
(2014) 03 BOM CK 0053
In the Bombay High Court
Case No : W.P. No. 4099 of 2012

Syed Ishaque Syed Nabi

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

Constitution of India, 1950 — Article 30(1)
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 16, 3, 3(2), 6, 8
Maharashtra Employment Guarantee Act, 1977 — Section 10, 11, 13, 16, 3(2)

Citation : (2014) 6 ALLMR 356 : (2014) 4 MhLj 457

Hon'ble Judges : P.R. Bora, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : A.A. Naik, Advocate for the Appellant; B.P. Maldhure, AGP, Advocate for the Respondent

Final Decision : Dismissed

Judgement

P.R. Bora, J.—Heard finally with the consent of Shri Naik, learned counsel for the petitioners and Mrs. Maldhure, learned Assistant Government Pleader for the respondents, by issuing Rule and making it returnable forthwith. Refusal by the respondents to the proposal submitted by the petitioners in regard to reemployment of petitioner No. 1 beyond the age of superannuation on the post of Head Master of Shah Babu High School and Junior College, Patur, a School run by petitioner No. 2, is under challenge in the present petition.

2. Petitioner No. 2 is a Minority Education Institute registered under the provisions of the Societies Registration Act, 1860, as well as Bombay Public Trust Act, 1950. Petitioner No. 1 is a Head Master of Shah Babu High School and Junior College, Patur. Petitioner No. 1 was appointed as Head Master of the said School on 1-7-1992 and since then he continuously worked on the said post. Petitioner No. 1 was to retire on 30-6-2007 on attaining his age of superannuation. However, since the retirement date was coming in the middle of Academic Session and also considering the excellent service and outstanding record of

petitioner No. 1, petitioner No. 2 - Society passed a resolution on 3-3-2007, resolving to reappoint petitioner No. 1 for two years with effect from 1-7-2007. Accordingly, petitioner No. 1 was reappointed and a proposal was forwarded to the Government seeking approval. Respondent No. 4 granted such approval for the term ending on 4-11-2007. Subsequently, one more proposal was forwarded by petitioner No. 2 and the same was also approved by the respondents, granting approval to the appointment of petitioner No. 1 till the end of the Academic Session 2007-08. One more approval was granted by the respondents whereby reappointment of petitioner No. 1 was approved till the end of Academic Session 2008-09. It is the last proposal sent by petitioner No. 2 - society on 26-3-2009 seeking reappointment of petitioner No. 2 on the post of Head Master for the period of next two years i.e. for the Academic Session 2009-10 and 2010-11, which has been rejected by the respondents. The said rejection is questioned in the present petition.

3. Shri Naik, learned counsel, assailed the impugned order stating that the respondents have misconstrued the provisions of section 3(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as MEPS Act) and have failed to consider the spirit of Article 30(1) of the Constitution of India. The learned counsel submitted that petitioner No. 1, after his retirement, has been appointed by petitioner No. 2 by issuing a fresh appointment order and as such it is not the case of extension of service but of a fresh appointment or reappointment on the post of Head Master. According to the learned counsel, exemption granted to a Minority School u/s 3(2) of the MEPS Act, is squarely attracted in the present case. The learned counsel further argued that right to appoint a person of its choice as Head Master is of vital importance for a Minority institution. The learned counsel referred to a Government Resolution dated 25-2-2011 wherein decision has been taken to extend the age of retirement of the Principals of the College affiliated to Non-Agricultural University, Higher and Technical Colleges from 58 to 65 years. It is the contention of the learned counsel that the benefit of said Government Resolution deserves to be extended to the Heads of Private Schools or else it would amount to discrimination. The learned counsel places reliance on the judgment of this Court in the case of Guntvantlal K. Khamar vs. State of Maharashtra and ors., reported at 1993(1) CLR 295. He also places reliance on the judgment of the Hon'ble Apex Court in the case of N. Ammad Vs. The Manager, Emjay High School and Others,

4. The submissions so made on behalf of the petitioners have been strongly opposed by the learned AGP, who is appearing for the respondents. She supports the impugned order. Taking us through the provisions of the MEPS Act and Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as MEPS Rules), she has submitted that though the operation of the MEPS Act is excluded in respect of recruitment of the Head of the Minority School, insofar as conditions of service and other matters are concerned, the employees of Minority Schools are at par with the employees of

Private Schools. The learned AGP relied upon the judgment of this Court in the case of Shri K.P. Shukla and Others Vs. The State of Maharashtra and Others, The learned AGP submitted that the similar controversy had arisen in the said matter whereupon this Court held that though the operation of the MEPS Act is excluded in respect of recruitment of head of the minority school, it is applicable as far as conditions of service and incidental matters are concerned.

5. There is no dispute that petitioner No. 2 is a Minority institution. Section 3(2) of the MEPS Act, as amended, reads thus:

(2) Notwithstanding anything contained in sub-section (1), the Provisions of this Act shall not apply to the recruitment, of the Head of a minority school and other persons (not exceeding three) who are employed in such school and whose names are notified by the Management to the Director or, as the case may be, the Deputy Director for this purpose.

Section 3 prior to its amendment reads as follows:

3(1) The provision of this Act shall apply to all private schools in the State of Maharashtra, whether receiving any grant-in-aid from the State Government or not.

(2) Notwithstanding anything contained in sub-section (1), the provisions of this Act shall not apply to the recruitment, conditions of service and conduct and discipline of the Head of a minority school or any other persons (not exceeding three) who are employed in such school and whose names are notified by the Management to the Deputy Director for this purpose.

The Act was amended by introduction of Bill No. XI of 1987 and sub-section (2) of section 3 was amended which has already been reproduced above.

6. In the case of Gunvantlal K. Khamar vs. State of Maharashtra (supra), this Court has referred to the statement of objects and reasons, set out for bringing an amendment to sub-section (2) of section 3 which states that the amendment was brought so as to extend the applicability of the provisions of the Act to the matters relating to conditions of service and conduct and discipline to the employees of minority schools. It is, thus clear that except the right to recruit a person of its choice, the minority institutions were not given any voice or liberty or relaxation in other service conditions applicable to the employees of the Private Schools. The age of retirement is held to be a "condition of service" by the Hon"ble Apex Court in the case of Paiara Lal Vs. State of Punjab and another, whereas in the case of State of Andhra Pradesh, etc., etc. Vs. S.K. Mohinuddin, etc., etc, the Hon"ble Apex Court has held that "the conditions of service include condition as to the age of superannuation."

7. Shri Naik, learned counsel, for the petitioner tried to convince us that the proposal of petitioner No. 2 - institution was for reappointment of petitioner No. 1 and hence, was liable to be extended the concession as provided u/s 3(2) of the MEPS Act. We are, however, unable to accept the arguments so advanced by

the learned counsel.

8. The concept of recruitment insofar as MEPS Act is concerned, needs to be understood in the backdrop of scheme thereof. It deals with the concepts like promotion, reversion, supersession, termination, otherwise termination, dismissal, retirement or superannuation etc. Qualifications, pay scales, promotional avenues, leave, departmental inquiries etc. Provisions of Act and 1981 Rules framed thereunder regulate all these aspects.

9. Amendment to section 3 of APMC Act with the case laws cited by us clearly reveals an intention only to exempt the minority institution from provisions regulating the "recruitment" and not the other facets of employment like promotion, reversion, supersession, termination, otherwise termination, dismissal, retirement or superannuation etc. It is held to be a complete code in various judgments of this Court. In the case of Kewalram Kiranapure Vs. Manoharbai Shikshan Prasarak Mandal and Secretary, Mahatma Gandhi Junior College and The Dy. Director of Education, Nagpur Region, this Court has held that:

5. It is appropriate to look into the scheme of 1977 Act here. It's S. 4 prescribes terms and conditions of service of employees of private school. Sub-section (1) authorises State Government to frame Rules providing for minimum qualifications and procedure for recruitment, duties, pay, allowances, postretirement and other benefits, also other conditions of service and reservation. It's sub-section (2) enables State to prescribe code of conduct and mode/manner of conducting disciplinary action for its violation. S. 16 is the rule making power of the State Government which again mentions these subjects or items. Sub-section (6) of section 6 mandates that no employee of a private school can be suspended, dismissed or removed or otherwise terminated or shall be reduced in rank by the management except as per the provisions therein or in 1981 Rules framed thereunder. Employee dismissed or removed or otherwise terminated, reduced in rank or superseded by the management has been given right u/s 9 to appeal to a special tribunal called School Tribunal constituted u/s 8 thereof. It is settled law that in these matters the jurisdiction of civil Court has been taken away. Judgment of Full Bench of this Court in St. Ulai High School and Shri Adishakti Hindi Prachar Samitee Vs. Shri Devendraprasad Jagannath Singh and The Zilla Parishad, can be conveniently referred for this purpose.

6. 1981 Rules contain provisions on various subjects stipulated in section 6 and section 16 of 1977 Act. Rule 1 is about short title while Rule 2 contains relevant definitions. From Rule 3 till Rule 21, it deals with qualification and appointments/promotions of Headmaster, Teachers and non-teaching staff, their scales of pay and allowances, categories, service book, seniority, leave, vacations, writing of their confidential reports, assessment of their work, superannuation, reemployment, pension, provident fund, workload etc. Issues like resignations, transfer, contesting of an election are dealt with at its end by Rules 40 to 43. For present purposes, it is important to note that Rule 22 prescribes duties and code

of conduct. Rule 23 regulates private tuitions, Rule 24 lays down the mode and manner of making representation, Rule 25-A points out the mode and manner of termination when post is abolished, Rule 26 regulates retrenchment when the posts are abolished and Rule 27 lays down principles thereof. Removal or termination is taken care of by Rule 28 and penalties which can be imposed on employee. It also defines what is misconduct, moral turpitude, wilful and persistent negligence of duty and incompetence. Rule 30 casts some obligation upon management when it imposes punishment of withholding of increment. Punishments are classified either as minor or major under Rule 31. Procedure for imposing minor penalties is given under Rule 32 while Rule 33 is for major penalties. Payment of subsistence allowance is under Rule 34 while conditions of suspension are under Rule 35. Constitution of Inquiry Committee and step by step procedure is then in Rules 36 and 37. Rule 38 restrains management from delegating to any subordinate authority except chief executive officer power to execute the decision of inquiry committee about termination or reduction in rank. Rule 39 then elaborates procedure for filing an appeal before the school tribunal.

10. In the case of Madhukar Sawarkar Vs. Director of Education, Maharashtra State and Others, this Court has held--

15. As already stated above, the purpose of Management Act, 1976 is very limited and it is for taking over management of property of certain educational institutions for a limited period. It, therefore, operates in different field. The provisions of the M.E.P.S. Act, 1977 squarely regulate the recruitment and the conditions of service of employee in private schools and therefore, govern the service condition of respondent No. 3. It is, therefore, apparent insofar as the matters relating to recruitment termination, dismissal, promotion etc. are concerned, the M.E.P.S. Act, 1977 will have overriding effect over the provisions of the Management Act, 1976. The provisions of section 9 begin with a non-obstante clause and it is clear that, therefore, said section will supersede provisions of section 3(7)(f) of the Management Act, 1976. In this respect, it is to be noted that when the Management Act, 1976 came into force, there was no such School Tribunal functioning. The M.E.P.S. Act has been later on enacted. Perusal of provisions of section 8(3) of the M.E.P.S. Act, 1977 reveals that a person holding a judicial office not lower in rank than that of Civil Judge (Sr. Dn.) or a person practising as an Advocate or Attorney for not less than seven years is eligible for being appointed as a Presiding Officer of the School Tribunal.

Perusal of section 9 also shows that a right of appeal in the matter of dismissal, removal or termination or reduction in rank or supersession has been given to the employee and period of limitation is also prescribed. Therefore, sub-section (2) of section 10 which prescribes general powers and procedure of Tribunal, specifically states that the Tribunal has powers as are vested in an Appellate Court under the Code of Civil Procedure, 1908 and it has also been given powers to stay the operation of any order against which an appeal has been preferred. It has also been authorised to decide the procedure to be followed by the Tribunal

for the disposal of its business including the place or places at which and the hours during which it shall hold its sittings. Section 11 also lays down the scope and parameters of other appropriate reliefs which can be given by the School Tribunal to employee while allowing the appeal either partially or wholly. Section 8 makes adjudication of School Tribunal final and section 13 provides for penalty to Management for its failure to comply with the Tribunal's directions. The M.E.P.S. Rules, 1981 framed under the M.E.P.S. Act deal with all provisions and aspects of employer-employee relationship like eligibility, qualifications for recruitment and promotions, recruitments for backward classes, leave, resignation, abolition of posts, retrenchment, absorption of surplus staff in other schools, code of conduct, procedure of departmental enquiries, termination, dismissal etc. Management Act, 1976 does not deal with or prescribe these matters and the M.E.P.S. Act with 1981 Rules framed thereunder reveal unequivocal intention of framers to enact complete code and law in this respect. This later law, therefore, provides a more effective and impartial forum for decision of such disputes and to that extent, eclipses the jurisdiction u/s 3(7)(f) of the Management Act.

11. Rule 17 of 1981 Rules enables only a teacher to continue even after completion of age of superannuation only in limited situations and by way of an exception. This concession granted cannot become a general condition of service applicable to everybody on uniform basis and cannot be extended to others either directly or indirectly. Hence, service till employee goes out of employment as per statutory terms and conditions can be only treated as valid for said enactment. It does not envisage any employment or its continuation after reaching the age of superannuation. It, therefore, does not envisage any re-employment or entry into employment thereafter. No employment or employee whose services cannot be regulated by or subjected to said Act or Rules, therefore legally exists or can be even thought of. It is therefore not permissible to construe term "recruitment" as one which encompasses the concept of either "continuation" or "reemployment" within itself. Such an interpretation will be creating a lacuna in an otherwise complete code. Re-employment is thus not covered within the scope of "recruitment" as understood in MEPS Act or 1981 Rules. Section 3(2) therefore does not extend any special treatment to the minority managements in the matter of reemployment or continuation of teachers who have crossed the normal age of superannuation. For the reason stated above, we do not find any merit in the present petition. Accordingly, the same is dismissed. Rule is discharged. However, there shall be no order as to costs.