
(2014) 03 BOM CK 0197

In the Bombay High Court

Case No : L.P.A. No. 170 of 2005 in W.P. No. 7373 of 2003

Subash Vidya Mandal

APPELLANT

Vs

Pushpalata Prabhakar Deshmukh

RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Citation : (2015) 3 ALLMR 713 : (2015) 1 BomCR 260 : (2014) 4 MhLj 323

Hon'ble Judges : Abhay Shreeniwas Oka, J; A.A. Sayed, J

Bench : Division Bench

Advocate : P.B. Shah, Advocate for the Appellant; Subhash Langote instructed by V.A. Madane, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.S. Oka, J.—By this Letters Patent Appeal, the appellants have taken exception to the judgment and order dated 2-5-2005 passed by the learned Single Judge in Writ Petition No. 7373 of 2003. The first appellant is a society registered under the Societies Registration Act, 1860 and a public trust registered under the Bombay Public Trusts Act, 1950. The first appellant is running a Secondary School (Subash Vidya Mandir) which is recognised and which receives 100% grant-in-aid. The second appellant is the Principal of the said school. It is not in dispute that the respondent was appointed as an Assistant Teacher in the school run by the first appellant on probation and on completion of the probationary period of two years, she is deemed to have become a permanent employee of the first appellant.

2. An appeal was preferred by the respondent being Appeal No. 88 of 2000 before the Presiding Officer of the School Tribunal at Pune. The case made out by the respondent in the appeal was that she was issued a memorandum on 16-3-1999 by the appellants. Though a reply was given by her to the memorandum, subsequently a further memorandum was issued to her by the appellants on the ground that she reported for duty ten minutes late. It is alleged that on 19-10-2000, she was not allowed to sign the muster by the

Chairman of the first appellant as well as the Headmaster of the School. It is alleged that after re-opening of the school on 30-11-2000, she was not allowed to sign the muster and discharge her duties. Thus, the appeal was preferred on the ground that there was otherwise termination of the respondent.

3. The appellants contested the appeal by filing Written Statement. The appellants relied upon the memorandums issued from time to time to the respondent. Reliance is placed on the letter dated 1-11-2000 issued by the second appellant to the respondent calling upon her to submit Medical Fitness Certificate. The specific stand taken is that since the respondent did not produce the Medical Fitness Certificate, the appellants were not in a position to allow the respondent to resume duty. However, it was contended that there was no cause of action for preferring the Appeal as the appellants never terminated the employment of the respondent. The School Tribunal by the judgment and order dated 5-4-2002 held that there was otherwise termination of employment of the respondent and the said termination was bad in law. The learned Presiding Officer passed an order directing the appellants to reinstate the respondent with effect from 13-11-2000 with full backwages from the date of termination till the date of reinstatement. Time of two months was granted to the appellants to comply with the said order. The Tribunal has recommended to the State Government that the backwages directed to be paid to the respondent may be deducted from the grant due and payable to the management and be paid to the respondent. Being aggrieved by the judgment and order of the Tribunal, the appellants preferred the Writ Petition. By the impugned order dated 2-5-2005, the learned Single Judge has summarily dismissed the Writ Petition.

4. Learned counsel appearing for the appellants submitted that all throughout the stand of the appellants was that the employment of the respondent was never terminated. He pointed out that there was every justification for the appellants for calling upon the respondent to submit Medical Fitness Certificate. He urged that the finding of the Tribunal which has been confirmed by the learned Single Judge that there was otherwise termination is completely erroneous. He invited our attention to the conduct of the respondent reflected from the memorandums issued to her from time to time. Lastly, he submitted that though there was no interim relief granted in this appeal, the respondent never resumed duty. He relied upon the letter dated 7-7-2005 addressed by the appellants to the respondent informing her that she has not resumed duty. He urged that during the pendency of the appeal, the respondent went to the extent of filing a complaint against the appellants under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which has resulted in the arrest of the concerned persons. Lastly, he has relied upon the Government decision dated 14-3-1978. He relied upon a circular dated 23-9-1983 and urged that in view of the decision of the State Government, as the School is 100% aided school, assuming that the impugned orders are confirmed, backwages will have to be paid by the State Government.

5. Learned counsel appearing for the respondent pointed out that during the pendency of the appeal, on 11-7-2005 the appellants filed a complaint with Narayangaon police station in which it is stated that as the appeal is pending, the management has prevented the respondent from entering the compound of the School, but the respondent was interfering with the functioning of the School. Therefore, it was prayed that an action be taken against her. He has also placed reliance on the correspondence made by the respondent during the pendency of the appeal.

6. We have carefully considered the submissions. We have perused the judgment and order passed by the Presiding Officer of the School Tribunal as well as the impugned judgment and order. In paragraph 9 of the judgment and order of the learned Presiding Officer, he has referred to the memorandums served by the appellants to the respondent from 6-3-1999 onwards. He has noted that the respondent replied and denied the allegations made therein. Further the Tribunal has noted that the appellants relied on Confidential Reports of the respondent to show that her performance was not satisfactory. In fact, the Confidential Report dated 28-8-2000 was placed on record which records adverse remarks against the respondent. The learned Presiding Officer has also referred to the stand taken by the appellants that the respondent could not be allowed to resume duty as she had not produced the Medical Fitness Certificate.

7. Considering the stand taken by the appellants based on the Confidential Report and the memorandums issued to the respondent and the admitted position that the respondent was not allowed to resume duty by the appellants, the Tribunal came to the conclusion that the action of the appellants in preventing the respondent from resuming duty and signing the muster amounts to otherwise termination and, therefore, the same is illegal as no inquiry as contemplated by the Rules was initiated against the respondent. The Presiding Officer observed, and in our view rightly, that if the opinion of the appellants was that the conduct and behaviour of the respondent was not satisfactory, they were duty bound to initiate an inquiry.

8. After having perused the stand taken by the appellants before the Tribunal, we find that the learned Presiding Officer was right in coming to the above conclusion. Another stand of the appellants before the Tribunal was that as the respondent failed to produce Medical Fitness Certificate, she was not allowed to resume duty. Moreover, there is specific reliance placed on the adverse remarks made in the Confidential Reports. The fact that the appellants prevented the respondent from resuming duty is virtually admitted and, therefore, the finding that there was otherwise termination which is illegal cannot be disturbed. The learned Single Judge in paragraph 3 of the impugned order has rightly observed that considering the allegations made by the respondent, she could not have been terminated without an inquiry.

9. No case is made out that after the otherwise termination, the respondent was gainfully employed and, therefore, the learned Presiding Officer was justified in

passing an order of reinstatement with backwages.

10. Perusal of the correspondence tendered by the learned counsel appearing for the parties on record is necessary. The appellants are relying upon a letter dated 7-7-2005 addressed to the respondent by the Incharge Headmaster of the concerned school. The said letter does not call upon the respondent to resume duty. It merely mentions that as per the order of the learned Single Judge, she had not reported for duty. The correspondence produced by the respondent shows that the appellants complained to the police on 11-8-2005 in which they have taken a stand that considering the pendency of this appeal, the respondent was not allowed to remain present in the precincts of the school. We find no error in the order of reinstatement with backwages.

11. Learned counsel appearing for the appellants has relied upon the Government circulars which, according to him, show that the policy of the State Government is that in case of an order for reinstatement passed by the School Tribunal with backwages, the State is under an obligation to release the necessary amount for payment of backwages. In this appeal, we cannot go into the question of existence of any such policy. However, it is for the appellants to submit pay bills for payment of backwages to the respondent to the appropriate authority. It is for the appellants to satisfy the appropriate authority that the State Government is under an obligation to release the salary grant for payment of backwages.

12. The learned counsel appearing for the appellants submitted that the appellants are not in a financial position to pay backwages. Therefore, we propose to grant a reasonable time to the appellants to pay backwages subject to the condition of the appellants reinstating the respondent on or before 1-4-2014. We, therefore, propose to grant time of six months from 1-4-2014 to the appellants to pay backwages. In the meanwhile, it will be open for the appellants to submit pay bills to the appropriate authority for the release of salary grant for payment of backwages. We make it clear that irrespective of the fact that the pay bills are sanctioned or not, the appellants will be under an obligation to pay backwages to the respondent. Hence, we pass the following order:

ORDER

(i) The Appeal is accordingly dismissed;

(ii) We grant time of six months from 01-4-2014 to the appellants to pay the entire amount of backwages to the respondent, subject to the condition that the respondent is reinstated on or before 1-4-2014;

(iii) If the appellants fail to reinstate the respondent before the end of this month, the respondent shall remain present in Subash Vidya Mandir on 1-4-2014 at 10.00 a.m. when the appellants shall allow the respondent to resume duty;

(iv) It will be open for the appellants to submit requisite bills to the concerned

authorities for release of the salary grant for payment of backwages to the respondent. It will be open for the appellants to rely upon relevant Government circulars;

(v) As and when the bills are submitted, the concerned authority shall process the same and take appropriate decision thereon within a period of three months from the date on which the bills are submitted;

(vi) In the event the bills are not sanctioned, it will be open for the appellants to take out appropriate proceedings;

(vii) We make it clear that even if the bills are not sanctioned, the appellants will be under an obligation to pay backwages to the respondent within a period of six months from 1-4-2014;

(viii) Parties concerned to act on authenticated copy of this judgment.