

(2009) 09 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 1606 of 2002

Shikshan Prasarak Mandal

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 16-09-2009

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5(1), 9
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 16(2), 2(K), 28(1), 6

Citation : (2010) 2 BomCR 354

Hon'ble Judges : Shinde S.S., J

Bench : Single Bench

Advocate : A.P. Tele, for the Appellant; T.S. Lodhe, A.G.P. and K.M. Nagarkar, for the Respondent

Final Decision : Allowed

Judgement

Shinde S.S., J.—This writ petition is filed challenging the judgment and Order dated 14/3/2002 passed by the Presiding Officer, School Tribunal, Aurangabad Division, Aurangabad in Appeal No. 64 of 1996.

2. The background facts of the case are as under:

The respondent No. 2 herein filed appeal before the Presiding Officer, School Tribunal, Aurangabad Division, Aurangabad being aggrieved by the termination of his services with the petitioners u/s 9 of the M.E.P.S. Act, 1977 (for short "the Act"). It is the case of the respondent No. 2 herein that the appellant has passed B.Sc. in Mathematics. He was appointed as Assistant Teacher w.e.f. 22/6/1992. According to him, his appointment was on clear, vacant and sanctioned post. The School was initially running on non grant basis. However, in the year 1995-96, the Government has given grants to the petitioner/Institution. It was the case of the respondent No. 2 before the School Tribunal that the petitioner/management is likely to appoint new person in his place and names of some junior persons are

sent for approval by the management to the Education Officer.

It is further case of the respondent No. 2 that being untrained teacher, his name was recommended for B.Ed. Course to the Education Officer, Zilla Parishad vide letter dated 23/3/1996 by the petitioner/management. It is further case of the petitioner that the original respondent Nos. 1 and 2, who are the present petitioners, orally directed and restrained the appellant from signing the muster roll from 14/4/1996. According to the original appellant/respondent No. 2 herein, this amounts to the oral termination.

It is his case that the management was duty bound to continue him in service and his services could not have been terminated without assigning any reasons. He is now over age. He will not get any service in any other institution. Therefore, he prayed that the termination order issued by the petitioners herein requires to be set aside.

3. The petitioners herein filed Written Statement on 6/8/1997 before the School Tribunal. The petitioners herein admitted the date of appointment of the appellant as Assistant Teacher and his qualifications. They contended that the appellant served up to 6/5/1996 and not up to 13/5/1996. In support of their contention, they produced attendance register before the School Tribunal. According to the petitioners, the date of alleged oral termination given by the appellant i.e. 14/4/1996 is imaginary. This date falls on Sunday. The appellant remained absent from duty since 15/4/1996 to 18/4/1996. According to the petitioner, the appellant had no cause of action to file appeal. The appeal was filed by taking imaginary date of oral termination i.e. 14/4/1996. According to the petitioners, it appears from the attendance register that the appellant has filed the appeal only to harass the petitioners herein. The appeal is pre-matured and not maintainable. The appellant was absent without prior permission since 15/4/1996 to 18/4/1996. He has not filed any application for leave. This conduct and behaviour of the appellant shows that he is not at all interested in service and he has abandoned services himself as per Rule 16(2) of M.E.P.S. Rules, 1981 (for short "the Rules"). It is further stated in the written statement that there was no approval to the appointment of the appellant and he himself abandoned the services.

In the additional say filed on behalf of petitioners before the School Tribunal, it is stated that after Summer Vacation from 1/7/1996, the appellant did not turn up to the School. He is untrained teacher and not qualified to the post of Assistant Teacher. The appellant has suppressed so many material facts. Therefore, they prayed that appeal may be dismissed.

4. The learned Counsel appearing for the petitioner submitted that, the School Tribunal did not frame necessary points for its determination on the point of nature of employment of the appellant, whether the appellant is trained teacher or not and other issues relevant to resolve the controversy. It is further submitted that the School Tribunal has not considered Rule 2(K) of the Rules,

which reads thus,

2(K): "Trained Teacher" means a teacher who has secured a professional certificate, a diploma or a degree recognized by the department which qualifies him for a teaching post in a school.

It is further submitted that it is admitted position that the respondent No. 2 is not a trained teacher as he does not possess requisite qualification as laid down in Rule 6, Schedule B-II of the Rules. The learned Counsel further invited my attention to the provisions of Section 5(1) of the Act and submitted that the respondent No. 2 was not duly qualified and as such is not eligible and entitled for any equitable relief and that too of reinstatement. The learned Counsel in support of his above contention, relied on in the case of (Ramkrishna Murlidharrao Mahajan v. Secretary, Vidya Vikas Shikshan Sanstha, Nipani and Ors.) in Writ Petition No. 335 of 1986, in case of (Anuradha Ashok Dixit v. President, Shiv Sena Kulgaon Zopad Paid Seva Mahasangh and Ors.) reported in 1999 (11) C.L.R. 591, in case of (Adarsha Addyapak Shala, Jalgaon and Anr. v. Smt. Bharati Mangilal Chavan and Ors.) in Writ Petition No. 4367 of 1999.

It is further submitted that the post for which respondent No. 2 was appointed, was not sanctioned post and in that regard, the learned Counsel placed reliance on the ratio laid down on in case of Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc., .

The learned Counsel further submitted that the respondent teacher was not fulfilling the requisite qualification is not entitled or has no legal right to continue in service. In support of his submission, the learned Counsel relied on reported judgment in case of (State of Rajasthan and Anr. v. Kulwant Kaur) reported in 2006 DGLS (soft) 253 : AIR 2006 S.C.W. 2622.

The learned Counsel further submitted that the respondent teacher being untrained and as a temporary employee, has no right to continue in the service or for reinstatement. In support of his contention, he has placed reliance on the reported judgment of the Supreme Court in case of Hindustan Education Society and another Vs. Sk. Kaleem Sk. Gulam Nabi and others, , in case of Akbar Peerbhoy College and others Vs. Mrs. Pramila N. Kutty and others, , wherein it is held that,

Where appointment of a temporary employee is made for a fixed period and services of such temporary employee comes to an end on the expiry of that fixed period, giving of notice under Rule 28(1) not required.

It is further submitted that merely because the name of the respondent teacher was sent for B.Ed. training course, that itself would not entitle the respondent to continue in the service. The learned Counsel placed reliance on the reported judgment of this Court in case of Maharashtra Seva Sangh and The Principal, Shree Nutan Prashala Junior College Vs. Shri Shaikh Jamalchand and The Deputy Director of Education, Pune Region, , wherein it is held that,

Person appointed by relaxing qualification is to be appointed purely on temporary basis - can not claim benefit of deemed permanency.

The learned Counsel further relied on the another judgment in case of Shri Sawale Motiram Shridhar Vs. Maharashtra Seva Sangh and Others, .

The learned Counsel further submitted that since the respondent teacher did not possess educational qualification and in case no such requisite educational qualifications are possessed, then he has no right to claim any permanency. In support of his contention, he placed reliance in case of Shri Vaijanath Shinde Vs. The Secretary, Marathwada Shikshan Prasarak Mandal, Jeevanrao Deshmukh and The Education Officer (Primary), Zilla Parishad, . The learned Counsel relied on observations in paragraph 9 of the said judgment, which reads thus:

In this view of matter we hold that for a valid appointment of a primary school teacher, a person must possess educational so also training/teaching qualification. No person can be legally appointed, who does not hold training qualification. Hence, service rendered as an untrained teacher will not qualify for being counted to determine seniority.

Therefore, learned Counsel would submit that the impugned judgment and Order of the School Tribunal deserves to be quashed and set aside by allowing the writ petition.

5. The learned Counsel appearing for the respondent No. 2 submitted that the post for which respondent No. 2 was appointed is vacant post. Therefore, he is entitled to be continued in service. It is further submitted that at the time of appointment, respondent No. 2 was untrained teacher w.e.f. 22/6/1992. His entire service record is unblemished. It is further submitted that in inspection of the school, it is found that the respondent teacher has worked for continuously 4 years. The learned Counsel further submitted that the petitioner/institution has appointed new 3 persons namely Shri. Gaikwad M.L. appointed on 14/6/1999, Shri Raut M.N. appointed on 3/7/1996 and Shri Shetkar J.C. appointed on 19/10/2007. The learned Counsel further submitted that though the name of the respondent No. 2 was forwarded/recommended for B.Ed. course, the petitioner illegally terminated the services of respondent No. 2 by not allowing him to sign must roll from 14/6/1996. In fact, the management was duty bound to continue the services of respondent No. 2. The respondent No. 2 became age bar, he would not get the service in future and he is jobless from the oral termination till date. It is further submitted that the petitioners have not followed the provisions of Rule 28(1) of the Rules before terminating the services of respondent No. 2. The learned Counsel invited my attention to paragraph Nos. 9 and 10 of the judgment of the School Tribunal and submitted that the Presiding Officer, School Tribunal has taken note of oral termination of the respondent and after appreciating the contentions of the respective parties, had come to the conclusion that the oral termination was unsustainable. According to the learned Counsel, once the name of the present respondent was recommended for B.Ed.

course, there was no reason for the management to discontinue his services. It is further submitted that after oral termination, again the respondent No. 2 was allowed to join the services and from 1/7/1996, the petitioner Institution restrained the respondent No. 2 to sign the must roll and refused to join him. The learned Counsel further submitted that now the respondent No. 2 had completed B.Ed. course in 2004-05. Therefore, he is entitled for the continuation in service. The learned Counsel submitted that the judgment cited by the learned Counsel for the petitioners are not applicable in the facts of this case. It is further submitted that so far reliance placed by the learned Counsel for the petitioner in case of Anna Manikrao Pethe Vs. The Presiding Officer, School Tribunal and others, is fully misplaced and said judgment has been over ruled by the Full Bench of this Court in case of St. Ulai High School and Shri Adishakti Hindi Prachar Samitee Vs. Shri Devendraprasad Jagannath Singh and The Zilla Parishad, . The learned Counsel further submitted that even about the non payment of salary of respondent No. 2, this Court has issued certain directions directing the management to pay his salary. The learned Counsel further submitted that there is no perversity in whatsoever in the finding recorded by the Tribunal. Therefore, this Court may not interfere under writ jurisdiction. Therefore, the learned Counsel submitted that this writ petition deserves to be dismissed.

6. The School Tribunal after hearing the learned Counsel for the respective parties and after appreciation of the evidence brought on record, framed necessary points for its determination. The Tribunal framed the point i.e. whether there was oral termination of the services of the appellant on 14/4/1996 in contravention of any provisions of the Act or the Rules and if so, whether it deserves to be set aside and further point was framed whether the appellant is entitled for reinstatement. The Tribunal held that the oral termination dated 14/4/1996 was in contravention of the rules and by setting aside the same, the Tribunal held that the appellant is entitled for continuation in the service with back wages.

7. While considering the case of the appellant, in paragraph No. 8 of the judgment, the Tribunal held that the services of the appellant was to be terminated, then it should have been with advance one month's notice as provided under Rule 28(1) of the Rules. However, the Tribunal has recorded the finding that, it can not be said at this stage that the appellant was a permanent employee of the respondent, because he is untrained teacher, having no qualification after B.Sc. Therefore, the management was obliged to follow the procedure of Rule 28(1) of the Rules.

8. In paragraph 9 of the judgment, the Tribunal has considered the point raised by the appellant about oral termination. The Tribunal has referred to the contentions of the petitioners herein that they disputed the date of termination from services of the appellant. It appears that the Tribunal has perused the documents produced on record by the petitioners. A copy of the attendance

register, which was filed by the petitioners at Exh. R-1 in the month of May, 1996, the Tribunal has recorded that on perusal of the said attendance register, there is no signature of appellant after 6/5/1996. He was also shown absent since 15/4/1996 till 20/4/1996. However, his signatures appear since 22/4/1996.

The Tribunal has further recorded that, the petitioners have contended that after opening of the school on 1/7/1996, the appellant never turned to the school and abandoned the services. The Tribunal has further observed that the management can not take benefit of Rule 16(2) of the Rules. The Tribunal has further recorded that the petitioners herein have tried to show that the appellant was absent from 15/4/1996 to 18/4/1996. The Tribunal has also referred to the copy of the show cause notice issued by the appellant to the petitioners on 19/4/1996, which was produced on record.

9. The Tribunal in paragraph 10 held that the services of the appellant are terminated illegally w.e.f 14/4/1996. The Tribunal has further recorded in the said paragraph that it is not open for the management to say that the appellant is not trained teacher, in view of the fact that the school committee has appointed appellant as untrained teacher in the year 1992. The Tribunal further recorded that it is an admitted fact that the name of the appellant was recommended for B.Ed. course training to the Education Officer and, therefore, the Tribunal felt that the services of the appellant should not have been terminated before completing B.Ed. course. The Tribunal has further observed that there appears back-log to reserve category in the said school for S.C., S.T. and O.B.C. and the appellant belongs to open category. It is further observed in paragraph 11-C, in fact there is no order from the Education Officer regarding the approval to the appointment of the appellant. The Tribunal further held in paragraph 12 that the services of appellant were terminated without notice and, therefore, he has completed the requirement of requisite qualification. Under such circumstances, the order of termination deserves to be set aside.

10. The Tribunal, therefore, directed the petitioners herein to continue the services of the appellant, if he is in service, otherwise he be reinstated in service within 40 days with other consequential benefits.

11. After hearing learned Counsel for the petitioners, learned Counsel appearing for the respondent No. 2 and learned A.G.P., for the State and after perusal of the pleadings in the petition, annexures thereto, the judgment and Order passed by the School Tribunal, I am of the considered view that the present writ petition deserves to be allowed for following reasons.

The Presiding Officer, School Tribunal has held that there was oral termination of the original appellant/respondent No. 2 herein from 14/4/1996 and same is quashed and set aside by the Tribunal. In fact, on perusal of paragraph 9 of the judgment of the School Tribunal, the Presiding Officer has observed thus,

I have perused the documents produced by the respondent No. 1. The copy of the attendance register has been filed. At Exh. R-1, for May 1996. There is no

signature of appellant appear after 6th May, 1996. He was also shown absent since 5th April, 1996 till 20 April, 1996. However, his signatures appear since 22/4/1996.

12. In the said paragraph, the Presiding Officer has further observed that,

The copy of the show cause notice dated 19/4/1996 issued to the appellant is filed on record.

Therefore, on perusal of observations in paragraph 9 referred herein above would clearly demonstrated that, the Presiding Officer, School Tribunal has noticed from the attendance register that, the appellant was absent from 15/4/1996 till 20/4/1996. His signature appears since 21/4/1996. It further appears that the Presiding Officer, School Tribunal has perused the show cause notice dated 19/4/1996 filed on behalf of management, calling explanation from the respondent for his absence from 15/4/1996 to 18/4/1996. The School Tribunal has also observed that, there is no signature of appellant, appearing after 6/5/1996 in the attendance register. It clearly appears that, the Presiding Officer, School Tribunal even after noticing attendance register and after noticing signature of the respondent No. 2/original appellant on the attendance register since 22/4/1996 till 6/5/1996, has come to the conclusion that there was oral termination of the respondent on 14/4/1996. The finding recorded by the School Tribunal that the respondent came to be orally terminated, is contrary to his own observations in paragraph 9 of the judgment. The findings recorded by the School Tribunal that there was oral termination on 14/4/1996, are contrary to the record. The Presiding Officer, School Tribunal has clearly seen the attendance register and also seen the signatures of the respondent No. 2/original appellant from 22/4/1996 till 6/5/1996. Therefore, the Tribunal has clearly recorded the perverse findings. Therefore, so far the date of oral termination i.e. 14/4/1996 pleaded by the appellant appears to be after thought and imaginary and, therefore, the findings of the Tribunal that there was oral termination on 14/4/1996 is required to be set aside.

13. The Tribunal in paragraph 10, has clearly observed that, the respondent No. 2 is untrained teacher and management can not take plea that he is untrained teacher. The Tribunal is not justified in holding that, since the respondent No. 2 is appointed as untrained teacher by the management, that itself would entitle the respondent No. 2 to continue in service. In fact, if certain qualifications are required for the post, then it is not open for the management to waive such qualifications as required under relevant rules. Therefore, the untrained teacher, can not be continued if the trained teacher is available. The Tribunal is also not correct in holding that since the petitioner has recommended the name of respondent No. 2 for B.Ed. course and, therefore, the management is not right or justified in terminating the services of the respondent No. 2. This Court has taken a view that the person not holding requisite qualification, has no right to continue in post, It is also relevant in this case to mention that no approval was granted by the Education Officer to the services of the respondent No. 2 being

untrained teacher. The Tribunal itself has recorded in paragraph 10 that there are back-log of reserve category in the petitioner school, one each for S.C., S.T. and O.B.C. In fact, the Tribunal has exceeded its jurisdiction and recorded these findings about back log in absence of any pleadings by either parties. It was unwarranted on the part of the Presiding Officer of the School Tribunal to hold that since then exists back-log and the services of the respondent teacher are not terminated on that count, therefore, he was entitled to be continued in the service.

14. On careful perusal of the findings recorded in paragraph 11, it appears that the School Tribunal has recorded contradictory findings about the approval of the services of the respondent teacher. The Tribunal has first recorded that, no approval was granted by the Education Officer, appointment of untrained teacher is seen from the letter dated 30/3/1996 and then it is recorded that it is not on record whether the proposal of the name of the appellant for approval was seen by the management. Further it is observed that, in fact, there is no order from the Education Officer regarding approval to the appointment of the appellant. Therefore, mere reading of paragraph 11 would show that the Tribunal has recorded contradictory findings on the point of approval.

In paragraph 12, the Tribunal has further recorded that the services of the respondent teacher were terminated without notice and before he completed training, qualification of B.Ed. and, therefore, said termination order is set aside. As stated above, the Tribunal has recorded perverse findings contrary to the attendance register and other documents, which were produced before the Tribunal and came to the wrong conclusion that the services of the original appellant teacher were orally terminated on 14/4/1996.

15. Therefore, the impugned judgment and Order of the Tribunal is not sustainable. The same is quashed and set aside. Rule is made absolute in terms of prayer Clause "B". The writ petition is allowed to above extent. The Civil application, if any, stands disposed of in view of disposal of main writ petition.