

(2012) 07 BOM CK 0114

In the Bombay High Court

Case No : Writ Petition No. 1151 of 2012

Sanjeevan Gramin Vaidyakiya and Samajik Sahayata
Pratisthan and Others

APPELLANT

Vs

Gorakhnath Popat Bandhane and Others

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 11

Citation : (2013) 1 ALLMR 227 : (2013) 3 BomCR 242 : (2012) 135 FLR 781 :
(2012) 4 LLJ 23

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Susheel Mahadeshwar instructed by Milind Parab and Associates, for
the Appellant; N.M. Ganguli, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—Heard by consent of the parties. The petitioner has challenged the impugned order dated 23.12.2011 whereby the learned Presiding Officer, considering the termination notice and undisputed facts that no opportunity whatsoever was given before terminating the respondent and thereby caused breach of principles of natural justice, has set aside the termination notice and directed to reinstate to the post of Laboratory Attendant with continuity and back wages. Though time was granted, till this date the order is not yet complied with.

2. The learned counsel appearing for the petitioner has strongly relied on the Judgment of the Full Bench in Saindranath Jagannath Jawanjal vs. Pratibha Shikshan Sanstha & Anr 2007 (3) Bombay Cases Reporter 527 and placed reliance specifically on paragraphs 45 and 46 which reads as under:

45....In this behalf, readily available judgments are in the case of U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, , U.P. State Textile Corporation

Ltd. Vs. P.C. Chaturvedi and Others, ; wherein the Supreme Court has observed that in case of no enquiry or defective enquiry, proper relief is to set aside the dismissal with direction to the management to hold enquiry from the stage the illegality has crept in and that the reinstatement is to be treated for the purposes of holding fresh enquiry and no more. So far as back wages are concerned, the entitlement thereof is to make dependent on the final outcome of the fresh enquiry.

46 The aforesaid principle has been adopted by the Division Bench of this Court while considering provisions of the M.E.P.S. Act in the case of Kashiram Kathane Vs. Bhartiya R.B. Damle Gram Sudhar Tatha Shikshan Prasara Society and Others, ; wherein and the Division Bench has read the aforesaid statement of law and the principles recognised by the Supreme Court in section 11 of the Act. This view is holding the filed for a decade.

He further relied upon a judgment in Kashiram Rajaram Kathane vs. Bhartiya R. B. Damle Gram Sudhar Tatha Shikshan Prasara Society & Ors reported in 1997(3) MLJ 235.

3. The principles so laid down by the Hon'ble the Supreme Court and as followed by the Full Bench of this Court, in my view, need no discussion and/or elaboration. We have to consider the facts and circumstances of each and every case. In the present case the respondent has served for more than five years as Laboratory Attendant. There is nothing on record that prior to the alleged incident there was any show cause notice and/or memo issued and/or served. Admittedly, apart from any adverse memo, no show cause notice whatsoever was issued prior to the termination notice dated 31.3.2011. The question of enquiry comes if any charges with show cause is issued.

4. After going through the contents of the termination order and hearing both the counsel appearing for the parties, I am inclined to observe that the termination order as stands, itself is very unclear and vague but stigmatic. The allegation of some undisclosed and/or alleged doubtful activities that itself cannot be the reason not to issue any memo and/or show cause notice and/or not to hold enquiry before terminating any employee.

5. The employer in a given case at his risk may terminate the employee without assigning any reason and even without issuing show cause notice. The Court needs to consider whether the basic principle of natural justice which has various facets and which cannot be invoked only from the point of view of the employers but also from the point of view of the employee. In the present case, in my view, there is a discussion referred to the rival contentions raised for the first time in the appeal. The Management and/or the employee cannot give justification to terminate the employee for the first time during trial and/or before the Tribunal. It definitely affects the right of the employee to deal and/or to defend the case at appropriate time.

6. If the Management as recorded, has certain adverse material, they must

initiate steps as required in accordance with law. Once they fail to take steps and they take risk of terminating service without issuing adverse memo and/or show cause notice and now to justify the same action, submits supporting material for the first time in the Tribunal and/or before the Court and to say that the grievances are very serious against the delinquent and/or employee, in my view, is of no assistance. The abrupt termination in such cases basically when averments alleging the doubtful activities itself means that the Management had previous knowledge and/or at least undisclosed material to support their action. The alleged collection of so called doubtful activities and/or materials brought and/or with the Management, just cannot be the foundation to terminate any employee without giving notice and/or at least memo of those activities alleged by others. Such averments and/or such adverse material forwarded by others and/or collected by the Management has various facets including internal or external politics. In my view, such undisclosed and vague reasons cannot be accepted as foundation to terminate the employees abruptly as done in the present case. The practical aspect of internal politics and/or external forces just cannot be overlooked. The service jurisprudence nowhere permits the parties to overlook practical side of such human intuition. If the management is clear and they have material to support the action, then it is necessary for them to disclose and give full opportunity to the employee before taking drastic action of termination, basically, when the Petitioner was in service for more than five years. The judgments, therefore, so cited in the present facts and circumstances, are not sufficient to interfere with the order so passed by the Presiding Officer.

7. I am not denying the right of the management to issue fresh show cause notice and/or to enquire into the matter. They are free to take action if they desire. The Court may not direct the private management to hold fresh enquiry in particular manner or method. Whatever material which they have, they may take their own decision and proceed to enquire and/or pass the appropriate order after giving opportunity to the parties. At the show cause notice stage in my view, the Court cannot direct to decide and/or to hold enquiry based upon the vague and unclear show cause notice basically when it is a private litigation between the employee and employer, of the private management. The Management in a given case, if proper explanation is given and after verifying the material, which they have collected and which they have brought, may withdraw the show cause notice and/or may drop the proceedings. It is the domain of the management to take action which they desire based on the material available and/or in the given case the parties may settle the matter then and there only. No question of direction from the Court even at such stage of conflict and/or dispute.

8. The learned counsel appearing for the respondent has contended that let the petitioner be kept under suspension and the management be permitted to hold enquiry and/or take appropriate steps. Admittedly, the respondent was never under suspension at any point of time. No show cause notice was issued. No officer was appointed. Therefore, submission to keep him under suspension is

uncalled for. The thing which was not done at the initial stage cannot be directed by the Court for the first time and basically in a dispute of this nature. Once the termination order itself goes, the sequence should be reinstatement to the post with continuity and backwages as directed. Nothing is wrong in it. "No work No Wages" should be the formula. It is not necessary in every matter that full back wages should be provided and/or granted. But in a case like this and considering the facts and circumstances, where the action of termination as recorded is apparently in breach of the basic principles of natural justice, there is no reason even to interfere with the order of back wages. In every matter though the principle of full back wages need not be followed but at the same if the action is illegal and in contravention of basic principles, I see there is no reason that the order of back wages as awarded need to be interfered with. Apparently the respondents and his family suffered because of illegal action. Therefore, taking over all view of the matter, no interference is called for. The petition is dismissed. Ad-interim order stands vacated. No costs.