

(2017) 11 BOM CK 0009
In the Bombay High Court
Case No : 6739 of 2006

Uma

APPELLANT

Vs

The State of Maharashtra & Ors.

RESPONDENT

Date of Decision : 29-11-2017

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of??Service) Act, 1977, —
Section 5(2), Section 9(1)(a)
Maharashtra Employees of Private Schools (Conditions of??Service) Rules, 1981, —
Rule 26(2), Rule 25-A

Citation : (2017) 11 BOM CK 0009

Hon'ble Judges : Ravindra V. Ghuge, Sunil K. Kotwal

Bench : DIVISON BENCH

Advocate : V.D. Gunale, Anjali B. Dube, V.S. Choudhary

Judgement

1. The first Writ Petition has been filed by the employee, who is the original appellant before the School Tribunal, putting forth prayer clause 26(C) as under :
"(C) By issuing appropriate writ, order or directions, the impugned order passed by respondent Nos.4 and 5 dated 7.8.2006 retrenching the services of the petitioner, be quashed and set aside. Consequently, the petitioner be allowed to resume the duties in respondent No.5 College and she be paid her regular monthly salary."

2. The second petition has been filed by the management, for challenging the judgment and order dated 25.11.2004, delivered by the School Tribunal, Solapur in Appeal No.348/2004, filed by the appellant/ employee, by which the original appellant has been granted reinstatement with continuity and full back wages.

3. The first petition lies before this Court. The second petition was to be considered by the learned Single Judge of this Court. However, on the request motion of the parties, the learned Administrative Judge of the Aurangabad Bench has passed an order dated 27.9.2017, thereby listing the second petition along with the first petition before this Court. It is in this backdrop that we have

considered both the petitions together finally.

4. So far as the first petition is concerned, learned counsel for the original appellant submits, on instructions, that pursuant to the judgment of the Tribunal, granting reinstatement in service, the appellant was reinstated and as there was no work available, she was absorbed in another institute. Thereafter, she applied for voluntary retirement and has now retired from service on the basis of her application. Hence, the appellant does not desire to prosecute the first petition, and the same can be disposed of.

5. Insofar as the second petition is concerned, learned counsel for the appellant submits that, if the management is prosecuting the second petition, then the petitioner would not be inclined to withdraw her petition, and the prayers set out in the said petition will be pressed.

6. We find that, the second petition deserves to be entertained first, as it pertains to the legality and validity of the order of reinstatement of the appellant with continuity and full back wages.

7. Learned counsel for the management in the second petition, has strenuously criticised the impugned judgment of the School Tribunal. The contention is that, the educational Trust, which predominantly conducts colleges in the Arts, Science and Commerce faculties, started a new course, which is by way of a training course, termed as "Minimum Competency Vocational Course (M.C.V.C.) in Electronic Technology, was started. The minimum strength of the students for operating the said course and for recognition, was 15. The appellant was appointed on 4.8.1989 and since then, had continued in service.

8. It is then stated that, as the strength of the students fell below 15, the competent authority issued a notice to the petitioner institution, dated 2.12.2002, indicating that, if the strength of the students does not rise, the recognition of the said institution would be discontinued and then, the payment of wages/ salary of the employees would be the burden to be shouldered by the educational institution. It is, therefore, strenuously contended, on the basis of Rule 25-A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 that the employer is obliged only to issue a notice of three months to the employees of such institution, which is to be closed down on account of the direction of the Department.

9. It is then contended that, the management issued a notice dated 2.12.2002, and notice dated 7.12.2002, to the appellant, informing her that her services would be dispensed with. A further notice was issued on 13.1.2012.

10. Since the appellant approached the School Tribunal by preferring Appeal No.61/2003, the management contended before the Tribunal that there was no termination of the appellant and as the appellant has not been issued with any termination order, the appeal is premature since there is no cause of action.

11. The learned counsel for the appellant respondent has strenuously supported

the impugned judgment. In addition thereto, he prays that, this Court should consider the prayer of illegal retrenchment by the management on 7.8.2006 and should direct the release of salary from the said day.

12. We have gone through the record available in the light of the submissions of the learned Advocates. Rule 25-A of the 1981 Rules reads as under : 25-A) Termination of service on account of abolition of posts :-

(1) The services of permanent employee may be terminated by the Management on account of abolition of posts due to closure of the school after giving him advance intimation of three months to the effect that in the event of closure of the school, his services shall automatically stand terminated. In the case of closure of school due to de-recognition, such advance intimation of three months shall be given by the Management to the permanent employees after receipt of a show cause notice from the Deputy Director. Explanation:-For the purpose of this sub-rule, the expression "closure of the school" shall include :- (i) voluntary closure by the Management of the entire school if it is imparting instruction through one medium or a part of the school comprising one or more media of instruction if it is imparting instruction through more than one medium; and

(ii) closure of the school due to de-recognition by the Department. (2) The names of the employees in aided schools, whose services stand terminated in accordance with sub-rule (1) on account of de-recognition and who are not directly responsible for such de-recognition, shall be taken on a waiting list by the Education Officer in the case of Primary and Secondary Schools and Junior college of Education, and same shall be recommended by him to the Managements of newly opened aided schools or of the existing aided schools which are allowed to open additional divisions or classes for consideration.

13. It is, therefore, obvious that, if the services of a permanent employee are to be terminated by the management on account of the closure of the school, the management can do so by issuing a notice of three months, and from the date proposed in the notice beyond three months, the institution would stand closed and the services of such permanent employee would stand automatically terminated.

14. In the backdrop of the said provision, the communication of the District Vocational Education & Training Office, Latur, dated 2.12.2002 and the two notices, issued by the management to the appellant, dated 7.12.2002 and 13.1.2003, assume significance.

15. By the notice dated 2.12.2002, the Department brought it to the notice of the management that the strength of the students has fallen below 15 and in the event, the said strength does not increase in future, the salaries of the employees would not be paid by the Department and that would then be the responsibility of the management.

16. Contention of the management before us is that, based on this notice, a

notice under Rule 25-A was issued initially on 7.12.2002 and then on 13.1.2003.

17. We find that, the notice dated 7.12.2002, cannot be said to be a notice under Rule 25-A by any stretch of imagination. It is in fact a notice, levelling allegations against the appellant that, because of her lack of performance, the strength of the students is decreasing and owing to the attrition of the students, they are joining the competitor institution. She was, therefore, called upon to show cause on her alleged misdeeds.

18. This brings us to the second notice dated 13.1.2003, wherein the management informs the appellant and another employee that, if the Department does not sanction the payment of salary, the salary of these employees would be stopped by the management. If the employees desire to continue in service, they should tender an affidavit on a Rs.20/- bond paper, duly notarised, that they are willing to continue in service without wages and will never claim any service benefits from the management. This letter dated 13.1.2003 being termed as a notice under Rule 25-A, is a fallacious submission on the part of the management. In fact, it holds out a threat to the employee that, if she desires to continue in employment, she must give a notarised undertaking, declaring that she will never claim service benefits while being in employment. This letter, therefore, cannot be said to be due compliance of Rule 25-A.

19. It cannot be ignored that, the management, of its own volition, did not desire to issue any notice under Rule 25-A. In fact, the said management submitted a letter to the Deputy Director of technical Education on 22.8.2003, seeking permission under Rule 26(2) of the 1981 Rules to retrench the appellant. No reply has been given by the Deputy Director of Vocational Education and Training. There is no provision of deemed sanction for retrenchment under the 1981 Rules. If there would have been such a deeming provision on the lines of the deeming provision granting permanency under Section 5(2) of the M.E.P.S. Act, 1977, the management could have supported this stand before the School Tribunal.

20. Surprisingly, the management has taken a stand specifically in para 6 that, no termination order has been issued to the appellant, the appellant has been continued in service and hence, it cannot be said that her services stand terminated. Probably the management aimed at rendering the appeal without cause of action by taking a stand that there was no termination. However, since the appellant was not allowed to mark her attendance and was not paid her salary, the case fell under Section 9(1)(a), by which a removal from service, in any manner whatsoever, would give rise to a cause of action for the Tribunal to consider.

21. It is in the above backdrop that the Tribunal has allowed the appeal and has granted reinstatement with continuity in service.

22. Learned counsel for the management has strenuously contended that, since

the appellant was not discharging her duties and there were no students, she deserves to be deprived of the back wages. Learned counsel for the appellant relies upon *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & ors.* reported in (2013) 10 SCC 324, by which the Hon"ble Apex Court has concluded that, as the termination of a teacher or an employee is bad in law and he was rendered to starvation, 100% back wages deserve to be granted.

23. Since we do not find any perversity in the conclusions of the School Tribunal in granting reinstatement with continuity of service, we are required to consider the prayers put forth by the appellant in her petition filed before us. She has claimed for the releasing of her salary w.e.f. 12.7.2006, which is the date of her reinstatement. Contention is, that she has not been paid her wages even after her reinstatement despite the directions of the School Tribunal.

24. It requires no debate that, an employee, who has performed her duty cannot be deprived of her salary and hence, the management would be liable to pay salary to the appellant for the period for which she has worked with the management after her reinstatement. The first petition filed by the petitioner, therefore, has to be partly allowed as no management can argue that work will be extracted from the employee, and yet the said employee would not be paid the wages. Rule is, therefore, made partly absolute in the first petition.

25. Insofar as back wages are concerned, for the period of termination of the appellant till her reinstatement in service, as is granted by the School Tribunal, we are informed that, the management has deposited a portion of the back wages in this Court. Office noting indicates that, an amount of Rs.4,16,195/- was deposited on 10.4.2007 and Rs.2 Lakhs were withdrawn by the appellant with the leave of this Court by virtue of the order dated 4.4.2008 in Civil Application No.1609/2008.

26. Considering the peculiar facts as above and taking into account the conduct of the management in trying to pressurize the appellant by the communication dated 13.1.2003, calling upon her to tender an affidavit giving up all service benefits and work for free, we find that, it would be appropriate to follow the ratio laid down by the Hon"ble Apex Court in the matter of *Deepali Gundu Survase (supra)*.

27. The second petition, which is filed by the management, challenging the impugned judgment of the School Tribunal is, therefore, devoid of merits and stands dismissed. Rule is discharged.

28. Pending Civil Applications are disposed of.

29. Both the learned Advocates jointly submit that the amount deposited in this Court is towards all unpaid salaries of the appellant, and as such, with the withdrawal of this amount, the management is not liable to pay any further amount to the said employee. The statements of the learned Advocates on both sides is accepted.

30. Needless to state, the original appellant namely Uma d/o Pandurang Mantri is permitted to withdraw the remainder amount from this Court along with accrued interest towards her back wages.