
(2001) 03 BOM CK 0003
In the Bombay High Court
Case No : Writ Petition No. 468 of 1986

Syed Nasiruddin	Vs	APPELLANT
N.B. Shaikh and others		RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Constitution of India, 1950 — Article 141, 226, 227
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5(2)

Citation : (2001) 03 BOM CK 0003

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : P.K. Joshi, for the Appellant; K.R. Deshpande holding for Pradeep Deshmukh for respondent No. 1 and N.B. Khandare, Assistant Government Pleader for respondent No. 3/State, for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—The petitioner challenges the judgment and order dated 2nd January, 1986 in Appeal No. 66 of 1983 by the School Tribunal, Amravati and Aurangabad. The contention of the petitioner is that the termination of the petitioner from the services from the employment with the respondent No. 1 in spite of being contrary to the procedure prescribed by law, the Tribunal has illegally upheld the same and, therefore, has rendered the judgment and order which is bad in law.

2. The first ground of the challenge to the impugned judgment of the Tribunal is that Tribunal ignoring the provisions of law contained in terms of section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977, and the protection available to the petitioner thereunder, has held that the petitioner was not a permanent employee and, therefore, is not entitled for protection in terms of the said provisions of law and that, therefore, no fault can be found with the order of termination of the petitioner issued by the respondent

- Management. According to the learned advocate there was neither any enquiry held before the termination of the services of the petitioner nor even the basic principles of natural justice were followed but the same was totally overlooked by the School Tribunal. Secondly, it is contended that from the defence before the Tribunal it was apparent that the termination of services was by way of punishment on account of alleged misconduct on the part of the petitioner during his employment in the school and being so it was mandatory for the Management to serve necessary charge sheet and to hold enquiry into the allegation of misconduct by the petitioner and thereafter to arrive at the appropriate decision in the matter. Having not done so and the same having been ignored by the Tribunal while confirming the order of termination, the Tribunal has acted illegally and arbitrarily. It is also contended that the stand taken by the management before the Tribunal apparently discloses inconsistent pleas inasmuch at one point it was stated that the petitioner was terminated from service since January 1981, at the same time it was contended that the petitioner resigned from his services in January 1981. Simultaneously it was also contended that the services of the petitioner were terminated on account of misconduct of the petitioner. These inconsistent pleas sufficiently disclosed arbitrary exercise on the part of respondents in the matter of termination of the services of the petitioner. However, the same also has been totally ignored by the School Tribunal. Reliance is placed in the decision of the Apex Court in the matter of Chandra Prakash Shahi vs. State of V. P. and others reported in 2000 AIR SCW 1816, D. K. Yadav vs. J.M.A. Industries Ltd. reported in 1993 2 CLR 116, V. P. Ahuja vs. State of Punjab and others reported in 2000 AIR SCW 792 and Prabhakar Shrikrishna Kokade vs. Adivasi Magaswarg Shikshan Mandal Sindewahi reported in 1993 Mh.L.J. 375. On the other hand, it is contended on behalf of the management that the petitioner was not a permanent employee and before terminating his services 2 notices were served upon the petitioner calling upon the petitioner to show cause as to why action should not be taken against him, one on 14-10-1980 and other on 25-11-1980 and yet no reply was filed by the petitioner. Thereafter, the management had taken decision to terminate the petitioner. It was further contended that the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 came into force with effect from 15th July, 1981 and, therefore, the provisions of the said Act were not applicable at the relevant time. However, the management had followed the principles of natural justice. Besides it is also contended that in the course of appeal necessary affidavits of the witnesses in support of the management's case were filed and the Head Master was subjected to the cross examination by the petitioner. Considering the said materials before the Tribunal, the Tribunal has held that the petitioner was liable to be terminated and therefore has refused to interfere with the order of termination of the services of the petitioner. It was further contended that considering the nature of allegations against the petitioner it was not necessary for the petitioner to examine the girls or the ladies, who were the victims of the alleged misbehaviour on the part of the petitioner and in that connection reliance is sought to be placed in the decision of

the Division Bench of this Court in the matter of Kumarnagar Social Welfare Center, Dhule vs. Vinayak Yadave Patil reported in 1993(1) Mah.L.R. 156. It was also contended that considering the fact that the matter is being considered in exercise of the powers under Article 227 of the Constitution of India, the scope of the petition is very limited and in that connection reliance is placed in the decision of the Apex Court in the matter of Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, and The State of Orissa and another vs. Murlidhar Jena reported in AIR 1963 SC 404.

3. It cannot be disputed that the scope of powers under Article 227 of the Constitution of India is very limited. Indeed, the Apex Court in Dharangadhra Chemical's case has clearly ruled that in the matters where the Industrial Tribunal has jurisdiction to decide the question sought to be raised by the parties before it and on appreciation of the materials placed before it, arrives at its own conclusion in respect thereof, the High Court exercising its jurisdiction under Articles 226 and 227 of the Constitution is not competent to set aside any such finding of fact reported by the Tribunal. So also in State of Orissa vs. Murlidhar Jena's case the Apex Court has held that in proceedings under Articles 226 and 227 the High Court cannot sit in appeal over the findings recorded by a competent tribunal, in a departmental enquiry. If the High Court purports to reappraise the evidence for itself, then it amounts to travelling beyond the scope of its jurisdiction. However, it is shown that the impugned findings recorded by the Administrative Tribunal are not supported by any evidence, the High Court would be justified in setting aside the findings.

4. Perusal of the impugned judgment discloses that the petitioner was employed with the respondent Management with effect from 12-6-1979 and the services came to be terminated with effect from 2-1-1981. The finding that for all purposes the date of commencement of the petitioner's employment in the services of the respondent management was 12-6-1979 was arrived at based on the fact that the concerned Education Officer by his letter dated 1-5-1979 has granted necessary approval for the employment of the petitioner in the services of the respondent Management in the capacity as a clerk with effect from 12-6-1979. Being so, no fault can be found with the said finding of the Tribunal which is based on the necessary material placed on record by the parties. Undisputedly there is no other material available before the Tribunal nor has been placed before this Court to arrive at any other conclusion about the employment of the petitioner in the services of the respondent management prior to the said date. Being so, the petitioner having not completed the period of two years, had not acquired the status of a permanent employee with the respondent on the relevant day.

5. The point which is sought to be raised on behalf of the petitioner is that irrespective of the fact that whether the petitioner was permanent employee or temporary employee, in case of termination of such employee necessary principles of natural justice ought to have been followed and this having not been

followed the termination cannot be sustained. The Tribunal on analysis of the materials on record has found that the conduct of the petitioner had been of such a nature that no fault can be found with the management for terminating his services. The Tribunal has referred to the statement of the Head Master and the Secretary of the society as well as the teachers namely Shaikh Gani s/o Babasaheb and Shaikh Chandpasha s/o Fatru Saheb and on analysis of their statements alongwith the statement of the petitioner has held that the evidence clearly established that the petitioner had assaulted the headmaster with intention to insult him and that the petitioner was involved in acts of moral turpitude adversely affecting the school inasmuch as on account of such behaviour the number of girl students in the school had decreased and it had adversely affected the reputation of the school. The misconduct on the part of the petitioner being prejudicial to the reputation of the school, the Tribunal has held that taking note of the same no fault can be found with the decision of the management to terminate the services of the petitioner. It is not in dispute that the affidavits of the said witnesses were placed on record and one of the material witnesses therefrom i.e. the Head Master and the Secretary of the Society was subjected to cross-examination by the petitioner. It is also a matter of record that after termination of services of the petitioner, he had approached the Education Officer with a complaint in that regard and the education authority had made necessary enquiry into the matter and had arrived at a finding that no fault can be found with the management for terminating the services of the petitioners in the facts and circumstances disclosed in the course of such enquiry. No doubt, it was sought to be contended that the said enquiry was not made by complying with the principles of natural justice and no value can be attached to such enquiry held on the back of the petitioner. However, the fact remains the petitioner availed full opportunity to meet the charges against him in the course of hearing of the matter by the School Tribunal. It is to be noted that the order of termination of services of the petitioner was subject matter of the dispute before the Tribunal. In the course of enquiry in that regard detailed opportunity was made available to the petitioner to meet the charges against him and after full enquiry in the matter the Tribunal has arrived at the conclusion that the petitioner has been guilty of the misconduct and acts of moral turpitude. In the circumstance, merely because no charge sheet was issued initially and no enquiry was conducted in that regard by the Tribunal can it be said that there is violation of principles of natural justice so as to justify interference by this Court in the order of the School Tribunal? At this stage it would be advantageous to refer to the decision of the Apex Court in *Somnath Sahu Vs. The State of Orissa and Others*, . In the said decision the appellant before the Apex Court has assailed the order passed by the respondent-Government thereon on 11-3-1960 to be illegal, because no enquiry into the alleged misconduct was conducted before passing the order of termination of services. After passing the said order, the appellate authority entertained the appeal filed by the appellant therein and the appellate authority refused to interfere in the order of dismissal. In those circumstances considering the fact that the appellant had preferred an appeal

and the proceedings in the appeal being continuation of the original proceedings it was held that the original order of termination had merged in the order of the appellate authority. Therefore, it was appellate authority's decision alone which was in existence and operative in law and was capable of enforcement and, therefore, the Apex Court had refused to interfere in the order of appellate authority even though originally there was no enquiry held. The relevant observations of the Apex Court therein read thus:

"We shall, however, assume in favour of the appellant that the order of respondent No.4 dated 11th March, 1960 was illegal because no inquiry into the alleged misconduct was made before making that order. Even on that assumption we are of the opinion that the appellant is not entitled to the grant of a writ under Article 226 of the Constitution.....The appellant was heard by the State Government in support of his appeal and ultimately the State Government dismissed the appeal in its order dated the 2nd January, 1962. In these circumstances we are of opinion that the order of respondent No. 4 dated the 11th March, 1960 has merged in the appellate order of the State Government dated the 2nd January, 1962 and it is the appellate decision alone which subsists and is operative in law and is capable of enforcement. In other words the original decision of respondent No. 4 dated the 11th March, 1960 no longer subsists for it has merged in the appellate decision of the State Government and unless the appellant is able to establish that the appellate decision of the State Government is defective in law the appellant will not be entitled to the grant of any relief. There can be no doubt that if an appeal is provided by a statutory rule against an order passed by a tribunal the decision of the appellate authority is the operative decision in law if the appellate authority modifies or reverses it. In law the position would be just the same even if the appellate decision merely confirms the decision of the Tribunal. As a result of the confirmation or affirmance of the decision of the Tribunal by the appellate authority the original decision merges in the appellate decision and it is the appellate decision alone which is subsisting and is operative and capable of enforcement. (See the decision of this Court in Commissioner of Income Tax, Bombay Vs. Amritlal Bhogilal and Co., and Madan Gopal Rungta vs. Secretary to the Government of Orissa reported in 1962 Supp 3 SCR 906).

The High Court is not constituted under Article 226 of the Constitution as a Court of Appeal over the decision of a statutory authority hearing the appeal. Where there is some evidence which the appellate authority has accepted and which evidence may reasonably support the conclusion that the officer was guilty of improper conduct, it is not the function of the High Court in a petition for writ under article 226 to review the evidence and to arrive at an independent finding on the evidence."

6. As already observed above, the Tribunal on detailed assessment of the evidence and the materials placed before it has arrived at the finding that the said material disclosed the acts of moral turpitude on the part of the petitioner

adversely affecting the reputation of the school of the respondent and this was reflected from the decrease in the number of girl students in the school and this fact was deposed before the Tribunal by none other than the Head Master of the school. The grievance of the petitioner that the girl students who are said to be the victims by the alleged acts on the part of the petitioner were not examined. However, as rightly submitted by the learned advocate for the respondent, it was not necessary for the management to produce such witness in support of the allegations of the acts of moral turpitude by the petitioner as has been held by the Division Bench of this Court in the matter of Kumarnagar Social Welfare Centre Dhule 's case (supra). The Division Bench of this Court by referring to its earlier unreported decision in Ulhasnagar Teachers Education Society vs. Shri P. B. Patil and another decided on 25th September, 1990, has held that in regard to incidents of outraging the modesty of girl students or lady teachers no full dressed enquiry is warranted in view of the specific words of Rule 28 sub-rule (2). It was clearly held that application of general rules of natural justice are excluded in such cases, because it is a matter of common knowledge that female folk would not appear for such cross-examination, shyness being the part of their natural behaviour. It is further observed that on sexual overtures, the female teacher or student would not be immediately driven to make open grievance. Any precipitate action may invite undesirable comments from the society at large. When a female is involved in a scandal, the female, although a victim, is looked upon with askance as to why she should be associated with another male. Silence is therefore a golden mean which she would follow in a given situation. She may chose to suffer ignominy rather than allow cross-examination where malicious and defamatory suggestions could be made. Bearing in mind the said decision of the Division Bench of this Court, no fault can be found with the management for not examining the lady teachers and the girl students who might have been the sufferers on account of any alleged act on the part of the petitioner.

7. There is no doubt that the Apex Court in D. K. Yadav's case as well as in Chandra Prakash Shahi's case has held that the services of the employee cannot be terminated arbitrarily and without complying with the principles of natural justice. The proposition of law is well established besides having found sanction in exercise of powers under Article 141 of the Constitution of India by the Apex Court. However, the application of the proposition of law would certainly dependent on the facts of each case. Bearing in mind, the said proposition of law and simultaneously considering the decision of the Apex Court in the matter of Somnath Sahu's case (supra) and considering the facts of the case in hand, it cannot be said that there has been any violation of principles of natural justice in the matter of the petitioner's case. Even though at the initial stage before issuing the order by the management, there was no full dressed enquiry held, yet the fact remains that necessary notice calling for explanation from the petitioner was issued to him on 14th October, 1980 and having not received any reply thereto the management had afforded second opportunity to the petitioner

on 25th November, 1980 and yet on both the occasions the petitioner chose to remain silent and totally non cooperative in the matter. The petitioner himself having chosen to be totally non cooperative in the matter, no fault can be found with the management having proceeded to take appropriate decision in the matter and that too after considering the facts and circumstances which apparently disclose the allegations of acts of moral turpitude which has been adversely affected the reputation of the school. In spite of these facts, it is also a matter of record that the School Tribunal before taking final decision in the matter gave ample opportunities to both the parties to produce necessary evidence in support of their rival contentions and after availing full advantage thereof, the parties had not only filed affidavits but also cross-examined the witnesses whoever required to be cross-examined by the parties. It is to be noted that the Apex Court in State of Orissa vs. Murlidhar Jena's case the Apex Court held that the while holding enquiry, the Tribunal is not governed by the strict and technical rules of evidence and sufficient compliance of principles of natural justice will meet the ends of justice. In the case in hand it cannot be said that it is a mere compliance of principles of natural justice as the parties had availed full opportunity to cross-examine the deponents. In fact all the technical rules of evidence have been complied with before deciding the matter. Being so, no fault can be found with the impugned judgment.

8. The decision in the matter of D. K. Yadav vs. J.M.A. Industries" case has no application to the case in hand as that was a case of a permanent employee and even otherwise it cannot be said that in the case in hand there is any miscarriage of justice as it is seen that the rules/principles of natural justice have been fully complied with while deciding the matter by the School Tribunal.

9. The decision of the Division Bench of this court in Prabhakar Shrikrishna Kokade's case is also not relevant in the case in hand. The same was delivered in different set of facts before the Court. Therein the termination of service was challenged by the petitioner and it was sought to be defended on the ground that Rule 28(2) and (3) of the Rules of 1981 permitted the termination of the petitioner. However on the basis of material placed before the Court it was found that the termination could not have been justified under the said provisions and therefore it was held that the termination was bad. That is not the case in the matter in hand. Undisputedly, the said rules were not in force at the relevant time. The record discloses sufficient compliance of principles of natural justice.

10. In the circumstances, therefore, there is no case for interference in the impugned order and hence the petition fails and is hereby dismissed. Rule is discharged with no order as to costs.