
(2019) 08 BOM CK 0080
In the Bombay High Court
Case No : Writ Petition No. 860 Of 2016

Shailesh Anand Kulkarni

APPELLANT

Vs

Khandesh College Education Society And Ors

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Maharashtra Employees Of Private Schools (Condition Of Service) Regulation Act, 1977
— Section 5(1)
Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 08 BOM CK 0080

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : A.M. Gholap, V.D. Hon, A.V. Hon, Ajinkya Deshmukh, N.T. Bhagat

Final Decision : Allowed

Judgement

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner / original appellant before the School Tribunal is aggrieved by the judgment of the School Tribunal dated 28.3.2015, by which, his Appeal No.35 of of 2012, challenging his oral termination, dated 1.3.2012, has been rejected. The Tribunal concluded that though the appellant was working from 2001 till 2012, as he was not issued with any appointment orders, his employment stood automatically terminated from 1.3.2012.

5. The contentions of the petitioner / appellant can be summarized as under:-

(a) The petitioner is Bachelor of Engineering (Computer).

(b) Respondent No.1 got permission to conduct a Vocational Course in Computer Science in 1998.

(c) The petitioner was appointed on 8.9.2001, after conducting interviews for the purpose of teaching Computer Science.

(d) No appointment order was issued.

(e) He was continued upto 1.3.2012 and was regularly paid his monthly salary from the coffers of the respondent / management.

(f) By Government Resolution dated 11.3.2010, the Department of Higher and Technical Education informed all the Educational Institutions that teachers teaching in such technical schools or colleges, notwithstanding that the schools are aided or unaided by the Government, would be granted approval and their service books should be completed in all respects and should be urgently submitted to the concerned department and the second copy of such service book should be handed over to the respective teachers.

(g) After the petitioner gathered knowledge about the said Government Resolution, he started pursuing the management to submit his proposal and supply him a copy of the service book.

(h) Since the management did not comply with the Government Resolution, the petitioner moved a specific application to the Principal of the institution on 18.2.2012 and 2.3.2012 by forwarding copies of the said communication to the President of the Society, to the Joint Director, Vocational Education and the District Vocational Education Officer.

(i) As the management received the first request / representation dated 28.2.2012, they immediately prevented the petitioner from marking his attendance w.e.f. 1.3.2012.

(j) The petitioner made a representation on 5.3.2012 complaining to the management that he has been orally prevented from recording his attendance and discharging his duties, by the Registrar - Shri D.B. Bhortakke.

(k) The Registrar orally informed the petitioner that he has been terminated from service and the management is not issuing any termination order.

(l) The petitioner lodged his Appeal before the School Tribunal on 22.3.2012.

(m) The management filed it's brief written statement through the Principal of the College contending that the College would not be covered under the MEPS Act, the appointment of the petitioner was not in accordance with law and not approved by the Education Officer.

(n) After working for 11 years undisputedly and being regularly paid monthly salary, though meager, the management could not have orally prevented the petitioner from reporting for duties.

(o) The contention of the management that there was a temporary vacancy and he was temporarily engaged for one academic year at a time, would indicate that the management is adopting an unsustainable stand.

(p) The management admitted that the petitioner was working, but has taken a stand that he was shifted to the Mooljee Jaitha Senior College in 2006.

(q) It is further contended that as there was no permanent vacancy available, he was continued on year to year basis and then appointed as a Full Time Shikshan Sevak as a Contract Teacher.

(r) A surprising stand has been taken by the management that because the petitioner had a vehicle, which was hired by the college as a taxi, that he was continued in employment.

(s) The Rules applicable to the petitioner, the MEPS Rules, 1981 prescribe Diploma in Engineering with three years' professional experience or a Degree in Engineering Technology, as being the requisite qualification for being appointed as a Teacher for Technical Subjects.

(t) The Government Resolution dated 31.7.1979 introducing the Vocational Courses at the plus two stage in the Junior Colleges also did not lay down any different qualification and Annexure 3 prescribes a minimum of Diploma in Engineering as the requisite qualification for a Full Time Teacher.

(u) Reliance is placed on a judgment delivered by this Court in the matter of Balasaheb Ramchandra Burke and others Vs. President, Bahujan Samaj Prabodhan Shikshan Sanstha and others [2016 (3) Bom. C.R. 197], wherein, this Court has set aside the termination order of several employees, by concluding that the management cannot take a stand that the employee was under-qualified and could not have been appointed, after he had put in 12 to 18 years in continued employment. The said judgment has not been interfered with by the Honourable Apex Court in Civil Appeal Nos.7159-7164 of 2016 (President, Bahujan Samaj Prabodhan Shikshan Sanstha & Ors.Vs. Balasaheb Ramchandra Burke) by it's conditional order dated 15.11.2016.

6. The learned Sr. Advocate appearing on behalf of the respondent / management submits, on the basis of it's written statement, as under:-

(a) The petitioner was not appointed by following the due procedure.

(b) The Computer Science subject, though an integral part of technical education, was not granted a Full Time sanctioned post of a Shikshan Sevak.

(c) The petitioner was continued on academic year to year basis.

(d) The subject Computer Science was available with the said college and education was being imparted to the admitted students.

(e) The said subject was on 'Permanent No Grant' basis.

(f) No salary grants were available for the Teacher appointed for the said subject and the management had to pay the salary of the petitioner from it's pocket.

(g) It is denied that the petitioner was working continuously and in the

uninterrupted service of the management for 11 years.

(h) Every year, there was a break in service after the end of the academic year and he was engaged at the beginning of the next academic year.

(i) He was a Contract Teacher.

(j) A regular selection committee was not formed.

(k) The management had prescribed a higher qualification in its advertisement.

(l) An honorarium was being paid to the petitioner.

(m) He was operating a Travel business and had also supplied a vehicle to the College on hire basis.

(n) No pay scale was available for such a post.

(o) The management has now appointed two teachers having Master's Degree in Computer Science with the additional B.Ed. qualification.

7. The Joint Director, Vocational and Technical Education, Regional Office, Nasik has tendered an affidavit-in-reply before the Tribunal, contending that the respondent / College was granted permission to impart education in Computer Science on 'No Grant' basis. The salary that is payable, is to be paid by the management from their accounts and there is no question of the State Government making such a payment. An affidavit-in-reply has also been filed in this proceeding, through the Joint Director, Vocational Education and Training, wherein it is reiterated that the entire salary of the Teachers, teaching in the Computer Science Course is the responsibility of the management. There are no specific Rules for Computer Science subject of Bi-Focal courses optional technical subjects. It is specifically stated in paragraph No.5 that as per the MEPS Act and the 1981 Rules, Schedule B-Part III- 3(i) and (ii), prescribes the qualification of Diploma in Engineering with three years' teaching experience or three years' professional experience or Degree in Engineering or Technology. It is then submitted that the Government Resolution dated 31.7.1979, specifically prescribes the same qualification.

8. Having considered the submissions of the learned Advocates for the respective sides, I find that the issue as to whether the petitioner was qualified to be appointed as a Teacher in the Computer Science Subject, is no longer a matter of debate. The prescribed Rules as well as annexure 3 to the said Government Resolution not only indicate that the qualification of Bachelor of Engineering or Technology was the requisite qualification, the pay-scale of a Full Time Teacher is also prescribed as being Rs. 500-20-700-25-900, as on 31.7.1979, which is 40 years ago. The scale of a Full Time Teacher is therefore, a matter of record for the period of 2001 to 2012, during which, the petitioner had performed his duties as a Full Time Teacher.

9. The management has taken a stand that the petitioner was engaged on

contract basis. No document has been produced by the management to indicate that the petitioner was engaged purely on contract. Per contra, the said college, which is The National Assessment and Accreditation Council ("NAAC") accredited "A" grade and UGS "Honoured College with Potential for Excellence", has issued certificates to the petitioner in plentiful, suggesting that he was engaged as a contributory lecturer from 2001 onwards. He was being paid a paltry amount of Rs.5,000/- per month, which was later on increased to about Rs. 5,800/- per month.

10. One salary certificate issued by the Principal for the academic year 2009-2010 indicates an amount of Rs. 1,00,500/-, inclusive of profession tax of Rs.1575/- for the period April 2009 to March 2010. The petitioner was paid the salary even for the month of May, 2009. Another salary certificate was issued for the period April 2010 to March 2011 for a salary of Rs.1,24,500/- as honorarium even for the month of May, 2010. Another salary certificate for the financial year April 2011 to March 2012 would also indicate that he was paid the salary of Rs.11,000/- for May, 2011 and his last drawn salary was at the rate of Rs.12,000/- per month as in March, 2012.

11. A document placed on record dated 29.7.2011, which is a list of college-wise internal / external examiners for HSC examination, supplied to the Maharashtra State Board of Secondary and Higher Secondary Education, Nasik indicates the name of the petitioner as being an examiner for the Computer Science subject and further indicating seven years of teaching experience.

12. This, therefore, clearly indicates that the stand taken by the management was only aimed at defeating the claim of the petitioner. On the one hand, the management claims that he was under-qualified, then it claims that he was a contractual employee and on the other hand, admits from its own records that he was an internal / external examiner for the management and had put in seven years of teaching experience. It is thus evident that the management has taken shifting stands. The record reveals that he has worked for eleven years. No management would engage a teacher for 11 years, if he is under-qualified or not eligible. This management, which has the NAAC accreditation of "A" grade can never be expected to exploit teachers in this fashion. If this conduct of the management is brought to the notice of NAAC, it would expose such exploitation at the hands of this educational institution.

13. The learned counsel for the management has relied upon the judgment delivered in Ramkrishna Chauhan and others Vs. Seth D.M. High School and others [2013 (3) AIR Bom R 106 = 2013(2) Bom CR 48]. The learned Full Bench has specifically observed in paragraph No.13 as under:-

" Indeed, this provision obliges the Management to fill in the permanent vacancy "as soon as possible". The term "as soon as possible" would mean that it has to be done within a reasonable time. That is a relative term. Nevertheless, by virtue of mandate of section 5(1), there is implicit obligation on the Management to

fulfill that requirement at the earliest, to wit, before commencement of the new academic year. That is so because, a permanent vacancy is one, which is in respect of a sanctioned post and in the case of an aided school, entitles the Management to receive commensurate grants in aid from the Government. Further, the sanctioned post for a school is prescribed by the State Authority keeping in mind the benchmark to be maintained for imparting high quality education and maintaining discipline in the school - commensurate with the strength of the students in the school. Thus, keeping the permanent vacancy unfilled for a long time, may entail in dilution of imparting of quality education. A fortiori, though the Management has implicit power to appoint a duly qualified person on contractual employment even against a permanent vacancy but, that must be only an interim arrangement till a suitable candidate is found in the selection process. It cannot be continued on year to year basis in succession. If the Management holds the selection process in the prescribed manner but wants to appoint the selected candidate on temporary basis must contemporaneously record tangible reasons as to why the selected candidate is not suitable to be appointed on probation against the permanent vacancy. In that event, the Appropriate Authority can consider the challenge to the appointment on temporary basis instead of probation, against a permanent vacancy. Further, the Management, receiving grants in aid, from the Government, should not and cannot be permitted to appoint a duly qualified person on temporary basis against a permanent vacancy, without holding of selection process as soon as possible in the prescribed manner. Besides, inspite of availability of a suitable candidate identified in the selection process held to fill in the permanent vacancy, the Management cannot appoint him on temporary basis against a permanent vacancy. Any other view would be antithesis to the mandate of Section 5(1) of the Act and against the principle underlying the exposition of the Apex Court in the case of *Ratan Lal and Ors. Vs. State of Haryana and Ors.*, as it would be hit by Article 14 and 16 of the Constitution of India. "

14. In my view, if the number of students necessary for imparting education in a particular subject are available, notwithstanding that the management is imparting education for the said subject on 'No Grant' basis, what applies to an institution on 'Grant in Aid' basis as noted in paragraph No.13 reproduced above, as a principle of maintaining the quality of education, would also apply to any institution, which may be on 'No Grant' basis.

15. Considering the observations of the learned Full Bench in paragraph 16 in the *Ramkrishna* case (supra), that a management cannot engage a teacher on contractual basis for years together, it is obvious that as the present respondent / management was conducting the said course on 'No Grant' basis, it did not require the sanction of a post from the Government so as to take a stand that though the Government permitted the college to conduct the said course, not a single post for a Full Time Teacher was sanctioned. The continuance of the petitioner for eleven years and documents indicating that he was paid salary even for the month of May, after each academic year was over, would indicate

that there was no break in service and the petitioner continued in employment. As stated by the Joint Director vide his reply before the School Tribunal as well as through the affidavit-in-reply in this Court, the engagement of such a Teacher was within the domain of the College and the payment of his salary was also the responsibility of the management.

16. In view of the above, it is apparent that the impugned oral termination of the petitioner is rendered unsustainable and illegal. The School Tribunal has completely ignored the above aspects and has mechanically passed an order believing the contention of the management that there was no post available and the petitioner was engaged on contractual basis. The said judgment is, therefore, rendered unsustainable and quashed and set aside. The impugned oral termination dated 1.3.2012 is also quashed and set aside.

17. The learned Advocate for the petitioner has prayed for 100% backwages, by relying on the judgment delivered in the case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others [(2013) 10 SCC 324]. The management contends that as the petitioner was operating taxis he should not be granted any backwages.

18. I find that the petitioner has conceded that he had a taxi, while he was already serving in the said college. The said business, which does not appear to be on a large scale basis, in view of the report of the RTO, Jalgaon, placed on record, cannot be equated with a regular employment, so as to conclude that the petitioner was in gainful employment. Nevertheless, since he had some source of income and the management is conducting the course on 'No Grant' basis, that the petitioner is granted reinstatement with continuity in service and with 50% backwages till the date of this judgment along with all incidental and consequential benefits.

19. This petition is, therefore, allowed in the above terms and Rule is made absolute accordingly.

20. After the judgment is pronounced, the learned advocate for the respondent/ management submits that this judgment may be stayed for a period of six weeks.

21. The learned advocate for the petitioner/ employee opposes the request on the ground that his termination is dated 01.03.2012 and is out of employment for the last 07 years.

22. I find that since I have concluded that the respondent/ management has exploited the petitioner by resorting to unethical shifting stands before the Tribunal as well as before this Court, the request for staying the judgment is refused.