

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 3149 OF 2003

...

Maharshi Karve Stree Shikshan Sanstha & Anr.Petitioners
V/S
Gulab Taty Wagmode & Ors.Respondents

...

WITH
CIVIL APPLICATION NO.3058 OF 2016
IN
WRIT PETITION NO. 3149 OF 2003

Sunanda Ashokkumar Deshmukh @
Sunanda Raghunath ParkhiApplicant/Intervenor
AND
Maharshi Karve Stree Shikshan Sanstha & Anr.Petitioners
V/S
Gulab Taty Wagmode & Ors.Respondents

Mr.R.S.Apte,Sr.Adv i/by Smt.Anjali N.Helekar for the Petitioners.
Mr.Sugandh Deshmukh i/by Deshmukh Rajaram Bhausahab for the
Respondent No.1.
Mrs.K.R.Kulkarni, AGP for the Respondents Nos.2 to 4.

...

CORAM : A.A. SAYED, J.

DATED : 27 SEPTEMBER 2017.

ORDER:

The challenge in this Petition filed under Articles 226 and 227 of the Constitution is to the judgment and order dated 30 March 2003 passed by the School Tribunal, Pune Region, Pune in an Appeal filed by the

Respondent No.1/Assistant Teacher under section 9 of the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977 ('MEPS Act' for short). By the impugned order the Appeal of the Respondent No.1 was allowed and the order of termination dated 12 December 1999 issued by the Petitioner Management was set aside and they were directed to reinstate the Respondent No.1 in service with full backwages.

2. The case of the Respondent No.1/original Appellant in the Appeal, in a nutshell, was as follows:

After process of advertisement and interview, he was selected in the D.Ed. College run by the Petitioner-Management by an order dated 30-12-1997 on probation of two years with effect from 01-01-1998. The Petitioner Management, however, appointed him in the Secondary School by the name Mahila Ashram High School, though the advertisement was for College of Education. It was only after the direction of the Education Officer, the Petitioner Management issued one more appointment order dated 31-03-1998 appointing him as a Lecturer in the D.Ed. College. The Petitioner Management was against him from the very beginning and through the probation period. After his appointment he was subjected to various kinds of allegations particularly by the Principal of the College

Mrs.Jadhav, and despite his complaint no action was taken by the Petitioner Management. A major incident took place when he alongwith other two male teachers had been to Ahmadabad on the excursion arranged by the College. He and two male teachers were given extremely bad treatment during the excursion and they were required to leave the excursion in between. The incident finally culminated into the Petitioner Management appointing a fact finding committee. He was served with the memo and three days salary was cut by way of punishment for returning earlier from such excursion. He was not supplied with the copy of the fact finding committee report. Notwithstanding the punishment imposed, he was being terminated again on the same count. One Mrs.Thuse, who was actually a Secondary School teacher and not connected with the Junior College of Education had openly criticized and insulted him and he had made complaint against her on 16-11-1999. The said Mrs.Thuse made a complaint to the police against him and for no reason the police was brought within the college premises so as to malign him. He was not allowed to place Dr. Ambedkar photo in the staff room. From the date of his appointment from 2-01-1998 he was in continuous service and he was to complete the probation period by 31-12-1999. However, by letter dated 12-12-1999 his services were sought to be terminated forthwith and he was paid one month salary.

3. A Written Statement was filed on behalf of the Petitioner Management before the School Tribunal denying all the contentions of the Respondent No.1. The case of the Petitioner Management in the Written Statement, inter alia, was as follows:

Respondent No.1 had not come to the School Tribunal with clean hand and he has concealed several true and correct facts. The Petitioner-Management were having 45 Units and about 7000 to 8000 employees and has variety of activities for women education upliftment and therefore there is no question of they acting against one individual employee with prejudice. There were about 130 girl students of D.Ed. College, who were gone for excursion and the duration of excursion was about a week. The Respondent No.1 had left excursion in between, which was most irresponsible approach. It was not only a legal duty but also a moral duty of the Respondent No.1 to ensure security of the girl students and the female staff who had accompanied the girl students. Respondent No.1 was on probation and non-permanent employee and therefore the overall conduct of the Respondent No.1 is to be considered. The School Tribunal cannot be expected to sit over the judgment of the Petitioner Management in respect of such assessment. The Petitioner Management had lost confidence in the Respondent No.1.

4. After hearing the parties, the School Tribunal passed the impugned order as indicated in paragraph 1 above.

5. I have heard the learned Senior Counsel for the Petitioner and the learned Counsel for the Respondent No.1 and the learned AGP.

6. It is an admitted position that at the time of termination the Respondent No.1 was on probation.

7. Learned Senior Counsel for the Petitioner Management submitted since the Respondent No.1 was a probationer, his services were rightly terminated by the Petitioner Management upon their overall subjective satisfaction after assessing his work and behaviour. He submitted that the Confidential Reports of Respondent No.1 were adverse and several Memos were issued to him. He submitted that it is an admitted position that one of the instances of the conduct of Respondent No.1 can be gauged from the fact that Respondent No.1 had returned from the excursion of the Ahmadabad trip midway alongwith his two male colleagues and that the security of the 140 girl students and other female staff members was compromised and the fact-finding committee also found the conduct of the

Respondent No. 1 was improper. He submitted that the order of termination was a simplicitor termination order and cannot be said to be stigmatic and the School Tribunal had erred in interfering with the decision of the Petitioner Management in terminating the Respondent No.1. Learned Senior Counsel for the Petitioner has relied upon the following judgments:

- (i) **Kendraya Vidyalaya Sangathan V/s. Arunkumar Madhavrao Sinddhye and Anr.**, (2007) 1 SCC 283;
- (ii) **Pavanendra Narayan Verma V/s. Sanjay Gandhi PGI of Medical Sciences and Anr.**, (2002) 1 SCC 520;
- (iii) **Krishnadevaraya Education Trust and Anr. V/s. L. A. Balkrishna** (2001) 9 SCC 319;
- (iv) **Secretary/Rector, Hyderabad Sindh National College Board, Mumbai & Ors. V/s. Deepak Indar Ahuja & Ors.**, (2006) 5 Mh. L. J. 403;
- (v) **Smt. Nilambari Dinkar Pawar V/s. Shikshan Prasarak Sanstha & Ors.**, 2007 (3) All MR 12;
- (vi) **Ashok S/o Pandurang Janjal V/s. Secretary, Tulsabai Kawal Vidyalaya, Patur and Ors.**, 2006 (4) Mh. L. J. 759;
- (vii) **Shri. Vitthal Pandharinath Dhere V/s. Shree Kedarnath Shikshan Sanstha & Ors.**, 1998 (1) Bom C.R. 592;
- (viii) **Anand Education Society, Lakhani and Anr. V/s. Bharti w/o Bhaskarrao Parsodkar and Ors.**, 2009 (3) Mh. L. J. 810.

8. Learned Counsel for the Respondent No. 1 on the other hand submitted that the order of termination was stigmatic and therefore

notwithstanding the fact that the Respondent No. 1 was on probation, the Petitioner Management ought to have conducted a full-fledged inquiry against the Respondent No.1 before terminating him. He submitted that the Respondent No.1 was victimized. In his submission, this Court in exercise of writ jurisdiction ought not to go into the findings of fact by the School Tribunal and the impugned order was rightly passed. Learned Counsel for the Respondent No.1 has relied upon the following judgments:

- (i) **Progressive Education Society and Anr. V/s. Rajendra and Anr.**, (2008) 3 SCC 310;
- (ii) **V. P. Ahuja V/s. State of Punjab and Anr.**, (200) 3 SCC 239;
- (iii) **Dipti Prakash Banerjee V/s. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and Ors.**, (1999) 3 SCC 60;
- (iv) **Vinayak Vidhyadayini Trust & Anr. V/s. Aruna T. Prabhu & Ors.**, 2011 (1) Mh. L.J. 550;
- (v) **Deepali Gundu Surwase V/s. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Ors.**, (2013) 10 SCC 324;
- (vi) **Nehru Yuva Kendra Sangathan V/s. Mehbub Alam Laskar**, (2008) 2 SCC 479;

9. In **Kendriya Vidhyalaya Sangathan** (supra), the Supreme Court has referred to the decision of **State of Punjab v/s. Sukhwinder Singh**, (2005) 5 SCC 569, wherein it was held that if mere holding of an inquiry to ascertain the relevant facts for arriving at a decision on objective

considerations whether to continue the employee in service or to make him permanent is treated as an inquiry 'for the purpose of imposing punishment' and an order of discharge or termination of service as a result thereof 'punitive in character', the fundamental difference between a probationer or a temporary employee or a permanent employee would be completely obliterated, which would be wholly wrong. The Supreme Court held that the innocuous order of termination following a fact-finding inquiry could not be said to be an order of punishment which entitled him to full-fledged inquiry contemplated under Article 311 of the Constitution.

10. In **Pavanendra Narayan Verma** (supra), the Supreme Court held that if the order of termination in respect of temporary employee stated that the work and conduct has not been found satisfactory cannot be said to be ex-facie stigmatic and mere holding of prior inquiry in which the inquiry report contained nothing more against him than his inability to meet the requirements of the post could not render the said order punitive. In paragraph 21 the Supreme Court held that one of the judicially evolved test to determine whether in substance an order of termination is punitive to see whether prior to the termination there was [a] a full scale formal inquiry [b] into allegations involving moral turpitude or misconduct which [c] culminated in a finding of guilt. If all 3 factors are present the termination has been held

to be punitive irrespective of the form of the termination order. Conversely if any one of the 3 factors is missing, the termination has been upheld.

11. In **Mathew P. Thomas** (supra), the Supreme Court has held that in case of a probationer, though show cause notice containing serious allegations of misconduct was issued, but the order of termination was based on unsatisfactory performance, the order of termination would be a simplicitor termination and would not be of stigmatic and the appointing authority abandoning the charges of misconduct and concentrating only on the lapses committed by the probationer, in such case the order terminating the services of the probationer for unsatisfactory performance would not be stigmatic.

12. In **Vithal Pandharinath Dhere** (supra), the Division Bench of this Court held that the Management would be the best judge of the situation as to whom to continue and whom not to continue and in respect of the probationer and it is the satisfaction of the Management which decides the issue as to whether a person on probation requires to be continued or not.

13. In **Secretary/Rector, Hyderabad Sindh National College Board** (supra) this Court held that in a case of probationer when the Management

decides not to hold disciplinary proceedings, it was open to the Management to adopt the alternate course of taking recourse to a termination simplicitor on an overall review of the work or conduct of the employee.

14. In **Ashok s/o Pandurang Janjal** (supra), the Division Bench of this Court has held that plain reading of Rule 15(6) of the MEPS Rules discloses that as regards the employee on probation, the question of recording of confidential reports in terms of Rule 15(1) to (5) does not arise and sub-rule (6) specifically provides that in the case of such type of an employee his performance should be objectively assessed by the Head during the period of his probation.

15. In **V.P.Ahuja** (supra), the Supreme Court held that the probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice.

16. In **Dipti Prakash Banerjee** (supra), the Supreme Court has held that it depends on facts and circumstances of each case and the language or

words employed in the order of termination of the probationer to judge whether the words employed amount to a stigma or not.

17. In **Nehru Yuva Kendra Sangathan** (supra), the Supreme Court has held that there exist a distinction between motive and foundation. If misconduct is the foundation of such an order, the same would be bad in law even if it appears to an innocuous and non-speaking one. In that case the employee was found to be guilty of misappropriation and his explanation was not considered. The Supreme Court held that mere holding of a preliminary inquiry where explanation is called for from the employee, if followed by an innocuous order of discharge, may not be held to be punitive in nature but not when it is founded on a finding of misconduct.

18. In the present case, the provisions governing the service of the Respondent No.1 who was a probationer are found in section 5 of the MEPS Act and Rules 14 and 15 of MEPS Rules. Section 5 of the MEPS Act and as it then stood and Rules 14 and 15 of the MEPS Rules, read as under:

“5 Certain obligations of Management of private schools:

(1)

(2) Every person appointed to fill a permanent vacancy shall be on probation for a period of two years. Subject to the provisions of sub-section (4) and (5), he shall on completion of this probation period of two years, be deemed to have been confirmed.

(3) If in the opinion of the Management, the work or behaviour of any probationer during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving him one month's notice or salary of one month in lieu of notice.

(4)

(4A)

(5)

Rule 14. Assessment of employees work.

(1) At the beginning of each term, the teacher shall prepare the plan of his academic programme and at the end of the academic year, prepare a report of the work done by him and submit it to the Head.

(2) Each employee on the teaching and non-teaching staff of a school shall submit the report of self-assessment in the respective Form in Schedule "G" within one month after the end of a year.

Rule 15. Writing of confidential reports etc.

(1) The confidential reports shall be written annually in the respective Form in Schedule "G". The reporting authorities in respect of the employees and the Head shall be the Head and the Chief Executive Officer respectively. Confidential reports shall be written in respect of the employee or the Head who had worked for six months or more during an academic year commencing from June. If the Head or a teacher is the Secretary of the Management the confidential report in his respect shall be written by the President of the Management.

(2) The confidential reports so written in respect of the employees and the Head shall be reviewed by the Chief Executive Officer and the President

of the Management, respectively. The confidential report of the Head or a teacher written by the President shall be reviewed by the Managing Committee.

(3) The respective reporting authority shall arrange to communicate confidentially in writing adverse remarks, if any, to the concerned employee or the Head, as the case may be, before the end of August every year.

(4) Representation, if any, from any employee against the adverse remark communicated to him in accordance with sub-rule (3) above shall be decided by the School Committee. Similar representation, if any, from the Head shall be decided by the Managing Committee.

(5) Failure to write and maintain confidential reports and to communicate adverse remarks to the employees within the period prescribed in sub-rule (3) shall have the effect that the work of the employee concerned was satisfactory during the period under report.

(6) Performance of an employee appointed on probation shall be objectively assessed by the Head during the period of his probation and a record of such assessment shall be maintained.”

19. The Respondent No. 1 has not alleged in his Appeal before the School Tribunal that the Confidential Reports have not been maintained by the Petitioner Management or that the adverse remarks have not been communicated to him. No such contention was even urged before the School Tribunal. As a matter of fact in the Affidavit in Reply dated 25 June 2003 filed by the Deputy Education Officer in the present Petition, he has specifically stated that the Petitioner Management has maintained assessment of Respondent No.1 by way of the confidential reports and adverse remarks have been communicated to him and the Petitioner

Management have followed the legal procedure before terminating the services of the Respondent No.1. In these circumstances the judgments relied upon on behalf of the Respondent No. 1 which hold that the Management is required to maintain Confidential Reports and adverse remarks are required to be communicated to the employee on probation, would be of no avail to the Respondent No. 1.

20. In light of the principles of law enunciated in the judgments discussed earlier and as held by the Supreme Court in the case of **Mathew P Thomas (supra)** that it is settled position that whether an order of termination is simplicitor or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. In my view, in the facts and circumstances of the present case if the Petitioner Management did not desire to continue with service of Respondent No. 1, they were within their rights to do so and the action of the Petitioner Management in terminating the service of the Respondent No. 1 cannot be faulted.

21. It is seen that the termination order dated 12.12.1999 is a simplicitor order of termination and does not cast any stigma on the Respondent No.1. It reads as under:

“As per the Resolution passed by in the meeting of the Managing Committee on 12.12.1999, you are informed that your services of the

Institution are terminated from today 12.12.1999. Along with the salary of one month by cheque dated 12.12.1999 of Bhagini Nivedita Bank with no. 011288 of Rs. 8,842/- is attached.”

The Respondent No.1 has admitted in his Appeal that Memos were issued to him during his probation period. The Confidential Reports of the Respondent No.1 were also adverse. The termination of Respondent No.1 by the Petitioner Management cannot be said to be by way of victimization or punishment. There was no question of conducting an inquiry as the Respondent No. 1 was admittedly on probation. Pertinently, it is not even the case of the Respondent No.1 in his Appeal that an inquiry was required to have been conducted before terminating him. The entire case of the Respondent No.1 in this Appeal is that of victimization. In any case, no judgments contemplate the holding of an inquiry of a probationer if the Management on their subjective after assessment of work and behaviour of a probationer terminate his services by a simplicitor order of termination. It is required to be borne in mind that the Respondent No.1 was a probationer and it would be the subjective satisfaction of the Petitioner Management after assessing his work and behavior to take a decision whether or not they want to continue or discontinue his service and the Petitioner Management would be the best judge in that regard. The very concept of probation is to assess the work and behaviour of a probationer for

continuing him in employment on permanent basis. The Respondent Management has averred in its Written Statement before the School Tribunal that it has about 45 units and 7000 to 8000 employees and has a variety of activities for women education up-liftment. It is not possible to accept the case of the Respondent No.1 that he was victimized. In the facts and circumstances of the case it cannot be said that the act on part of the Petitioner Management was malafide or arbitrary. It is an admitted position that on one occasion the Respondent No.1 was a part of the excursion to Gujarat of 113 girl students for the period from 04-10-1998 to 09-10-1998 and the Respondent No. 1 and his two male colleagues (against whom also the Petitioner Management had taken action) had returned from the excursion without permission midway on 06-10-1998. The Respondent No. 1 has averred in his Appeal before the School Tribunal that the Petitioner Management appointed a fact finding committee 'to ascertain the correct happenings' with regard to the excursion and he was served with a Memo and his 3 days salary was deducted by way of punishment for returning early from the excursion alongwith other two teachers. Thus, admittedly there was no full-fledged inquiry conducted in that regard. In any event, the distance of time between the excursion which was in beginning of October 1998 and the termination order dated 12-12-1999 clearly suggests that the termination was not punitive, else the Petitioner Management would have

terminated the services of the Respondent No.1 in October 1998 itself. Having perused the impugned order of the School Tribunal, I have no hesitation in holding that the same is clearly perverse. It is noticed that this Court had stayed the impugned order of the School Tribunal and the Respondent No.1 is not serving the College for the last more than 17 ½ years.

22. For the aforesaid reasons, the School Tribunal had erred in interfering with order of termination of the Respondent No. 1, who was a probationer. The impugned order of the School Tribunal cannot be sustained and required to be set aside and accordingly set aside. The Petition succeeds. Rule is made absolute in terms of prayer clause (a). There shall be no order as to costs.

23 The Civil Application for intervention does not survive and to stand disposed of.

(A.A.SAYED, J.)