

(1988) 08 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 4393 of 1985

Satish Balkrishna Mule

APPELLANT

Vs

Shri M.V. Chaskadbi, Charirman, Shri Samarth Vidya Prasarak
Mandal

RESPONDENT

Date of Decision : 04-08-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1988) 90 BOMLR 272

Hon'ble Judges : V.S. Kotwal, J;C.S. Dharmadhikari, J

Bench : Division Bench

Judgement

C.S. Dharmadhikari, J.—This writ petition is filed by petitioner Shri Satish Balkrishna Mule against the order dated August 16, 1985 passed by the Presiding Officer, School Tribunal, Pune refusing him the relief of reinstatement.

2. The petitioner was appointed as a teacher in the school run by Shri Samarth Vidya Prasarak Mandal, Ahmednagar since 1982. His services came to be terminated some time in June 1985. Being aggrieved by the said order of termination of his services, he filed an appeal before the School Tribunal. The Tribunal came to the conclusion, that before terminating the services of the petitioner the management had not followed the procedure prescribed by Rules 33 to 37 of the Maharashtra Employees of Private School (Conditions of Services) Rules 1981 and, therefore, the termination of his services was illegal. As a necessary consequence of this, the order of termination came to be set aside.

3. However, instead of granting the normal relief of reinstatement, the Tribunal granted the alternate relief of compensation equal to the amount of three months' salary admissible to the petitioner in accordance with the then existing rules. As already observed, it is this part of the order, which is challenged in the present petition.

4. Shri Apte, learned Counsel appearing for the petitioner contended before us

that this was a fit case wherein the normal relief of reinstatement with back wages should have been granted. The Tribunal committed an error in granting the alternate relief of compensation. He also contended that even otherwise the order passed by the Tribunal is illegal, as the Tribunal has not granted back wages in addition to the compensation, but has only granted three months' salary as compensation. Thus, in substance it is contended by Shri Apte that the Tribunal has failed to exercise the jurisdiction vested in it by Jaw or has exercised the jurisdiction illegally, which has resulted in miscarriage of justice.

5. On the other hand, it is contended by Shri Karavande, learned Counsel appearing for the respondents that the Tribunal has given good reasons for granting the alternate relief in para 10 of the order. The discretion has been properly exercised by the Tribunal and for good reasons. From the reasons given by the Tribunal in para 10 of the order it is quite obvious that this was not a fit case wherein the relief of reinstatement could have been granted. While granting the alternate relief the Tribunal has granted compensation as per the provisions of Section 11(2) of the Act and, therefore, this is not a fit case for interference in the extra-ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

6. With the assistance of learned Counsel appearing for both sides, we have gone through the relevant material. In para 10 of the order the Tribunal has held that the management had a grievance against the petitioner from the beginning and even during the period he was working as a Head Master. Since his work was found unsatisfactory, he was reverted as an assistant teacher. Several complaints were received against him from his colleagues. A complaint from one Urmila Kulkarni is on record. There is another report dated March 5, 1985, which also shows that his conduct as a whole was not good and satisfactory and the relations between him and the management were strained. It also appears that the management has lost confidence in him and for good reasons. In these circumstances, it cannot be said that the discretion exercised by the Tribunal was in any way arbitrary or illegal so as to call for an interference in writ jurisdiction of this Court.

7. However, we find some substance in the contention of Shri Apte that the Tribunal should have granted back wages in addition to the compensation. In this context, he has drawn our attention to the decision of this Court in *Premraj Sarda College, Ahmednagar v. Dr. Vasant Tryambak Sambre* (1984) W.P. N 2795 : 1979 W.P. N. 2516 : 1980 decided on April 25, 1984 by Dharmadhikari & Kamat JJ. (Judgment by Dharmadhikari J.) (Unrep.) wherein while construing the provisions of Section 42-D(c) of Pune University Act, the Court observed as under:

However it is quite obvious that this compensation is to be awarded regard being had to the loss of employment thereafter. Therefore this compensation is not in lieu of back wages. Once it is held that the termination is bad, then normally employee is entitled to reinstatement with back wages. If this relief could not be

granted or is not granted and he is awarded appropriate compensation for loss of employment and possibility of getting suitable employment thereafter, then in the absence of any reason, normally this compensation must be in addition to the back wages. Otherwise condition precedent will become a condition subsequent, which is not the intention of legislature, or statutes. Even otherwise if two interpretations are possible of an enactment which is enacted as a beneficial piece of legislation so as to confer certain rights over the teaching staff and protect them from unscrupulous removal or termination from services, and if there is any doubt about the construction of a provision, then the same must be resolved in favour of the teachers upon whom the legislature intends to confer certain rights. A notice of three months or payment in lieu of notice is a condition precedent for terminating the services of a confirmed teacher. It is pre-requisite for a valid termination. If this condition is not complied with, then termination is ab initio void. Therefore in our opinion Dr. Sambare will be entitled to back wages from the date of the termination till the date of the order of the College Tribunal i.e. July 25, 1979 in addition to the compensation awarded by the Tribunal. However this order of back wages cannot be passed straightaway in view of the decision of the Supreme Court in AIR 1981 SC 789 P. Kasilingam v. P.S.G. College of Technology. It was also a case of the college teachers, and similar provisions fell for consideration of the Supreme Court in the said decision. In para 17 of the Judgment the Supreme Court has observed as under:

Normally, the reinstatement of a person in service should carry a direction for payment of his back wages. We regret to find that the Government has made no direction in that behalf. We are, therefore, constrained to remit the matter to the Government. While adjudicating upon the claim of the appellant to payment of all his arrears of pay and allowances, the Government shall give an opportunity to the respondent to have its say in the matter. The respondent is entitled, as a matter of law, to adjustment of equities between the parties by an account being taken of the salary earned by the appellant elsewhere or of any income derived by him from any source whatsoever between the period from September 19, 1976 till the date of reinstatement. The appellant had a duty to mitigate his loss and it cannot be that during the aforesaid period he remained idle throughout.

8. In our view the law laid down in the said decision aptly applies to the present case also. Section 11(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 confers power on the Tribunal to give appropriate relief and direction. After setting aside the order of management partially or wholly, the Tribunal can direct the management to reinstate the employee on the same post or on lower post as it may specify. Where it is decided not to reinstate the employee or in any other appropriate case the Tribunal can grant employee compensation in lieu of reinstatement, regard being had to loss of employment and the possibility of getting or not getting suitable employment thereafter. It is not disputed before us that in case reinstatement is directed, the employee is entitled to back wages, as he is deemed to have been continued in service throughout, which is as a result of reinstatement. Therefore

in a case where compensation is granted in lieu of reinstatement, then obviously employee will be entitled to back wages, though a direction in that behalf will have to be issued by the Tribunal. The compensation contemplated by Section 11(2) is for loss of employment and the possibility of getting or not getting suitable employment thereafter. Therefore in our view the petitioner will be entitled to back wages from the date of termination of his services till the date of order by the Tribunal awarding him compensation. However, as observed by the Supreme Court in P. Kasilingam Vs. P.S.G. College of Technology, equities will have to be adjusted. In the present case, it is contended by the respondent management that the petitioner was gainfully employed elsewhere immediately thereafter and therefore is not entitled to any back wages.

9. This position is disputed by the petitioner. However, it is admitted by him that he was working in Modak Classes for about 10 months, but it could not be said that he was gainfully employed. Thus, there is a dispute between the parties as to what amount he was earning, while he was otherwise employed. In these circumstances the ends of justice will be met if the respondent management is directed to pay the petitioner 50% of the salary admissible, in accordance with the existing rules in addition to the compensation equal to the the amount of three months" salary as directed by the Tribunal. Since the Tribunal has failed to exercise its powers u/s 11(2) of the Act and for no reason has refused to1 grant back wages to the petitioner, the order passed by the Tribunal in that behalf will have to be modified.

10. Hence, the rule is made partly absolute. The respondents are directed to pay to the petitioner half of the salary admissible to him from the date of termination of his services till the date of the Award passed by the School Tribunal i.e. August 16, 1985 at the rate admissible to him in accordance with the existing rules (existing as on the date of termination of services). This will be in addition to the compensation equal to the amount of three months" salary as directed by the School Tribunal. However, in the circumstances of the case, there will be no order as to costs.