

(2015) 09 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 1804 of 2006

Shree Rashtriya Shikshan Sanstha and Others

APPELLANT

Vs

Sheela and Others

RESPONDENT

Date of Decision : 22-09-2015

Acts Referred:

Citation : (2015) 09 BOM CK 0007

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : M.P. Lala, for the Appellant; A.D. Mohgaonkar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Z.A. Haq, J—Heard Shri M.P. Lala, advocate for the petitioners, Shri A.D. Mohgaonkar, advocate for respondent no.1 and Shri S.M. Bagde, A.G.P. for respondent no.2 Education Officer.

2. The respondent no.1 was appointed as an Assistant Teacher in Nutan Vidyalaya, Gondia administered by the petitioner no.1 Society on 7th December, 1999. It is undisputed that the appointment of the respondent no.1 was made after following the prescribed procedure. The appointment of the respondent no.1 was approved by the Education Officer by the communication dated 8th March, 2000.

The services of the respondent no.1 were terminated by the order dated 5th December, 2001 w.e.f. 7th December, 2001 on the ground that the performance and behaviour of the respondent no.1 during the probation period was not satisfactory. The respondent no.1 filed appeal before the School Tribunal challenging the termination order. The School Tribunal, by the impugned order, has allowed the appeal filed by the respondent no.1, has set aside the termination order and has directed the petitioner no.1 Society to reinstate the respondent no.1 with continuity of service. The Tribunal has directed the

petitioner no.1 Society to pay the arrears of salary and emoluments to the respondent no.1. The petitioners being aggrieved by the order passed by the School Tribunal, have filed this petition.

3. Shri M.P. Lala, learned advocate for the petitioners has submitted that the Tribunal has committed an error in setting aside the termination order on the ground that the petitioners have not maintained the confidential assessment record of the respondent no.1 as required by Rule 15 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as "Rules of 1981"). It is submitted that there is documentary evidence on the record to show that the respondent no.1 was made aware that her performance and behaviour was not satisfactory. The learned advocate has referred to the communication sent by the Headmaster of Shriram Vidyalaya, Khamari to the President of the petitioner no.1 Society on 12th July, 2000, the communication sent by the Secretary of the petitioner no.1 Society to the respondent no.1 on 27th September, 2000, the communication sent by the President of the petitioner no.1 Society to the respondent no.1 on 29th November, 2000 and the reply sent by the respondent no.1 to the President of the petitioner no.1 Society on 2nd December, 2000 and has submitted that these documents show that the respondent no.1 was aware that her performance and behaviour was not satisfactory. It is further submitted that Subrule (6) of Rule 15 of the Rules of 1981 has to be read independently and the provisions of Rule 15(1) to Rule 15(5) of the Rules of 1981 will not apply to the probationer. The learned advocate for the petitioners has referred to the form of confidential report of the respondent no.1 placed on the record as Annexure J (page 29 and 30 of the paperbook) and has submitted that the assessment by the Headmaster of the school is sufficient for the Management to come to the conclusion as to whether the respondent no.1 should be continued in service or not. It is further submitted that the respondent no.1 was transferred from the School at Gondia to the School at Khamari on 29th June, 2000, however, she had not reported at the school at Khamari and subsequently she filed Writ Petition No. 373/2001 before this Court in which an interim order came to be passed on 9th March, 2001 pursuant to which the respondent no.1 was permitted to report on duty at the School at Khamari and she joined the school at Khamari on 13th March, 2001. It is submitted that these facts are sufficient to show that behaviour of the respondent no.1 was not proper and she was not complying with the orders issued by the Management. It is submitted that it is the prerogative of the employer to assess the performance and behaviour of the probationer and if it is found that the performance and behaviour of the probationer is not satisfactory, the employer is well within its right to discontinue the probationer at the time of completion of the probation period.

The learned advocate for the petitioners has submitted that the Tribunal has committed an error in granting arrears of salary and emoluments to the respondent no.1 without there being any pleadings of the respondent no.1 showing that she was not gainfully employed during the relevant period. It is

submitted that as per the established law, the burden is on the employee to plead that she was not gainfully employed during the relevant period and as there was no pleadings on behalf of the respondent no.1 there was no occasion for the petitioners to bring on the record any material to show that she was gainfully employed. It is submitted that the impugned order be set aside and the termination order issued by the Management be maintained.

4. Shri A.D. Mohgaonkar, learned advocate for the respondent no.1 has submitted that the Tribunal has properly appreciated all the relevant aspects of the matter and relying on Rule 15 of the Rules of 1981 has rightly quashed the termination order. It is submitted that as per the provisions of Rule 15(1) to Rule 15(6) of the Rules of 1981, which are required to be read conjointly, the confidential reports are to be written and reviewed and if any adverse remarks are there, the adverse remarks are required to be communicated to the employee before the end of August every year. It is submitted that the communication of the adverse remarks is necessary as Rule 15(4) enables the employee to make representation against the adverse remarks to the higher Authority. It is submitted that in the present case, the confidential reports were neither written nor maintained and, therefore, the Tribunal has rightly quashed the termination order. It is submitted that the documents placed on the record of the writ petition on which the learned advocate has relied at the time of arguments, were not before the School Tribunal. It is further submitted that the confidential report placed on the record as Annexure J is written by the Headmaster of the School at Khamari where the respondent no.1 has worked from 13th March, 2001. It is submitted that the Headmaster of the School at Khamari had no occasion to assess the performance of the respondent no.1 for the period prior to 13th March, 2001 and without any basis the Headmaster of the School at Khamari had written adverse report against the respondent no.1 assessing her performance from 21st June, 2000 though the respondent no.1 was not working in the school at Khamari till 12th March, 2001. It is submitted that this fact shows that the documents are created subsequently to overcome the findings recorded by the Tribunal relying on the provisions of Rule 15 of the Rules of 1981.

The learned advocate for the respondent no.1 has relied on the judgment given in the case of Jasmer Singh Vs. State of Haryana(2015) 2 AD 215 : (2015) 144 FLR 837 : (2015) 1 SCALE 360 : (2015) 4 SCC 458 : (2015) 2 SCJ 391 : (2015) 2 SCT 91 : (2015) 1 SLJ 389 and has submitted that the directions given by the Tribunal to the petitioner no.1 Society to pay the arrears of salary and emoluments cannot be faulted with. It is prayed that the petition be dismissed with costs.

5. After considering the submissions made by the learned advocates for the respective parties and examining the documents placed on the record of the writ petition, in my view, the findings recorded by the School Tribunal relying on the provisions of Rule 15 of the Rules of 1981 cannot be faulted with. This Court has

considered the rigour of Rule 15(1) to 15(6) of the Rules of 1981 in the judgment given in the case of President, Jijamata Shikshan Prasarak Mandal and Others Vs. Presiding Officer, School Tribunal and Others, (2015) 2 MhLj 199 and in the judgment given in the case of Jaywant Govindrao Sanap Vs. Janki Shikshan Prasarak Sanstha and Others .

Rule 15(1) of the Rules of 1981 casts an obligation on the head of the School to maintain the confidential reports annually in the form prescribed under Schedule "G". Rule 15(2) of the Rules of 1981 casts an obligation on the Chief Executive Officer to review the confidential reports written by the Head of the School. Rule 15(3) of the Rules of 1981 lays down that the reporting authority shall arrange to communicate confidentially in writing, adverse remarks, if any, to the concerned employee before the end of August every year. In the present case there is nothing on the record to show that the provisions of Rule 15(1) to 15(3) of the Rules of 1981 were complied with. The School Tribunal has rightly relied on the provisions of Rule 15 of the Rules of 1981 for quashing the termination order.

6. The submission made on behalf of the petitioners that Rule 15(6) of the Rules of 1981 has to be read independently and the provisions of Rule 15(1) to Rule 15(5) of the Rules of 1981 will not apply to the probationers, is misdirected. Rule 15(1) of the Rules of 1981 lays down that the confidential reports shall be written in respect of the employee who had worked for six months or more during an academic year commencing from June. It is admitted fact that the respondent no.1 was appointed on probation and has worked in the school administered by the petitioner no.1 Society for the entire probation period i.e. for period of two years. In view of the provisions of Rule 15(1) of the Rules of 1981, the Headmaster of the school in which the respondent no.1 was working, should have maintained the confidential reports of the respondent no.1. The submission made on behalf of the petitioners that the confidential reports of probationer who has worked for 2 years are not required to be maintained, cannot be accepted overlooking the provisions of Rule 15(1) of the Rules of 1981, which lay down that the confidential reports of the employees who have worked for more than six months are required to be written. If the submission made on behalf of the petitioners that Rule 15(6) of the Rules of 1981 has to be read independently without referring to Rule 15(1) to Rule 15(5) of the Rules of 1981, then it will result in giving arbitrary powers to the Management to deal with the probationers. In my view, the scheme as laid down by Rule 15(1) to Rule 15(5) of the Rules of 1981 will have to be made applicable to the probationers also and the probationers cannot be deprived of the protection granted to other employees under the scheme of Rule 15(1) to Rule 15(5) of the Rules of 1981.

7. The documents relied upon by the petitioners are not sufficient to accept the claim of the petitioners that the performance and behaviour of the respondent no.1 was not satisfactory. Apart from the fact that there is nothing on the record to show that the documents were filed before the School Tribunal, the communication dated 12th July, 2000 is an internal correspondence from the

Headmaster of School at Khamari to the President of the petitioner no.1 Society, the communication dated 7th October, 2001 is internal correspondence from the Headmaster of the School at Khamari to the President, Coordination Committee, Nutan Vidyalaya. It is not the case of the petitioners that the respondent no.1 was made aware about the contents of the abovereferred correspondence. The petitioners cannot rely on the above referred documents to substantiate their action.

8. One more factor which goes in favour of the respondent no.1 is that this Court has not granted stay to the directions given by the School Tribunal regarding the reinstatement of the respondent no.1. It is an admitted fact that the respondent no.1 has been reinstated on 19th April, 2008 pursuant to the order passed by the School Tribunal and is working in the school administered by the petitioner no.1 Society for more than seven years. The petitioners have not placed on the record any material to show that the performance and behaviour of the respondent no.1 after her reinstatement has not been proper.

In these facts, I am not inclined to interfere with the order passed by the School Tribunal directing reinstatement of the respondent no.1.

9. As far as the submission made on behalf of the petitioners that the School Tribunal has committed an error by granting the arrears of salary and emoluments to the respondent no.1 is concerned, in my view, the directions given by the Tribunal in this regards do not require any interference. Though the learned advocate for the respondent no.1 has not been able to point out from the record that the respondent no.1 had pleaded that she was not gainfully employed during the relevant period and though the Tribunal has not adverted to the point, the petitioners have not been able to raise any challenge to the directions given by the Tribunal directing the petitioner no.1 Society to pay the arrears of salary and emoluments. In spite of the directions given by the Tribunal in the impugned order there is nothing in the petition to show that the petitioners have disputed the entitlement of the respondent no.1 for the arrears of salary and emoluments. Shri Mohgaonkar, learned advocate for the respondent no.1 has rightly relied on the judgment given in the case of Jasmer Singh V/s. State of Haryana & Anr. (cited supra).

The impugned order does not require any interference. The petition is dismissed. In the circumstances, the parties to bear their own costs. The amount deposited by the petitioners before this Court should be given to the respondent no.1, along with interest, if any.