

(2009) 11 BOM CK 0129

In the Bombay High Court

Case No : Writ Petition No. 3444 of 1994

Shri Sadguru Dnyan Prasarak Shikshan Sanstha and The
Head Master, Linga High School

APPELLANT

Vs

Presiding Officer, School Tribunal, Amravati Division, Shankar
Balaji Wankhede and Education Officer (Secondary) Zilla
Parishad

RESPONDENT

Date of Decision : 25-11-2009

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 5, 5(1), 5(2), 5(4), 5(5)

Citation : (2009) 11 BOM CK 0129

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : H.A. Deshpande, for the Appellant; R.R. Pillai, for the Respondent

Final Decision : Dismissed

Judgement

C.L. Pangarkar, J.—The School Management prefers this writ petition against the order of the School Tribunal, whereby it has directed the school to reinstate the respondent with back wages.

2. The facts giving rise to the petition are as follows.

The petitioner runs a school known as Linga High School at Linga, Tq. Warud. It is a recognized school and is governed by the provisions of Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977 and Rules there under (M.E.P.S. Act). There was a clear and permanent vacancy of an Assistant Teacher in the said school in the year 1986-87. Respondent No. 2 applied for his appointment as an Assistant Teacher. He was accordingly appointed as Assistant Teacher w.e.f. 13/9/1986 but according to respondent No. 2, no written order was issued. The services of respondent No. 2, however, were continued and he continued to work up to 30/4/1990. Respondent No. 2 holds qualification M.A.B.Ed. It is the contention of respondent No. 2 that his services

were orally terminated by the present petitioner. Since the services of respondent No. 2 came to be terminated, he filed an appeal u/s 9 of the M.E.P.S. Act before the School Tribunal. 3. The appeal was resisted by the present petitioners mainly on three grounds. First ground was that the school was not permanently recognized, respondent No. 2 did not hold required qualification of B.Ed. and third; appointment was temporary.

4. The learned Judge of the Tribunal negated the contentions raised by the present petitioner and directed reinstatement. Hence, the present writ petition.

5. I have heard the learned Counsel for the petitioners as well as the respondents.

6. From the submissions made in the memo of appeal, it does not seem to be in dispute that respondent No. 2 was appointed in clear vacancy for three consecutive years i.e. from 1987-88 to 1989-90. His appointment, however, was from year to year for three years.

7. Learned Counsel for respondent No. 2 submits before me that respondent No. 2 had worked continuously for three Academic Sessions and his appointment was in a clear vacancy. He submits that proof of these two ingredients is enough to treat respondent No. 2 as deemed to be confirmed u/s 5 of the M.E.P.S. Act. The learned Counsel for the petitioners submits, on the other hand, that there are three reasons which are enough to hold that respondent No. 2 cannot be deemed to be confirmed. The first ground that is advanced is that the school was newly established and its recognition itself was for all these three years from year to year. The second ground is that respondent No. 2 did not hold B.Ed. Degree from recognized University and third; the appointment of respondent No. 2 itself was temporary and from year to year. 8. The learned Judge of the Tribunal has rejected the contention that, because the school received the recognition from year to year, the services of respondent No. 2 were temporary and from year to year. According to Clause 4.1 and 4.2 of the School Code, a school upon establishment continues to receive temporary recognition only for year to year for first five years. It is only after five years that it becomes eligible for permanent recognition. This school itself had temporary recognition from year to year during that period and therefore there was no question of respondent No. 2 being appointed on probation for two years or in a permanent vacancy. This Court had an occasion to deal with similar contingency. In a decision reported in Maharashtra Shikshan Sanstha and Another Vs. State of Maharashtra and Others, , this Court observed as follows:

6. Mr. Dharmadhikari, learned Counsel, for the petitioners relied upon a judgment of Supreme Court in Hindustan Education Society and another Vs. Sk. Kaleem Sk. Gulam Nabi and others, in which the Supreme Court was considering the effect of an appointment order for a period of 11 months from 11/6/1992 to 10/5/1993 is a clear vacancy. The Supreme Court in para No. 5 has observed as follows:

In view of the above and the order of appointment, the appointment of the respondent was purely temporary for a limited period. Obviously, the approval given by the competent authority was for that temporary appointment. As regards permanent appointments, they are regulated by Sub-sections (1) and (2) of Section 5 of the Act according to which the Management shall, as soon as possible, fill up, in the manner prescribed, every permanent vacancy in a private school by appointment of a person duly qualified to fill in such vacancy. Every person so appointed shall be put on probation for a period of two years subject to the provisions of Sub-section (4) and (5). He shall, on completion of the probation period of two years, be confirmed.

Having regard to the fact that school was granted recognition from year to year for a period of three years consecutively and having regard to the admitted fact that the approval of 1st respondent was not for more than one year, it is clear that the appointment in question was similar to the one considered by Their Lordships in decision cited supra.

7. Mr. Manohar, learned Counsel, for the 3rd respondent submitted that if the managements are allowed to appoint teachers from year to year on a temporary basis, it would defeat the purpose of Section 5(2) of the Act. As a broad proposition, this cannot be disputed. However, each appointment would have to be considered case by case. In the present case, it is clear that the appointment was a temporary appointment for one year. Thereafter, there is no appointment and the 3rd respondent seems to have worked for more than two years with breaks in the summer vacation. Having regard to the fact that the School itself had not been recognized, I find that the appointment cannot be said to be in a permanent and clear vacancy which would attract the provisions of Section 5 of the Act.

8. In fairness, Mr. Manohar, learned Counsel for the 3rd respondent, did not dispute that the facts of the present case are covered by the decision of Division Bench of this Court in Mathuradas Mohota College of Science Vs. R.T. Borkar and Others, . In similar situation, the Division Bench presided over by the Chief Justice Shri M.B. Shah, as then he was, has in paragraph 7 observed as under:

It is further to be noted that the post was of teacher in Botany subject which was not the subject of the respondent No. 1 as the respondent No. 1 is M.Sc. in Zoology and, therefore, it cannot be said that respondent No. 1 was duly qualified for the said post. Apart from this, even assuming that there was a clear vacancy, the order issued was purely temporary and, therefore, not proper order. However, it will be an error to treat the said order as an order u/s 5 of the Act, viz., the order for a period of two years probation. Such legal fiction we do not find anywhere in the Act and the Rules and, therefore, the finding recorded by the Tribunal that the order is covered u/s 5 of the MEPS Act is not correct.

9. The decision applies on all foreshadowing to the instant case. It would be clear that the school had no permanent recognition and was still under temporary recognition.

The recognition could be withdrawn any time and therefore, the posts that were available were not permanent vacancies though they could be said to be clear vacancies. In order to bring the case u/s 5(2) of the M.E.P.S. Act, it would be necessary that the post against which the claim is made is permanent. Due to the temporary recognition in no case the post could be said to be permanent.

10. The petitioners have placed on record the Resolution of Society by which appointment was approved by the Society. The petitioners have also placed on record all the three appointment orders as well as termination orders, though respondent No. 2 raises a plea of appointment and termination being oral. The resolution clearly says that appointment is made for period 1/7/1987 to 30/4/1988 and is subject to proof of recognition of B.Ed. Degree of Kesarwani University. The appointment order is also for that period only and makes it clear that it would be subject to approval of B.Ed. There is also a termination order on record. This order, therefore, clearly goes to show that the appointment was temporary and it was duly terminated after the Academic Sessions. The petitioners have also placed on record the documents which show that every year respondent No. 2 applied afresh and fresh appointment order was issued to him and every year a termination order was issued. It is, therefore, clear that respondent No. 2's appointment was for that academic sessions only. In the circumstances, the ratio in Maharashtra Shikshan Sanstha applies to the present case. Similarly, it may be mentioned that the decision rendered in Maharashtra Shikshan Sanstha case is rendered upon consideration of the decision reported in Hindustan Education Society and another Vs. Sk. Kaleem Sk. Gulam Nabi and others, .

11. Further, it is case of petitioner that respondent No. 2 was not entitled to confirmation because he did not hold B.Ed. qualification from recognized University. The Resolution passed by the petitioner while approving the appointment of respondent No. 2 shows that respondent No. 2 was appointed subject to recognition of his B.Ed. Degree by the Government. Even the appointment order makes that clear. The petitioners have placed on record the other Resolution as well as letter, while terminating the services, calling upon respondent No. 2 to prove that his degree is approved by the State Government. Respondent No. 2 has not placed any Government Resolution showing approval of his degree. On the other hand, petitioner places on record at page No. 115 in the record of the Tribunal the letters of the Deputy Director which show that B.Ed. Degree of Kesarwani University is not at all recognized. For this reason, the petitioner was not entitled to hold the post as an Assistant Teacher. The learned Judge of the Tribunal has ignored all these aspects. In the circumstances, it appears that the learned Judge has come to wrong conclusion and had wrongly directed the reinstatement. As a result, the petition is allowed. The order passed by the School tribunal is set aside and the appeal preferred by respondent No. 2 before the School Tribunal stands dismissed. No order as to costs.