

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1614 OF 2015

Vikram S/o Rajaram Unde,
Age-35 years, Occu-Teacher,
R/o T.P.4, Plot No.41/1/06,
Shri Hareshwar Krupa, Parag Corner,
Mahavir Nagar, Behind Hotel Oberai,
Satedi, Tq. And Dist. Ahmednagar

PETITIONER

VERSUS

1. Matimand Vikas Sikshan Mandal
Tilak Road, Ahmednagar
Tq. And Dist. Ahmednagar,
Through its Secretary,
(In Charge Secretary)

2. Headmistress,
Matimand Boys School,
Tilak Road, Ahmednagar,
Tq. And Dist. Ahmednagar,

3. District Social Welfare Officer,
Zilla Parishad,
Ahmednagar,
Tq. And Dist. Ahmednagar

4. The Regional Deputy Commissioner,
Social Welfare Nashik Division,
Nashik

RESPONDENTS

Mr.M.V.Salunke h/f Mr.V.D.Salunke, Advocate for the petitioner.
Mr.P.P.Kothari, Advocate for respondent Nos.1 and 2.
Mr.S.T.Shelke, Advocate for respondent No.3.
Mr.K.N.Lokhande, AGP for respondent No.4.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 20/10/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner is aggrieved by the order of termination dated 17/06/2014 passed by respondent No.1 / employer and the order dated 06/01/2015 passed by the respondent No.4 / Deputy Commissioner, Social Welfare in Appeal No.2/2014.
3. The contentions of the petitioner can be summarized in brief as follows :-
 - [a] On 09/09/2003, the petitioner was granted Diploma in Hearing Language and Speech (DHLS) by the Ali Yavar Jung National Institute for the Hearing Handicapped, Mumbai.
 - [b] The petitioner was registered with the Rehabilitation Council of India (RCI) and a certificate u/s 19 of the Rehabilitation Council of India Act, 1992 was issued declaring him to be a Speech and Hearing Technician.
 - [c] The petitioner was appointed as a part-time employee by respondent No.1 / Institution after following a Selection Process, on 05/07/2004.
 - [d] The petitioner was enrolled with the Employment Exchange.
 - [e] By the order of approval dated 27/04/2007, issued by the competent authority, he was approved to be on probation from

05/07/2004 for a period of 2 years.

- [f] By communication dated 26/07/2006, respondent No.3 concluded that the petitioner had satisfactorily completed his probation period and his appointment was approved as a part time employee on 50% scale (Aardh vetan) till further orders.
- [g] By an order dated 17/06/2014, the petitioner was terminated from employment under clause 10(4) of the Rules of the respondent No.1 / Institution.
- [h] The petitioner lodged a complaint with respondent No.3 and it is stated that the enquiry is still in progress.
- [i] The petitioner challenged his termination under the Special School Code, 1997 before respondent No.4 / Appellate Authority in Appeal No.2/2014.
- [j] By the impugned order dated 06/01/2015, respondent No.4 dismissed the appeal despite concluding that respondent No.1 had not complied with the principles of natural justice while terminating the petitioner.
- [k] The petitioner points out clause 44(6) of The Special School Code, 1997, which indicates that an employee would be part time permanent if the number of students in the Special School is less than 50.
- [l] The students in respondent/School are 40 in number.
- [m] The course curriculum prescribed by the RCI / a statutory body under the Ministry of Social Justice and Empowerment for DHLS indicates that the Diploma Qualification, which the petitioner has acquired, is sufficient for gaining lateral entry in the BASLP equivalent programme. (Course curriculum is marked Exhibit "X" for identification.
- [n] The petitioner has further indicated from the Government

Resolution dated 18/08/2004 that the said GR prescribes qualification for part time / paramedical staff which has been introduced after he was appointed on 05/07/2004.

- [o] He further points out from the communication dated 06/09/2012 that the Government has accepted the policy of protecting the employment and salary of such candidates having DHLS until the Government of Maharashtra takes a decision with regard to their employment.
- [p] The termination order dated 17/06/2014 is not preceded with a notice of hearing, much less affording a reasonable opportunity of hearing or a fair hearing.
- [q] He submits that the Appellate Authority has mechanically proceeded to conclude in the impugned order that because the petitioner is not a Speech Therapist, he need not be continued in employment.
- [r] The impugned termination order is rendered unsustainable since the petitioner cannot be discriminated against on the ground that he is not a Speech Therapist in the light of the Course Curriculum indicating an equivalence to candidates holding DHLS.

4. Mr.S.T.Shelke, learned Advocate has appeared on behalf of respondent No.3 and has submitted that an enquiry is being conducted at its level to assess whether the termination of the petitioner can be said to be on the ground of inadequate qualification. Since the matter was subjudiced before respondent No.4 and then before this Court, further hearing in the said enquiry has been

stalled. The petitioner as well as respondent No.1 Institution have filed their submissions before respondent No.3 / Authority.

5. Mr.Kothari, learned Advocate has appeared on behalf of respondent No.1 / Institution and has strenuously justified the termination order and has supported the impugned order.

6. An affidavit in reply has been preferred by respondent Nos. 1 and 2. It is canvassed that a Speech Therapist / Specialist was required on Part-Time basis in 2004. The petitioner was appointed on 05/07/2004 as a "Speech Therapist Specialist" on part time basis on a vacant post. He was placed under Probation for two years. The petitioner is aware that the Part time post is never a permanent post. After the probation period concluded, the petitioner was continued in employment by extending his appointment. By order dated 05/07/2006 issued by the competent authority, the service of the petitioner was continued until further orders.

7. It is further stated that the appointment of the petitioner, though made on the post of "Speech Therapist", the educational qualification required was a Diploma or Degree in Speech Audiology and not DHLS. The petitioner was asked to obtain the Diploma in

Speech Audiology. Instead of acquiring the said qualification, he started complaining about salary not being paid to him. Had he acquired the qualification of Diploma in Speech Audiology, he would have been continued in service. He was not eligible to be appointed for the post of "Speech Therapist". The approval granted to him by the competent authority is against the Rules. 6th pay Commission Benefits are not available to the petitioner.

8. It is further stated in the affidavit in reply that the Commissioner for persons with disability has directed respondent No.1 by letter dated 30/05/2008, not to fill up the post of "Speech Therapist" if it has fallen vacant. Respondent No.1 has complied with the order passed by respondent No.4 and paid one month wages to the petitioner for curing the defect which has occurred while terminating him without notice.

9. It is further stated that the enquiry pending before respondent No.3 can be proceeded with. Presently, the post is abolished. Respondent No.3 can decide the controversy and issue necessary orders.

10. The learned AGP appearing on behalf of respondent No.4 has

defended the impugned order.

11. I have considered the submissions of the learned Advocates as have been recorded hereinabove.

12. Despite the contention of respondent No.1, I am unable to ignore the fact that the petitioner was appointed by following the due process of Law. He was working for 10 years prior to his termination. No notice or opportunity of hearing was given to the petitioner while issuing the order of termination. Principles of natural justice have, therefore, been blatantly violated by respondent No.1.

13. The termination of the petitioner is said to be under clause 10(4) of the Rules of the respondent No.1 / Institution. Perusal of clause 10(4) indicates that Class-IV employees (Sevak-Servant) appointed on other activities of respondent No.1 / Institution could be terminated if they are found to be unsatisfactory.

14. The order of termination does not divulge any other reason except clause 10(4). The petitioner is not a class-IV employee or a servant. In my view, clause 10(4) does not cover the case of the petitioner.

15. Even otherwise, after the probation period of the petitioner was concluded satisfactorily, respondent No.1 continued him in employment and respondent No.3 accorded its approval. It, therefore, can neither be said that the petitioner is on probation for all these 10 years nor can it be said that the petitioner continues to work as a temporary employee. After satisfactory conclusion of probation, an employee becomes permanent in employment and does not get converted from a probationer to a temporary or a casual employee.

16. It is unacceptable for an employer to turn around after 10 years of employment of an employee and contend that he lacks in qualifications. If that could be the case in case of the petitioner, respondent No.1 should have issued the said order while appointing him on probation indicating that if he fails to acquire Diploma in Speech Therapy, he would be disengaged.

17. The order of probation does not reflect such a condition. Similarly, the order of the competent authority / respondent No.3 dated 26/07/2006 does not lay down any condition upon the petitioner. So also, the order of termination does not reveal that the petitioner is being terminated since he failed to acquire qualification

of Diploma or Degree in Speech Therapy.

18. In these circumstances, respondent No.1 employer will be estopped from raising all these grounds after the petitioner has worked for 10 years. Respondent No.1 has relied upon the judgment of this Court dated 02/04/2007 delivered in the case of Shiv Chhatrapati Education Society Vs. Naarendra Kashinath Choudhary to contend that a person who is not duly qualified, can be terminated.

19. Paragraph Nos. 2 and 3 of the judgment of this Court in Shiv Chhatrapati case (supra) reads as under :-

“2. It is the case of the petitioner that respondent No.1 came to be appointed temporarily as an assistant teacher in school administered by the petitioner under initial appointment order with effect from 14.6.1985. Thereafter respondent No.1 was terminated from service at the end of academic sessions and came to be issued an order of reappointment yet again for next academic session.

According to the petitioner for two fold reasons the appointment of respondent No.1 had to be temporary and the said two reasons are ; (i) that the vacancy wherein the respondent No.1 was appointed was earmarked for reserved category for

schedule caste and (ii) that the respondent No.1 was untrained teacher and was only possessing qualification of B.Sc. According to the petitioner respondent No.1 stood terminated by efflux of time at the end of academic sessions 1989- 90 whereas the respondent No.1 contended before the Tribunal in appeal that he was also appointed in academic sessions 1990- 91 and was orally terminated with effect from 3.9.1990. It is evident from the judgment of the Appellate Tribunal that when the matter was decided by the Tribunal respondent No.1 had not by then acquired training/teaching qualification of B.Ed. But had registered himself for a correspondence course with Annamalai University for B.Ed. The Tribunal has allowed the appeal by holding that though the respondent No.1 was untrained, he had right to continue until replaced by a trained teacher. In the present case after termination of respondent No.1 one Mr.Jadhav who is impleaded as respondent No.2 in this petition came to be appointed on 18.8.1990. Shri Jadhav respondent No.2 herein belonged to schedule caste category of backward class and thus was appointed on directions from the Social Welfare Officer which are contained in a communication dated 16.8.1990. With a view to remove the back log respondent No.2- Jadhav was appointed from 18.8.1990 and he had acquired training qualification in June, 1992. A certificate to that effect is filed on record by the petitioner at page 29. It is thus clear that when the Tribunal decided the appeal respondent No.2-Jadhav had already acquired the qualification and he continues to be in service of the petitioner since the year 1990 till date for the reason that the judgment and order passed by the Tribunal was

stayed by this Court by granting interim relief while issuing rule in the matter.

Learned counsel for the petitioner has invited my attention to ground No.(f) of the petition where it is stated that the order passed by the Tribunal granting back wages was also unsustainable as the respondent No.1 during pendency of the appeal secured employment with a company known as Bombay Drug situated at the address mentioned therein and has been drawing salary of Rs.1450/- . It is then stated that respondent No.1 has withdrawn his provident fund and hence contended that respondent No.1 is not interested in reemployment. The said statement is made on affidavit which goes without rebuttal in the absence of any affidavit in reply from respondent No.1. It thus appears that respondent No.1 is not interested in opposing this writ petition as no one is representing respondent No.1 despite service.

3. In the above fact situation the only question that arises for consideration is as to whether can an untrained teacher claim right to the post on the basis of temporary appointment order appointing him for a period of one academic session. For making a substantive appointment so also temporary appointment the candidate need to possess eligibility qualification as are laid down under Schedule B. Even while filling temporary vacancy the management is obliged to appoint a person duly qualified to fill in such vacancy. Sub-section 5 of section 5 obliges the management to appoint a person who is duly qualified. Similar is

the position that emerges from Rule 6 of the M.E.P.S. Rules which lays down that minimum qualification as prescribed in schedule B need to be possessed by teaching and non- teaching staff. Thus it is the statutory requirement that teacher need to possess training qualification and in the absence of which such a candidate cannot claim any right to the post. The respondent No.1 has failed to acquire training qualification though he was in service for about five years. Even during pendency of the appeal before the Tribunal it has come on record that respondent No.1 had not acquired training qualification. It is not clear as to whether till date has the respondent No.1 acquired training qualification or otherwise as no affidavit in reply has been filed in this Court. It thus appears from the record that respondent No.1 stood terminated at the end of academic session 1989- 90 under terms of order of appointment. As I am of the view that an untrained teacher does not have any right to the post no fault can be found in termination of such an employee. Respondent No.1 also seems to have secured gainful employment long back. It is evident from the petition which is sworn on 16.7.1993 and the averments therein have not been denied. Hence I proceed to accept the averments made in the petition as true and correct.”

20. It is quite evident that the facts in the Shiv Chhatrapati case (supra) are completely different than the facts emerging in this case. The ratio laid down in the said judgment, therefore, would not be applicable.

21. I find from the impugned order delivered by respondent No.4 that none of the above issues have been even considered, much less discussed. Moreover, respondent No.4 concluded that the termination was bad in law as it was violating clause 1-A of the Special School Code of 1992 applicable to the probationers and other temporary employees. Respondent No.4 has apparently lost sight of the fact that the petitioner had completed his probation of two years satisfactorily, was continued in employment by respondent No.1 and on the recommendation of respondent No.1, respondent No.3 had granted its approval by order dated 26/07/2006.

22. In the light of the above, this petition is allowed. The impugned order of termination dated 17/06/2014 and the impugned order of respondent No.4 dated 06/01/2015 are quashed and set aside. The petitioner shall stand reinstated with continuity of service from 17/06/2014.

23. Considering the nature of duties being performed by the petitioner and the special school in which he imparts education to the special children, I am inclined to grant 75% back wages to the petitioner considering the ratio laid down by the Apex Court in the case of Nicholas Piramal India Ltd., Vs. Hari Singh 2015(2) CLR 468.

24. The back wages shall be paid by respondent No.1 within a period of 12 weeks from today, failing which, the said amount shall carry interest @ 3% p.a. from 17/06/2014.

25. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)