
(1983) 09 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No. 2138 of 1983 (Bom.)

Yeshwant Prasad Popular Education Society

APPELLANT

Vs

Shashikala D. Vaidya

RESPONDENT

Date of Decision : 01-09-1983

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 9

Citation : (1984) 86 BOMLR 21 : (1983) MhLj 961

Hon'ble Judges : Kantharia, J; Dharmadhikari, J

Bench : Division Bench

Judgement

Dharmadhikari, J.—This writ petition is filed by the petitioners, the Education Society, against the order passed by the School Tribunal, Pune, overruling the preliminary objections raised by the petitioners that the appeal filed before the Tribunal by the respondent-teacher is not maintainable in view of the fact that the order of termination was already challenged by the respondent-teacher before the Deputy Director of Education as well as the Joint Director under Rule 77.3(vii) and (viii) as well as Rule 77.10 of the Secondary School Code and the said appeals were heard and decided on the merits by the authorities concerned.

2. It appears to be an admitted position that the respondent No. 1 who was an assistant teacher in a school run by the petitioners society was removed from service after due enquiry on July 12, 1977. The respondent No. 1 teacher challenged the said order of removal by filing an appeal before the Deputy Director of Education under Rule 77.3 of the Code. The Deputy Director held that the charges levelled against the teacher are proved but the punishment imposed is too severe. Therefore he directed the management to reconsider the question of punishment. Being aggrieved by this order of the Deputy Director of Education the management filed an appeal before the Joint Director under Rule 77.10 of the Code on October 15, 1977. The Joint Director allowed the appeal filed by the management and remanded back the matter to the Deputy Director. However vide his order dated July 4, 1979 the Deputy Director confirmed his earlier order.

He held that some of the charges levelled against the teacher are proved fully and others are also partly proved. In spite of this finding Deputy Director took a view that looking to the gravity of the charges and long service of the lady teacher, her case needs to be viewed sympathetically and therefore he found no reason to modify his earlier decision. Being aggrieved by this second order of the Deputy Director, the management again filed an appeal before the Joint Director on October 13, 1979. The Joint Director allowed the appeal filed by the management and upheld the findings of the enquiry committee and the decision of the management terminating the services of the respondent-teacher. It then appears that against this order of Joint Director the respondent-teacher filed an appeal before the Government which came to be rejected vide its order dated July 29, 1982. The Government came to the conclusion that as per the provisions of the Secondary Schools Code the decision of the Director of Education is final and binding upon both the parties and the rules do not provide for any further appeal to Government against the said decision. Thereafter the respondent-teacher filed present appeal u/s 9 of the Maharashtra Employees of Private Schools (Conditions of service) Regulation Act, 1978 (hereafter referred to as the Regulation Act). This appeal was filed before the Tribunal on April 7, 1982. Before the Tribunal the petitioner-society raised a preliminary objection that in view of the provisions of the Regulation Act the appeal itself is not maintainable. The said objection was heard and decided as preliminary objection and vide order dated July 1, 1983 the School Tribunal came to the conclusion that the appeal is maintainable. As already observed it is against this order present writ petition is filed by the petitioner-society. It was also brought to our notice that the same presiding officer had taken a different view in an appeal No. 21 of 1981 and had held that the tribunal had no jurisdiction to entertain the appeal as the questions involved therein were already decided by the Deputy Director of Education, under the Schools Code. Similar view was taken by the same tribunal in an appeal No. 6 of 1981. Thus conflicting and self-contradictory views were taken by the same tribunal in different appeals. Therefore the only question which requires consideration in this petition is to find out as to whether in such circumstances an appeal is maintainable u/s 9 of the Regulation Act.

3. Shri Sali the learned Counsel appearing for the petitioner-society contended before us that if the provisions of the Regulation Act, and particularly Section 9 and 15 thereof are read together and harmoniously, it is quite clear that in the cases where the orders of the management have become final in view of the decisions of the Deputy Director or the Joint Director of Education, the same cannot be reagitated before the School Tribunal u/s 9 of the Regulation Act. According to Shri Sali provisions of the Regulation Act do not have retrospective effect. An appeal is provided against the order passed by the management. Once an appeal was filed under the provisions of the School Code against the order of the management, it is an order of appellate authority i.e. the Deputy Director or the Joint Director of Education which holds the field, since the order passed by the management stands merged in the said appellate order. Further the tribunal

constituted under the Regulation Act cannot scrutinise the validity or legality of the orders passed by the Deputy Director or the Joint Director in appeal under the School Code and therefore the School Tribunal committed an error apparent on the face of record in holding that the appeal filed before it is maintainable.

4. On the other hand it is contended by Shri Ghaisas the learned Counsel appearing for the respondent-teacher that if various provisions of the Act are read with the preamble of the statute it is quite clear that the present Act has been enacted to give protection to the teachers serving in a private school. The provisions of the Schools Code had no statutory force and therefore the legislature had enacted this special legislation to provide for a forum to aggrieved teachers. In terms the provisions of the Act are given retrospective effect and this is clear from the proviso to Section 9(1) of the Act which lays down that the orders of dismissal, removal or otherwise passed by the management before the July 1, 1976 are not amenable to appeal u/s 9 of the Act. In substance it is contended by Shri Ghaisas that since the provisions of the Schools Code were inadequate and the appeals provided were to the executive authorities only, the legislature has stepped in to provide, for a statutory remedy of appeal to an independent tribunal. In the present case the order of removal was passed after July 1, 1976 and therefore the School Tribunal was right in coming to the conclusion that the appeal was maintainable.

5. It is true that the Regulation Act was enacted by the legislature to regulate the recruitments and the conditions of service of the employees working in the private schools in the State with a view to provide such employees security and stability of service. The present Act was also enacted as the legislature thought it expedient in the public interest to lay down the duties and functions of such employees with a view to ensure that they become accountable to the management and contribute their mite for improving the standard of education. Thus this Act was enacted to confer certain rights upon the employees which are coupled with duties. The present Act had received the assent of the President on March 20, 1976 but was brought into force on July 15, 1981 which was declared as appointed date. In the present writ petition we are mainly concerned with the provisions of Section 9 and Section 15 of the Act. The said sections read as under :

9. (1) Notwithstanding anything contained in any law or contract for the time being in force, any employee in a private school who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the management and who is aggrieved, shall have a right of appeal and may appeal against any such order to the Tribunal constituted u/s 8;

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the management at any time before the 1st July 1976.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be;

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

(3) Notwithstanding anything contained in Sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

(4)...

Section 15. All appeals of employees of private schools relating to the matters specified in Section 9, which may be pending on the appointed date before the department or the Director or an Officer subordinate to him, as the case may be, in accordance with the provisions of the Secondary Schools Code, shall be transferred to the Tribunal as soon as it is constituted. The Tribunal shall hear and dispose of every such appeal, as if it were made u/s 9, provided that the prescribed fee of Rs. 50/- is paid by the employee within one month of the receipt of a notice given to him by the Tribunal for that purpose.

6. From the bare reading of Section 9 of the Act it is quite clear that a right of appeal is conferred upon an employee of the private school who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank by the management. By proviso to this section it is laid down that no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a court of competent jurisdiction or is pending before such court on the appointed date. It is also laid down that no appeal shall lie in a case where the order was passed by the management at any time before the July 1, 1976. By Section 15 it is laid down that all appeals of employees of private schools relating to the matters specified in Section 9, which may be pending on the appointed date before the department or the Director or an officer subordinate to him, in accordance with the provisions of the Schools Code, shall stand transferred to the Tribunal as soon as it is constituted. After such transfer of appeals the Tribunal is directed to hear and decide every such appeal, as if it were made u/s 9 of the Act. Thus the legislature has taken a note of the appeals riled and pending under the provisions of the Schools Code and has made a provision for transfer of the said appeals to the Tribunal. If the appeals are not pending and are finally decided, then obviously they are not covered by Section 15. The matters which are finally decided by the Deputy Director or the Joint Director of Education, in our view, are also not covered by Section 9 of the Act.

7. u/s 9 an appeal could be filed by the employee against the order passed by the management. Under the provisions of Rule 77.3(vii) and (viii) of the Secondary Schools Code either party was given a right to prefer an appeal to the Deputy Director within 15 days of the receipt of the decision of the enquiry

committee. If no appeal was preferred by the either side the decision of the enquiry committee was treated as final and binding on both parties and was to be executed forthwith. If an appeal is preferred to the Deputy Director he was asked to take decision on the appeal within three months on the receipt of the appeal after hearing both parties, if they so desire. This time could be extended with the permission of the Director. Then a further appeal is provided for by Rule 77.10 of the Schools Code and under the said provision either party can file appeal against the decision of the Deputy Director to the Director of Education. The decision of the Director was made binding on both parties. In the case before us initially the respondent-teacher had filed an appeal before the Deputy Director which came to be partially allowed. Against the said decision of the Deputy Director the management filed an appeal before the Joint Director which was allowed and the order passed by the Deputy Director was set aside. An appeal made to the Government also came to be rejected. This all happened before February 29, 1980 i.e. prior to the coming into force of Regulation Act. As already observed the Regulation Act was brought into force on July 15, 1981. Once appeals were filed under the provisions of the Secondary Schools Code and were heard and decided by the Deputy Director and the Joint Director on the merits of the matter, than obviously the order passed by the management stood merged in the appellate order of the Deputy Director or Joint Director. This principle of merger is by now well recognised. In *Gojer Bros. (Pvt.) Ltd. Vs. Shri Ratan Lal Singh*, the Supreme Court had an occasion to consider a similar question. Initially in para 10 of the judgment a question was posed by the Supreme Court in the following terms :

10. The juristic justification of the doctrine of merger may be sought in the principle that there cannot be, at one and the same time, more than one operative order governing the same subject matter. Therefore the judgement of an inferior court, if subjected to an examination by the superior court, ceases to have existence in the eye of law and is treated as being superseded by the judgement of the superior court. In other words, the judgement of the inferior court loses its identity by its merger with the judgement of the superior court.

Then after making a reference to various decisions in the field this is what the Supreme Court has observed in para 18 of its judgment :

The fundamental reason of the rule that where there has been an appeal, the decree to be executed is the decree of the appellate court is that in such cases the decree of the trial Court is merged in the decree of the appellate court. In course of time, this concept which" was originally restricted to appellate decrees on the ground that an appeal is a continuation of the suit came to be gradually extended to other proceedings like revisions and even to proceedings before quasi-judicial and executive authorities.

This being the position in law the order passed by the management removing the respondent-teacher from service stood merged initially in the order Of the Deputy Director of Education and then in the order passed by the Joint Director

of Education. These orders received finality and are binding upon the parties. In view of this position there was no order of the management in the field which could have been challenged u/s 9 of the Regulation Act.

8. This position is further clear from the provisions of Section 15 of the Regulation Act. The legislature has made a provision for transfer of appeals filed by the employees under the Secondary Schools Code and pending on the appointed date. Thus the legislature has not chosen to touch or reopen the orders passed by the competent authorities in appeals under the provisions of the Secondary Schools Code. This was advisedly not done, since the said orders had become final and were binding upon the parties. Though a non-obstante clause is used in Section 9 of the Act, it is not given overriding effect over the orders passed in appeals under the Schools Code, which have received finality and are binding upon the parties. Pending appeals are transferred to School Tribunal u/s 15 but the appeals which are finally disposed of on merits, are not touched nor the final orders passed therein are upset. It appears that while enacting Sections 9. and 15 the legislature indirectly recognised the principle of issue estoppel. Issue estoppel is concerned with the judicial establishment of a proposition of law or fact between the parties. It depends upon well-known doctrines which control the relitigation of issues which are settled by prior litigation, Subjecting a person to a proceeding over again for determination of the same question is opposed to the principles of natural justice and fair play. It is this principle which is recognised by the legislature in the Regulation Act. In the present case the order of removal passed by the management was subjected to appeals under the Secondary Schools Code. The said appeals were heard and decided on merits. Under the Code the appellate authorities act as non-statutory tribunals discharging functions of public nature. These appellate authorities are given power to render definitive judgment or decision which has finality and authoritativeness. These decisions are binding upon the parties appearing before it, so far as the rights litigated are concerned. The management is duty bound to implement the orders passed in appeal. Under the provisions of the Schools Code the order passed by the Deputy Director is made final and binding upon the parties subject to the appeal to the Joint Director, Under Rule 77.3(vii) it is the order of Deputy Director which is made executable. By Rule 77.10 a finality and binding effect is given to the order passed by the Joint Director. In the present case the same subject matter was agitated and decided under the Secondary Schools Code which received finality and binding effect. Further the order passed by the management stood merged hi the order passed by the Deputy Director and Joint Director and therefore the only executable order in the field was that of the Second Appellate Authority. The School Tribunal had no authority or jurisdiction to sit in appeal over the order passed by the Joint Director in appeal which has become final and is binding upon the parties.

9. It is no doubt true that the present enactment was enacted to confer certain rights upon the teachers. It is equally true that a fight between the management and the teacher is unequal. However it appears that the legislature did not want

to open the doors for reagitating or re-litigating the same issues which are already settled in the prior litigation by the competent authorities under the provisions of the Secondary Schools Code and that too on the merits of the controversy. This position is further clear from the fact that the legislature by proviso to Section 9(1) has made amenable to appeal only those orders which are passed on or after July 1, 1976 and has not permitted to agitate the matters which have become stale. The legislature has also not thought it fit to touch the matters pending before the Court of competent jurisdiction. It is not correct to say that the Deputy Director or the Joint Directors of Education entertaining the appeals under Secondary Schools Code, are merely executive officers and are not quasi-judicial tribunals. As held by the Division Bench of this Court in *Kamala Prasad Shukla v. S.N. Ingole* [1983] Mah. L.J. 348: (1982) 85 Bom. L.R. 1 the functionaries under the Schools Code act as non-statutory tribunals, discharging the functions of a public nature, and are expected to decide the appeals in conformity with the provisions of the Secondary Schools Code. In the present case appeals were heard and decided by the Deputy Director as well as the Joint Director on merits and their orders have become final and are binding upon the parties. In this view of the matter the appeal filed before School Tribunal was not maintainable.

10. At this stage Shri Ghaisas, the learned Counsel appearing for the respondent-teacher contended before us that liberty should be given to the respondent-teacher to file a writ petition against the prior order of the "Joint Director itself. In our view, such a liberty is not necessary, if such a remedy is otherwise available to the respondent-teacher in law.

11. Hence the Rule is made absolute and the order passed by the School Tribunal, Pune, dated July 7, 1983 is quashed. However in the circumstances of the case there will be no orders as to costs.