief does not relate to either dismissal, removal, termination, reduction in rank or supersession in promotion. This suit is, therefore, certainly out of cognizance of the Tribunal. The Civil Court, therefore, could certainly take cognizance of such a suit. Whether such a declaration and injunction could be granted or not would be a different question and we need not go into that.

13. In Civil Suit No. 178 of 1996, the plaintiff claims declaration that the Resolution demoting him be declared as void. This suit, therefore, necessarily relates to reduction in rank governed by the provisions of Section 9(i)(a) of the Act. The Tribunal alone, therefore, will have jurisdiction to deal with this question and Civil court's jurisdiction is certainly ousted, as far as reliefs in this suit are concerned. The order of the lower court to this effect, entertaining the suit certainly suffers from illegality.

14. In Civil Suit No. 224 of 1996, the plaintiff submits and prays that none other than him should be allowed to act as Headmaster. The plaintiff has already been demoted to the lower post of Assistant Teacher, as can be seen from the pleadings in Civil Suit No. 178 of 1996. By making this kind of prayer, the

plaintiff virtually wants his reduction in rank to be revoked. The question that is required to be determined by the court would be with regard to the reduction of the plaintiff in the rank. Therefore, the School Tribunal alone will have jurisdiction to decide the controversy in this suit. Hence, the order holding that this suit also can be tried by the Civil Court is certainly illegal. The Civil Court could not entertain this suit because a Tribunal constituted under the Act has right to take cognizance of such dispute.

15. As a result, the revision has to be allowed partly. The order holding Civil Suit No. 165 of 1996 to be maintainable in civil court has to be upheld while the order in respect of Civil Suit Nos. 178 of 1996 and 224 of 1996 has to be set aside. Accordingly, the order of the trial court with regard to Civil Suit No. 178 of 1996 and 224 of 1996 is set aside. As per provisions contained in explanation to Rule 10(1) Order 7 of C.P.C., I direct the trial court to return the complaints in Civil Suit Nos. 178 of 1996 and 224 of 1996 to plaintiff for presentation to the proper court and shall proceed with Civil Suit No. 165 of 1996.