

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 4013 OF 2016****Brilliance Educational Foundation & Anr. Petitioners****VERSUS****Mrs.Marykutty Kurian (Binci Shibi)
& Ors. Respondents****ALONGWITH****WRIT PETITION NO. 4014 OF 2016****Brilliance Educational Foundation & Anr. Petitioners****VERSUS****Mr.Shibi Thomas & Ors. Respondents**

Mr.Uday Nighot for the Petitioners.

Mr.S.D.Rayrikar, A.G.P. for Respondent no.3.

CORAM : R.D. DHANUKA, J.**DATED : 6th JUNE, 2016****P.C.**

Both the petitions being identical were heard together and are being disposed off by a common order.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order and judgment dated 3rd December, 2015 passed by the school tribunal allowing the appeal filed by the respondent no.1 thereby declaring the letter of termination dated 2nd May, 2014 issued by the petitioner as illegal, improper and unjust and has quashed and set aside the same. The school tribunal has also directed the petitioner nos. 1 and 2 to reinstate respondent no.1 in service with continuity of service and full back-wages with all consequential benefits within 30 days from the date of the said order.

3. Learned counsel appearing for the petitioners submits that the school tribunal has not given proper opportunity to the petitioners to defend the appeal filed by the respondent no.1. He submits that the respondent no.1 was not appointed by the petitioners in the year 2008 as alleged by the respondent no.1 but was appointed in the year 2013. He submits that the petitioners were thus not required to conduct any enquiry against the respondent no.1 before terminating her services since the respondent no.1 had not become permanent.

4. A perusal of the affidavit in reply filed by the appellant before the school tribunal indicates that the appointment of the respondent no.1 as assistant teacher on 1st May, 2008 has not been denied by the petitioners. On the contrary, the record further indicates that the respondent no.1 had executed bonds on 25th April, 2008 and on 1st May, 2013 in respect of which the petitioners had alleged violation and breach against the respondent no.1 before the school tribunal. Learned counsel appearing for the petitioners is not in a position to show as to how the appointment of the respondent no.1 was made in the year 2013 and not in the year 2008 though repeated opportunities are given by this court.

5. Insofar as submission of the learned counsel for the petitioners that no proper opportunity was given by the school tribunal is concerned, a perusal of the order passed by the school tribunal indicates that the petitioners through their advocate had filed pursis stating that no instruction was given by the petitioners. In my view the learned counsel appearing for the petitioners is thus not right in his submission that no opportunity was given by the school tribunal to the petitioners to defend their case. The petitioners had already filed affidavit in reply before the school tribunal which has been considered by the school tribunal.

6. A perusal of the record clearly indicates that the respondent no.1 was appointed on 1st May, 2008. The respondent no.1 became permanent teacher after expiry of three years. The petitioners admittedly did not conduct any enquiry rendered against the respondent no.1 before terminating her services which is in violation of section 5(2) read with rules 28(5), 29 and 33 of MEPS Rules, 1981. The school tribunal has thus in my view rightly set aside the termination order dated 2nd May, 2014 having found the same in violation of the above referred provisions.

7. The school tribunal has passed a detailed order after considering the submissions made by the respondent no.1 and after considering the affidavit in reply filed by the petitioners. The findings of fact rendered by the school tribunal are not perverse and thus cannot be interfered with by this court under Article 226 of the Constitution of India.

8. Learned counsel appearing for the petitioners placed reliance on the judgment of this court in case of **Adarsh Vidya Mandir & Anr. vs. Awedesh Narayan Komal Singh & Ors.** 2005(1) Bom.C.R.786 in support of the submission that if the school tribunal has not given proper opportunity to a party and passes an ex-parte order, the matter has to be remanded back to the school tribunal. A perusal of the said judgment rendered by this court indicates that this court had considered a situation where though an enquiry was found to be at fault, the school tribunal had directed to reinstate the employee. In that context, this court held that appropriate course was to relegate parties before tribunal by affording them fair opportunity to adduce evidence. In my view the reliance placed by the learned counsel for the petitioners on the judgment of this court in case of **Adarsh Vidya Mandir & Anr.** (supra) is totally misplaced.

9. Both the petitions are devoid of merits and are accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]