
(2003) 09 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition No. 2311 of 1990

The President, Janata Shikshan Mandal and Another

APPELLANT

Vs

Subhash Vithoba Shelke and Another

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2004) 2 ALLMR 120 : (2004) 3 BomCR 754 : (2004) 106 BOMLR 909

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This writ petition under Article 227 of the Constitution of India takes exception to the judgments and orders dated September 25, 1989, and March 1, 1990, passed by the Presiding Officer, College Tribunal, Pune/Shivaji University, Pune in Appeal No. 11/89(S).

2. The respondent No. 1 was appointed as part-time lecturer in English subject on 18th July, 1987. The appointment order clearly mentions that the appointment is on probation upto 2 academic years, i. e., 1987-88 and 1988-89. The petitioners terminated the services of the Respondent No. 1 by letter dated 29th March, 1989 with effect from 29.6.1989, which is before the expiry of two years" probation period. On perusal of the termination letter, no doubt the same is termination simpliciter. Nonetheless, the respondent No. 1 challenged the action of the petitioner by way of statutory appeal before the College Tribunal. The petitioners resisted the appeal preferred by the respondent No. 1 and justified the termination of the respondent No. 1 on the ground that his performance was unsatisfactory for the relevant period. That aspect has been considered by the College Tribunal in the impugned judgment and order and the stand taken on behalf of the petitioner has been rejected. In other words, the Tribunal has found that the termination was illegal, as there was no valid reason for terminating the services of respondent No. 1. Against that decision, the

petitioner had filed writ petition in this Court, being Writ Petition No. 5282/1989. However, it appears that the said writ petition was withdrawn on December 13, 1989. In the memo of writ petition, paragraph IX, the order passed on that writ petition has been reproduced, which reads thus :

Allowed to be withdrawn to approach the Tribunal in regard to the alleged factual errors in its judgment.

Copy of the order as passed by this Court has not been produced, except what is reproduced in the memo of writ petition, referred to above. Assuming that the petitioner had liberty to file the present writ petition, we would proceed to decide the matter on merits. Be that as it may, after withdrawing the earlier writ petition, the petitioner moved the College Tribunal for correction of the alleged factual errors in the judgment dated September 25, 1989. The Tribunal has found that there were no factual errors in its earlier judgment and, accordingly, directed issuance of the original judgment again to the petitioner for compliance. That order was passed on 1st March, 1990, which is also subject matter of challenge in this writ petition.

3. Mr. Railkar, for the petitioners, contends that respondent No. 1 was appointed on probation basis and, therefore, it was open to the petitioners to terminate his services at any time before completion of the two years' probation period without assigning any reason. He further submits that the termination order is simpliciter termination of the respondent No. 1 and it has not attached any stigma, for which reason the Tribunal could not have interfered with the said termination order. He submits that the petitioner was not required to assign any reason even before the Tribunal when the termination order was under challenge before that forum, as it was not obliged to give any reason while terminating the services of respondent No. 1. He further submits that in any case the petitioner had produced ample material to justify the termination order on the ground that the performance of respondent No. 1 during the relevant time was found to be unsatisfactory and that is a subjective satisfaction reached by the appropriate authority, which cannot be a matter of adjudication before the Tribunal. He has placed reliance on the unreported decision of this Court in the case of *The Head Mistress, Sister Nivedita English Medium School and Anr. v. Shri Kodanipani R. Kulkarni* decided on 25.6.2002 to buttress the above submissions.

4. On the other hand, the Counsel for respondent No. 1 contends that the Tribunal has given valid and cogent reasons for interfering with the termination order, having found that there was no material to sustain the justification pressed into service on behalf of the petitioner for supporting the termination order on the ground that the performance of respondent No. 1 was unsatisfactory. He submits that the finding of fact reached by the Tribunal does not deserve any interference in exercise of writ jurisdiction.

5. Having considered the rival submissions, I find substance in the objection raised on behalf of respondent No. 1 that this is not a fit case for interference in

exercise of writ jurisdiction. I shall presently indicate the reasons to support that conclusion.

6. According to the petitioners, the petitioners were entitled to terminate the services of the respondent No. 1 before completion of the probation period. There can be no dispute with this proposition. There is also no dispute that the termination order as issued on 29th March, 1989, to come into effect from 29th July, 1989, will be before completion of probation period from the date of appointment, i.e., 18th July, 1987. However, it is not possible to countenance the submission, as pressed into service on behalf of the petitioner that It was not necessary for the petitioner to indicate any reason, so as to justify the termination order as passed, even before the Tribunal. However, although the petitioners are entitled to terminate the services of the respondent No. 1 before completion of probation period by issuance of order of simpliciter termination, that does not mean that when the validity of that order is challenged before the competent forum, the management is not obliged to offer justification. That submission cannot be accepted. On the other hand, when the validity of such order is challenged, the management is obliged to support that order by indicating the ground on which that has been passed, either on account of misconduct or unsatisfactory performance, as the case may be. If such grounds are not available and Invoked, the decision of the management of terminating the services of a probationer cannot be said to be legal and valid, simpliciter termination though. In the present case, however, the management has produced material before the Tribunal to justify the order of termination. The Tribunal has addressed to each of those documents and has found that the credibility of those documents was questionable and has also observed that the documents, which can be looked into did not reveal the factum of opinion recorded about the incompetence of the respondent No. 1 during the relevant period. Moreover, the Tribunal has found that the requirement in Statute 202 has not been observed by the Management, as that position has not been substantiated from the record, as produced. It is on this reasoning the Tribunal has found that the materials relied on by the petitioners to justify the order were untenable. In paragraph 8 of its judgment, the Tribunal has discarded the documents produced by the petitioners by observing that there was discrepancy in the copies of the documents supplied to respondent No. 1 and those produced before the Court. That is a finding of fact, which is recorded by the Tribunal and has not been questioned before this Court. If that finding of fact is to prevail, then the basis for discarding the said documents as assigned by the Tribunal in paragraph 8 of its judgment cannot be interfered with; rather, it will have to be upheld. Moreover, the Tribunal has observed in paragraph 13 of its decision that there is nothing on record to show that the procedure, as is required to be followed under Statute 202 for recording of the assessment of the teacher's work has been observed by the management. That is also a finding of fact, which cannot be interfered with in exercise of writ jurisdiction. Moreover, nothing has been brought to my notice that the said finding is inappropriate in any manner.

7. However, to get over this position, Mr. Railkar contended that the service condition of a probationer would be governed by Statute 198 alone and looking at that provision, there was nothing to suggest that the assessment of the teacher was to be maintained in a particular manner as is sought to be contended and which fact had weighed with the Tribunal. I find no substance in this argument. No doubt, Statute 198 deals with the service conditions of a probationer. The relevant portion thereof reads thus:

1. A teacher shall, subject to the procedure prescribed for selection and appointment, be appointed, in the first instance on probation for 24 months from the date on which he joins his duties at the end of which he shall be confirmed or his services dispensed with provided that intimation of such confirmation or notice of termination of service is given atleast one month before the due date, in absence of which it shall be construed that he has completed the period of probation satisfactorily and that he has been confirmed in service.

Provided also that it will not be necessary to assign any reasons for terminating the services of a teacher on probation if it is held that he has not completed his probation satisfactorily.

The Governing Body of the College/Recognised Institution may in very exceptional cases and for reasons to be recorded, reduce the period of probation and shall have the power to assess the suitability of a teacher for confirmation even before the expiry of the period of 24 months from the date on which he joins his duties but not earlier than 9 months from that date on the basis of the assessment report justifying special consideration.

However, there is nothing to suggest that the management is not obliged to follow the procedure stated in Statute 202 for assessment of teacher's work, which will have to be done for testing the action of the management of terminating the services of a probationer, albeit simplicities termination. Statute 202 reads thus:

In order to enable the Principal/Head of the Recognised Institution to evaluate the work of a teacher, the teacher should prepare the academic programme at the beginning of each term and submit the same to the Principal/ Head of the Recognised Institution through the Head of the Department and at the end of each term he should submit to the Principal/Head of the Recognised Institution a detailed report in writing of the work done by him.

In addition the Assessment Report of the teacher shall be maintained by the Principal of the College/Head of the Recognised Institution for the following purposes:

1. Six monthly report during the period of probation.
2. Confirmation in Service.
3. Interview for a higher post.

4. To determine once in every three years whether the teacher continues to take his work seriously.

5. On other occasions when required for specific purposes.

The adverse remarks as well as remarks of appreciation of any outstanding work be brought in writing to the notice of the person concerned by the Principal of the College/Head of the Recognised Institution; or Chairman of the Governing Body in the case of Principal/Head of the Recognised Institution with a view to making improvement in the work, by the person concerned, if the report is adverse.

On plain reading of this statute, the concerned teacher is required to prepare academic programme at the beginning of each term and submit the same to the specified authority and at the end of each term, he has to submit to the specified authority in writing of the work done by him. That submission is one of the basis for recording of assessment report. The assessment report of the teacher is required to be maintained by virtue of these provisions by the specified officer amongst others for six monthly report during the period of probation as also for confirmation in service of the petitioner. The provision further stipulates that if there is any adverse remark, the same should be brought to the notice of the concerned teacher in writing with a view to enable the teacher to make improvement in the work, if the report is adverse. There is nothing on record to suggest that such a course was adopted before recording the assessment report, which is referred to at Exhibit C collectively, originally marked as Sr. Nos. 1 to 5, with Exhibit 40 before the Tribunal, as mentioned in paragraph 8 of the judgment. Even for this reason, the assessment report which is sought to be relied upon will be of no avail to the petitioner.

8. Mr. Railkar then relied upon the document at Exhibit D, which is noting of the Principal, dated 6th October, 1988, recording the lesson observations of the Principal. It mentions certain suggestions to be followed by respondent No. 1. However, it appears that this document was not pressed into service before the Tribunal, as there is no mention of this document in the entire decision of the Tribunal. Mr. Railkar fairly accepts that this document was not pressed into service before the Tribunal. If that is so, the said document cannot be looked into for the first time before this Court, so as to entitle the petitioners to justify the impugned termination order on that basis.

9. Mr. Railkar had then relied on document at Exhibit E, which is a letter issued by the Principal to the respondent No. 1 dated 31st December, 1988. The Tribunal has considered this document in paragraph 7 of its judgment. According to the Tribunal, the document nowhere mentions about the incompetence or unsatisfactory work of respondent No. 1. I find no reasons to depart from the opinion expressed by the Tribunal with regard to the purport of this document as stated in paragraph 7 of the impugned judgment. No interference is warranted in that regard.

10. No other document has been relied upon before this Court to question the correctness of the decision of the Tribunal or to support the termination order, which was subject matter of challenge before the Tribunal. In that sense, there is no infirmity either in the approach or the conclusion reached by the Tribunal, which deserves to be interfered with by this Court in exercise of writ jurisdiction.

11. That takes me to the unreported decision of this Court relied upon by Mr. Railkar. Reliance placed on this decision is obviously ill-advised. In this case, the Court was concerned with the finding recorded by the School Tribunal that the teacher had successfully completed two years' probation period, which finding was error apparent, as the termination order was passed within two years of the probation period. It is on that basis the Court proceeded to allow that writ petition filed by the management and the observations made therein will have to be understood in that context alone. Whereas in the present case, we are concerned with the question as to whether the termination order issued by the petitioners as against respondent No. 1 is valid and legal. It can be said to be legal and valid only when the management would successfully demonstrate that the same was issued because of the unsatisfactory performance or misconduct of the respondent No. 1. However, for the reasons recorded above, none of those grounds were available to the petitioner management. If that is so, the termination order, though simpliciter, cannot be sustained in law. Therefore, no interference is warranted with the conclusion reached by the Tribunal in setting aside the same and passing the necessary orders thereafter.

12. No other contention has been raised before me. Hence, writ petition is dismissed. Rule discharged. No order as to costs.