

(1996) 08 BOM CK 0022

In the Bombay High Court

Case No : Writ Petition No. 4272 of 1988

Shri Vitthal Pandharinath Dhere

APPELLANT

Vs

Shree Kedarnath Shikshan Sanstha and others

RESPONDENT

Date of Decision : 19-08-1996

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 4(6), 5(3)
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 15(6)

Citation : (1998) 1 BomCR 592

Hon'ble Judges : S.S. Nijjar, J; N.D. Vyas, J

Bench : Division Bench

Advocate : Subhash Langote, for the Appellant; R.V. More and V.V. D'gama, A.G.P., for the Respondent

Judgement

N.D. Vyas, J.—By the present writ petition, the petitioner has impugned the judgment and order of the School Tribunal, Pune, whereby the appeal filed by the petitioner is dismissed. By the said appeal, the petitioner had challenged the termination order passed by respondent Nos. 1, 2 and 3.

2. Briefly stated the facts giving rise to the present petition are as follows :

The petitioner was appointed as Assistant Teacher in the Shree Kedar High School of which one Mr. M.S. Patil was the Head Master. This appointment had taken place on 24th June 1985 and although no appointment letter was received, the admitted position is that the petitioner was appointed on probation of two years. It is the petitioner's contention that on the completion of one year, the petitioner was given annual increment in service and that during his tenure, the results of the standards to which he was teaching were excellent. On 31st March 1987, a notice of termination was issued by the said School authority simply stating that for the Academic Year starting from 15th June 1987, the petitioner's services were not required and, therefore, on the completion of the Academic

year on 30th April 1987 he was required to hand over charge. Thus a month's notice was given to the petitioner. Being dissatisfied with the said order, the petitioner preferred an appeal to the School Tribunal, Pune and as mentioned above, the appeal having been decided against the petitioner, the present petition is preferred.

3. Mr. Langote, the learned Counsel appearing for the petitioner submitted that there was no material before the management to have prompted the management to terminate the services. In fact it was his grievance that the alleged material on the basis whereof the resolution passed by the management terminating the services if tested objectively would show that in fact there was no material before the school authorities. He submitted that u/s 4(6) of the Maharashtra Employees of Private Schools, (Conditions of Service) Regulations Act, (hereinafter referred to as "the said Act"), no employee of a private school can be suspended, dismissed or removed or his services can be otherwise terminated or he can be reduced in rank, by the management, except in accordance with the provisions of this Act and the Rules made in that behalf, meaning thereby that the services were not properly terminated and that by using the excuse of terminating the services simpliciter, in fact a stigma was attached to his character.

4. In order to appreciate the submissions, it is necessary to refer to certain provisions of the said Act and the Rules framed thereunder. As mentioned above, section 4(6) of the said Act speaks of suspension, dismissal or removal from service which can be done only in accordance with the provisions of the said Act and Rules made thereunder. Section 5(3) of the said Act provides that if in the opinion of the management, the work or behaviour of any probationer, during the period of his probation, is not satisfactory, the management may terminate his services at any time during the said period after giving him one month's notice or salary of one month in lieu of notice. Mr. Langote also relied on Rule 15(6) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, which are framed under the said Act. The said sub-rule (6) provides that performance of an employee appointed on probation shall be objectively assessed by the Head Master during the period of his probation and a record of such assessment shall be maintained. Relying on the above mentioned provisions, Mr. Langote submitted that in fact the Head Master never attended the school and in fact there was nothing to show that during the period of his service, may be on probation, that any record of any assessment was maintained by the school. Thus he submitted that in the absence of such objective assessment, the termination of the petitioner was colourable.

5. Mr. More appearing for respondent Nos. 1 to 3 and Mr. D'gama appearing for the remaining respondents submitted that when the petitioner admittedly was appointed on probation, there was no question of any reasons to be given or any material to be shown to the person who is appointed while his services are not required. They heavily relied on the provisions of section 5(3) of the said Act

which provides specifically for termination of services of probationer. It was their submission that sub-section (6) of section 4 which provides for suspension, dismissal or removal from service and which applies to any employee, also provides that the same has to be done in accordance with the provisions of the said Act and as per the provision of section 5(3) mentioned above, the termination of service had taken place and, therefore, it was in accordance with the provisions of the said Act. Commenting upon Rule 15(6) of the said Rules, Mr. More submitted that if the same is read with Rule 15(5) of the said Rules, the picture that emerges is that if the record as required by Rule 15 is not maintained, then the only conclusion which could be drawn would be that the work of the employee was satisfactory and this inference would be, therefore, in favour of the employee.

6. We find considerable force in the submission made on behalf of the respondents. In our opinion, section 5(3) of the said Act which provides for termination of services of an employee speaks of "work" or "behaviour" of any probationer not found satisfactory. Even assuming that the work of the petitioner was found satisfactory on the basis of non-production of any confidential record as provided under Rule 15(6), the management would be free to come to a conclusion that the behaviour of the employee was not satisfactory. In the instant case, the Tribunal has relied on the representation which was received by the management which prompted the management to pass a resolution in question. The resolution passed by the management was passed on 27th March, 1987 and referring to the representation the resolution stated that the same was received from the teaching and non-teaching staff and it was dangerous and unsatisfactory to keep the petitioner in service as according to the Management, the complaints were found to be true and thus a serious note was taken of the fact and that the presence of the petitioner was not found in the interest of the school. In our opinion, the management is best Judge of the situation as to whom to continue and whom not to continue. Admittedly when the petitioner was on probation, it is the satisfaction of the management which decides the issue as to whether a person on probation requires to be continued or not. Coming to the arguments of Mr. Langote, that it would result into a stigma being attached to the character of the petitioner, in our opinion, suffice it to say that the order challenged by the petitioner before the Tribunal simply stated that his services were not required. If as a result of the appeal preferred by the petitioner certain facts comes to light and if they are interpreted as a stigma to the character of the petitioner, the petitioner has himself to blame.

7. In view of the above, we see no substance in the present petition. Petition thus dismissed. However, looking to the facts and circumstances of the case, no order as to costs.

8. Petition dismissed.