
(2005) 05 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 1867 of 1993

Shikshan Prasarak Mandal

APPELLANT

Vs

Presiding Officer, School Tribunal and Another

RESPONDENT

Date of Decision : 03-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5, 5(1), 5(2), 5(3), 9

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 10, 28(1)

Citation : (2005) 6 BomCR 311 : (2005) 4 MhLj 485

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : S.P. Bhandarkar, for the Appellant; A.S. Sonare, AGP for respondent No. 1 and B.M. Khan, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—Heard Shri Bhandarkar, Advocate for the petitioner and Shri Khan, Advocate for respondent No. 2.

2. By this writ petition filed under Articles 226 and 227 of Constitution of India, the petitioner - employer challenges the order dated 27-1-1993 passed by the School Tribunal in appeal u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, (hereinafter referred to as MEPS Act), preferred by present respondent No. 2. Respondent No. 2 complained of termination of his services in violation of provisions of MEPS Act and filed said appeal. The School Tribunal has allowed the said appeal and has directed the petitioner to reinstate him on the post of Assistant Teacher. Though this Court has admitted the petition for final hearing, no interim orders are passed and as such, respondent No. 2, who has been reinstated is continuing in service even today.

3. Shri Bhandarkar, Advocate for the petitioner invites attention of this Court to the appointment order dated 4-8-1987 by which respondent No. 2 came to be appointed as Lecturer/Instructor in Electronics as purely temporary employee for 1987-88 Session. He also shows the second appointment order dated 1-9-1988 by which again, he has been given appointment as purely temporary employee for 1988-89 Session. Respondent No. 2 thereafter filed appeal challenging his oral termination with effect from 20-4-1989 and 20-6-1989 or 2-9-1989. The grievance of respondent No. 2 is that he was not permitted to engage classes after 20-4-1989 and he was informed about his termination on 20-6-1989 and 2-9-1989. Respondent No. 2 is teaching Electronics and his case is that he was appointed-against a clear vacancy and as such he could not have been discontinued orally. He further contended that after completion of two years, he became permanent and in any case his services were terminated in contravention of Rule 28(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as MEPS Rules.)

4. The petitioner opposed this appeal before the School Tribunal by pointing out that respondent No. 2 was not appointed against any permanent vacancy. The petitioner stated that respondent No. 2 was appointed in purely temporary capacity for specific period and he was not employee after the expiry of that period. It is contended that his services came to an end automatically at the end of session. It is further stated that he was paid salary of Rs. 1,200/- per month and it was a fixed salary. The management contended that respondent No. 2 accepted all this and therefore he could not be permitted to turn around challenging his specific contract of service. Shri Bhandarkar, Advocate for the petitioner contended that in this background the School Tribunal considered Rule 10 of the MEPS Rules which defines temporary employee and has drawn inference that respondent No. 2 was appointed on clear and permanent post and as such he was appointed on probation for a period of two years from the date of joining of his duties. The School Tribunal has further found that respondent No. 2 was entitled to be continued even after the end of session and, therefore, he was entitled to be continued in 1989-90 Session on probation upto 4-8-1989. It is in this background that the School Tribunal has granted relief to respondent No. 2.

5. Shri Bhandarkar, Advocate contends that the inference of appointment of respondent No. 2 against clear and permanent post as drawn by School Tribunal is unwarranted. He invites attention of the Court to the proforma of appointment of order given in Schedule "D*" of MEPS Rules and states that the order of appointment of probationer and order of appointment as temporary employee are required to be issued in different formats and as the Subject of Electronics was newly introduced and was to be closed down, the petitioner appointed respondent No. 2 in purely temporary capacity for each session. He invites attention of the Court to the judgment of the Hon"ble Apex Court in the case of Hindustan Education Society and another Vs. Sk. Kaleem Sk. Gulam Nabi and others, , to contend that in similar circumstances, the Hon"ble Apex Court has found that the appointment was in temporary capacity and as such it cannot be

considered to be a permanent appointment and therefore the directions issued by the High Court were quashed and set aside. He further relies upon the judgment of this Court in the case of A.P. College v. Mrs. Pramila, reported at 1997 (3) Mh.L.J. 195, to point out the circumstances in which Rule 28(1) of the Rules is attracted.

6. As against this, Shri Khan, Advocate for respondent No. 2 states that the School Tribunal has found that the management did not produce any material before it to show that the appointment of respondent No. 2 was in temporary capacity. He relies upon the definition of temporary employee as contained in Rule 10 of the Rules and states that merely because the appointment order mentions that it is for particular session, it does not become a temporary appointment. He states that the petitioner has to prove that there was a temporary vacancy and against such temporary vacancy, respondent No. 2 was appointed for fixed period. He contends that the discussion as contained in the order of the School Tribunal is, therefore, just and proper and does not call for any interference in writ jurisdiction. He also invites attention of this Court to the Division Bench judgment of this Court in the case of Anil Dattatraya Ade Vs. Presiding Officer, School Tribunal and Others, , particularly paragraph 16 of the judgment.

7. The provisions of Section 5 of the MEPS Act require management to fill in every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy and Sub-section (2) thereof states that every person appointed to fill a permanent vacancy shall be on probation for a period of two years. The provisions of Rule 10 which stipulate categories of employees states that the employees shall be permanent or non-permanent. Non-permanent employees may be either temporary or on probation. A temporary employee is one who is appointed to a temporary vacancy for a fixed period. Thus, in view of mandate of Section 5(1) of the MEPS Act, it is apparent that if the management wanted to show that respondent No. 2 was a temporary employee, it was incumbent upon the petitioner management to produce material before it to show that respondent No. 2 was appointed against a vacancy which was of temporary nature. The perusal of judgment of the School Tribunal reveals that no such material has been produced. In the absence of any such material and the fact that respondent No. 2 was continued for two sessions, the School Tribunal has drawn an inference that respondent No. 2 was continued on probation. The qualifications of respondent No. 2 are not in dispute and also there is nothing on record to gather that his performance or behaviour during this period was not satisfactory. It is in this background that the School Tribunal has found that the order of termination is in violation of Section 5(3) of the MEPS Act and Rule 28(1) of the MEPS Rules.

8. The perusal of the judgment reported at 1997 (3) Mh.L.J. 195, reveals that there the Court was considering the case of a Lecturer who was appointed in a Junior College temporarily for a period from 26-6-1989 to 20-4-1990 and the

appointment order itself stated that after expiry of the said period, her services shall stand terminated without any notice. The Court has considered the question of necessity of notice under Rule 28(1) of the MEPS Rules in this background and has found that Rule 28(1) does not require any notice to be given in such circumstances. It will thus be apparent that issue considered in this case is entirely different and the ruling, therefore, has no application in the facts and circumstances of the present case.

9. The next ruling on which reliance is placed by the advocate for the petitioner is reported at Hindustan Education Society and another Vs. Sk. Kaleem Sk. Gulam Nabi and others, . Here again, the Hon''ble Apex Court has considered the order of appointment which was purely temporary for a period of 11 months from 11-6-1992 to 10-5-1993 in clear vacancy and it further stated that after expiry of the above period, services of appointee shall stand terminated without any notice. It is in this background that the Hon''ble Apex Court has found that the appointment was of purely temporary nature and the approval given by the Competent Authority was also for that temporary appointment. It found that the procedure prescribed for permanent appointment as contemplated by Section 5(1) and (2) has not been followed. It is in this background that the Hon''ble Apex Court has considered the issue and answered it. Thus, the facts considered by the Hon''ble Apex Court are entirely different and therefore said ruling has no application to this case. Here, the management has not pointed out the procedure followed while appointing respondent No. 2 in service and does not state that the procedure as contemplated by Sub-sections (1) and (2) of Section 5 have not been followed.

10. In the case before the Hon''ble Apex Court as also in the case before this Court, the appointment was of temporary nature and the appointment was obvious from the order of appointment itself. In the case before the Hon''ble Apex Court, it was expressly mentioned that though vacancy was clear, the appointment was only for 11 months and that period of 11 months has also been specified with further warning that after expiry of 11 months, the services of appointee shall stand terminated without any notice. The appointment order in the judgment 1997 (3) Mh.L.J. 195 before this Court was also identical. When in this background, the appointment order issued to respondent No. 2 is seen, it will be apparent that in the said appointment order, it is only specified that the appointment is purely temporary for particular session without mentioning the nature of vacancy and there is no mention that at the end of that session, services of respondent No. 2 shall come to an end without any notice. The School Tribunal has noticed that the said appointment has continued for the next session also and therefore, it has drawn the inference as mentioned above.

11. The reliance placed by Shri Khan, Advocate for respondent No. 2 on the Division Bench of this Court reported at Anil Dattatraya Ade Vs. Presiding Officer, School Tribunal and Others, , in this background is relevant. In para 16 of the Division Bench judgment, the Court has found that under provisions of Section 5

of the MEPS Act, an employee who is appointed on a permanent vacancy on probation after completion of two years acquires the status of permanency automatically without any specific confirmation order passed by the employer. The order of termination dated 29-6-1984 which purported to terminate the petitioner was found to be illegal and contrary to the provisions of the Act thereunder. It is thus clear that provisions of Section 5 cast particular obligation upon the employer and the employer cannot be permitted to defeat the same in such mode and manner. The School Tribunal has also considered the provisions of Rule 28(1) of the MEPS Rules and has found that services of temporary employee other than probationer can be terminated at any time without assigning any reason after giving one calender month's notice or paying one month's salary in lieu of notice. Admittedly, even this has not been complied with in this case.

12. Under the circumstances, I find that the School Tribunal has not committed any jurisdictional mistake and there is no error apparent on record. Respondent No. 2 is continuing in service since 1987-88 and till date, he has put in about 17-18 years of service. Under the circumstances, I find that no case is made out for interference in writ jurisdiction.

13. Writ Petition is dismissed. Rule is discharged. There shall be no order as to costs.