

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

WRIT PETITION NO. 2398 OF 2007

Deepak T. Kaul,
R/at. J-87, AWHO Colony, Sector-29,
Faridabad -121 008.

... Petitioner.

V/s.

1. The Chairman,
Sanjeevani Vidhyalaya Trust,
C/o. Kalayani Consultations Pvt. Ltd.,
1st Floor, B & C Wing, Bund Garden Rd.,
Pune -1.

... Respondents.

2. The Secretary,
Sanjeevani Vidhyalaya Trust, Panchgani,
Dist. Satara.

3. The Education Officer,
Zilla Parishad, Satara.

4. The Director of Education,
Maharashtra State, Pune- 1.

5. The Presiding Officer,
School Tribunal, Kolhapur Region,
Kolhapur, Maharashtra.

6. The State of Maharashtra, Office
of Govt. Pleader, A.S., PWD Bldg.
High Court, Bombay.

... Respondents.

Mr. G. R. Dwivedi, Advocate i/by Mr. R.A. Singh for the Petitioner.
Mr. Nitin A. Kulkarni, Advocate for Respondent No.1.
Mr. N. C. Walimbe, AGP for Respondent Nos. 4 and 6.

CORAM : UJJAL BHUYAN, J.

DATE : JANUARY 09, 2020.

ORAL JUDGMENT :

1 Heard Mr. Dwivedi, learned counsel for the Petitioner; Mr. Nitin Kulkarni, learned counsel for Respondent No. 1; and Mr. N. C. Walimbe, learned AGP for Respondent Nos. 4 and 6.

2 By filing this Petition under Article 227 of the Constitution of India, Petitioner seeks quashing of judgment and order dated 31.07.2006 passed by the Presiding Officer, School Tribunal, Kolhapur Region, Kolhapur (briefly “the Tribunal” hereinafter), dismissing the appeal filed by the Petitioner, challenging termination notice dated 01.03.2000.

3 Case of the Petitioner is that a public advertisement was issued by Respondent Nos. 1 and 2 for appointment to the post of Executive Assistant to Deputy Secretary of Sanjeevani Vidhyalaya Trust (Trust); pursuant to which Petitioner submitted application on 05.11.1996. There was an interview and following such interview, Petitioner was offered appointment vide appointment letter dated 04.09.1997 issued by Respondent No. 2. It was mentioned in the letter that Petitioner would be on probation for a period of two years from 01.12.1997. According to the Petitioner, the appointment was against a clear vacancy and pursuant to the appointment letter dated 04.09.1997 he joined services w.e.f. 01.05.1998. In terms of the appointment letter, two years probation period would have ended on

30.04.2000. However, Respondent No. 2 informed the Petitioner vide letter dated 01.03.2000 that though his probation period would be over on 01.05.2000, it was decided not to continue with his services w.e.f. 01.05.2000.

4 Aggrieved by such termination notice dated 01.03.2000, Petitioner had made a series of correspondence with the authorities of the Trust but without any success. Ultimately, he preferred appeal before the Tribunal under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short - "MEPS Act" hereinafter).

5 The appeal was registered as Appeal No. 18 of 2001. Chairman and Secretary of the Trust were added as Respondent Nos. 1 and 2. Education Officer, Zilla Parishad, Satara and Director of Education, Maharashtra State were added as Respondent Nos. 3 and 4.

6 Respondent Nos. 1 and 2 contested the appeal by filing written statement; though the other two Respondents did not contest the appeal. The appeal was heard by the Tribunal where-after both Petitioner and Respondent Nos. 1 and 2 filed their written arguments.

7 After hearing the matter, Tribunal passed the impugned judgment and order dated 31.07.2006, dismissing the appeal, holding that the Petitioner was not entitled to claim permanency in the post of Executive Assistant.

8 Aggrieved, present Writ Petition has been filed.

9 Main ground taken in the Writ Petition challenging the impugned judgment and order is that having regard to the nature of appointment and the fact that appointment was against a clear vacancy after following the due selection process, Petitioner could not have been terminated from service in the manner in which he was terminated. Petitioner is entitled to protection under section 5(2) and (3) of the M.E.P.S. Act. The view taken by the Tribunal is wholly erroneous and is liable to be appropriately interfered with.

10 An affidavit has been filed on behalf of the Trust; supporting the impugned judgment and order passed by the Tribunal. It is contended that there is no necessity to interfere with such finding. Referring to section 5(3) of the M.E.P.S. Act, it is contended that the Management of the Trust has option to terminate the services of a probationer at any time during probation period, after giving one month's notice or salary in lieu of notice; but at the same time it is contended that the Trust is not a school under the M.E.P.S. Act and therefore, the appeal filed by the Petitioner was not maintainable. Appointment letter was signed by the Secretary of the Trust and, therefore, such an appointment letter is not a valid appointment letter in so far the school is concerned. It was a case of termination simplicitor without any stigma and therefore, no enquiry was called for.

11 Detailed submissions have been made by learned counsel for the parties, which have been duly considered.

12 Adverting to the impugned judgment and order, it is seen that the Tribunal had framed four issues; out of which issue nos. 2 and 3 are relevant. As per issue no. 2, the question framed was whether the appellant (petitioner) could prove that the termination notice was illegal in view of the provisions contained in the M.E.P.S. Act and the Rules framed thereunder and whether it was required to be interfered with. The third issue was whether the appellant (petitioner) was entitled to reinstatement alongwith full back wages and all incidental benefits. In respect of these two issues, the answer provided by the Tribunal was in the negative. It may be mentioned that both issue nos. 2 and 3 were dealt with together by the Tribunal. While adjudicating these two issues, an incidental question also arose as to whether appeal filed by the Petitioner was maintainable or not.

13 As already noted earlier, appeal of the Petitioner was filed under section 9 of the M.E.P.S. Act. It was contended on behalf of the Petitioner that since the Petitioner was an employee of the Trust, his appeal would be covered by the M.E.P.S. Act. In this connection, reliance was placed on a decision of this court in the case of **Sudhakar Vinayak Karegaonkar vs. State of Maharashtra** (2000) I CLR 251; paragraph-9 of which was extracted by the Tribunal. In the said judgment, it was held that an appeal filed by an employee under section 9 of the MEPS Act would be maintainable. Following such decision, Tribunal noted that Respondents did not come up with any specific case that the Petitioner had some other alternative remedy available to him.

Therefore, contention of Petitioner that appeal filed by the Petitioner was tenable, was found to be sustainable.

14 Tribunal thereafter proceeded to deal with the substance of the challenge. The Tribunal noted that the Petitioner had joined services on 01.05.1998 and was on probation till 01.05.2000. His service was terminated on the last date by giving two months' prior notice. In other words, Petitioner was terminated from service during probation period. Thereafter, Tribunal held as under :

“In view of the above observations, I perused the appointment letter dated 04.09.1997 filed along with document list exh. 4 which is observed issued by the Director/Secretary of Sanjeevan Vidhyalaya Trust and not by the Head Master/ Secretary of the School Committee. Further that appointment order specifically contends that the rules and regulations of the Trust implied and express and the modifications if any are binding on the appellant. There is no mention in the said appointment order that the terms of the employment and conditions of service shall be as laid down in the M.E.P.S. Act, 1977 and the Rules made thereunder as required as per Schedule 'D'. Hence, observing that the appointment order dated 04.09.1997 is not as per Schedule 'D' of the M.E.P.S. Rules, the appointment of appellant can not be said to be legal in view of the provisions under M.E.P.S. Act and the rules thereunder. Therefore, the submission of the advocate of the appellant that the services of appellant are protected under Sec. 4(6) of the M.E.P.S. Act cannot be sustained. On the other hand in view of the observations in the above quoted citation the submission of the advocate of respondents that no legal right is created in favour of

appellant on the basis of such illegal appointment order which is no order in the eye of law is observed sustainable.

Hence, observing that the appellant has failed to establish his legal right on the post of the Executive Assistant in view of the provisions of the M.E.P.S. Act and the rules made thereunder, I hold that the appellant is not entitled to claim permanency on that post. Consequently, the termination notice dated 01.03.2000 is held legal. In result, I answer point nos. 1 and 2 in the negative and proceed to pass the following order.

Order

1. The appeal is hereby dismissed.
2. No order as to costs.”

15 From the above, it is evident that the Tribunal had considered that the appointment letter was issued by the Director / Secretary of the Trust and not by the Head Master/ Secretary of the School Committee. It was also noted that there was no mention in the appointment letter that the terms of employment and conditions of service would be as laid down in the M.E.P.S. Act and the Rules framed thereunder. Tribunal observed that appointment letter dated 04.09.1997 was not as per Schedule-B of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (M.E.P.S. Rules, hereinafter). Therefore, it was concluded that the Petitioner was not entitled to protection under section 4(6) of the M.E.P.S. Act.

16 To appreciate the correctness or otherwise of the finding rendered by the Tribunal, it would be apposite to advert to the letter of

appointment dated 04.09.1997. From a perusal of the letter of appointment, it is seen that Petitioner was appointed after a due selection process and was put on probation for a period of two years. It was mentioned that appointment of the petitioner was subject to the terms and conditions mentioned in the service agreement entered into between the parties separately. Letter of appointment further discloses payment of salary to the Petitioner at a particular pay-scale with additional allowances like, conveyance allowance, food subsidy, interim relief, hill station allowance, etc. alongwith P. F. (based on basic and D.A.only). Letter of appointment also provided that on the Petitioner becoming eligible for the next higher slot in the pay-scale, he would be required to cross the efficiency bar for which the conditions were mentioned in the letter of appointment. The appointment letter was issued by Ms. Shashi Thakar, Director / Secretary of the Trust.

17 A careful perusal of the letter of appointment would go to show that it had all the trappings of a regular appointment; albeit the fact that Petitioner was put on probation for a period of two years which in-fact is a requirement under the M.E.P.S. Act i.e. under sub-section (2) of section 5 thereof. On 01.03.2000, Petitioner was informed by Respondent No. 2 that his probation period would be over on 01.05.2000; but it was decided not to continue his services beyond 01.05.2000.

18 In the appeal filed by the Petitioner, stand taken by Respondent Nos. 1 and 2 in the written statement was that it was a

termination within the period of probation. It was a case of a probationer's termination simplicitor without any stigma or charge and, therefore, no enquiry was called for. It was also contended that the appeal was not maintainable under the M.E.P.S. Act.

19 In the written statement/arguments, Respondent Nos. 1 and 2 reiterated the same contentions; while asserting that provisions of M.E.P.S. Act was not applicable. In addition, it was contended that the Petitioner was not an employee of the school.

20 It has already been noted that Tribunal had found the appeal filed by the Petitioner to be maintainable. The appeal was filed under section 9 of the M.E.P.S. Act. Sub-section (1) of Section 9 provides that notwithstanding anything contained in any law or contract for the time being in force, any employee in a private school, who is aggrieved by his dismissal or removal or whose services are otherwise terminated or who is reduced in rank etc. shall have a right to appeal before the Tribunal. Therefore, right to file appeal under sub-section (1) of section 9 has been given to any employee of a private school. "Employee" has been defined in section 2(7) of the M.E.P.S. Act to mean any member of the teaching and non-teaching staff of a recognized school and includes Assistant Teacher (Probationary). Therefore, when the Tribunal held that appeal of the Petitioner was maintainable, it was a clear admission or acknowledgment on the part of the Tribunal that the Petitioner was treated as an employee of the school; otherwise appeal of the Petitioner would not have been maintainable. If this be the position,

then to say that Petitioner was not an employee of the school and therefore, not be entitled to the protections under the M.E.P.S. Act would not be justified.

21 Section 4 deals with the terms and conditions of service of employees' of private schools. Sub-section (6) thereof says that no employee of a private school shall be suspended, dismissed or removed or his services shall not be otherwise terminated or he shall not be reduced in rank by the Management, except in accordance with the provisions of the M.E.P.S. Act and the Rules made in that behalf. Of-course, a view may be taken that a probationer may not be entitled to the protection under sub-section (6) of section 4.

22 It, therefore, becomes important to advert to the provisions of section 5 of the M.E.P.S. Act; particularly sub-sections (2) and (3) thereof. Section 5 lays down certain obligations of the Management of private schools. As per sub-section (1), the Management shall fill in every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy expeditiously and in the manner prescribed. Sub-section (2) of Section 5 says that every person appointed to fill a permanent vacancy, except Assistant Teacher (Probationary) shall be on probation for a period of two years. Subject to the provisions of sub-sections (3) and (4), he shall on completion of this probation period of two years, be deemed to have been confirmed.

22.1. Therefore, the statutory requirement is that every person appointed to fill a permanent vacancy except Assistant Teacher shall be on probation for a period of two years and on completion of the probation period of two years, he shall be deemed to have been confirmed which, however, is subject to the provisions of sub-sections (3) and (4).

22.2. Under sub-section (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 or honorarium of one month in lieu of notice. Sub-section (4) deals with a situation where the services of a probationer are terminated under sub-section (3) and he is reappointed by the Management.

22.3. Admittedly, Petitioner's case does not fall within sub-sections (3) and (4) of section 5. Though the termination notice was issued during the probation period, petitioner had completed his two year probation period on 30.04.2000. In that view of the matter, having successfully completed the statutory probationary period, his case would be squarely covered by sub-section (2) of section 5. Tribunal completely overlooked this aspect of the matter which vitiated the impugned judgment and order.

23 Adverting to the termination notice dated 01.03.2000, it is seen that Petitioner was merely informed that it was decided not to

continue with his services beyond 01.05.2000. As alluded to hereinabove, the termination of service of the Petitioner was not on account of the work or behaviour of the Petitioner during the period of probation being found not satisfactory. Even otherwise also, services of a person on probation cannot be dispensed with by the Management for no apparent reason, just on its whims and fancies. Respondent Nos. 1 and 2 were under statutory obligation to adhere to the provisions contained in sub-section (2) of section 5 of the M.E.P.S. Act, which they failed to perform.

24 Insofar finding recorded by the Tribunal that the appointment letter itself was not as per the M.E.P.S. Rules, I am afraid such a finding or rather objection is more of form than of substance. It is not the case that Petitioner was appointed dehors any selection process or that he lacked eligibility. What is objected to is that the appointment letter ought to have been signed by the Head Master/Secretary of the school to enable the Petitioner to be considered as an employee of the school. Though format of an order of appointment is provided in Schedule 'D' to the M.E.P.S. Rules, the Rules have to be read in conjunction with the M.E.P.S. Act. It is the substance of the order of appointment which is relevant and not the format. Therefore, the constricted view taken by the Tribunal cannot be supported on a proper appreciation of the provisions of the M.E.P.S. Act and Rules framed thereunder.

25 Offshoot of the above discussion is that the impugned judgment and order dated 31.07.2006 passed by the Tribunal cannot be sustained and is accordingly set aside.

26 Since Petitioner had completed his probation period, Respondent Nos. 1 and 2 are directed to pass appropriate order in terms of section 5(2) of the M.E.P.S. Act within a period of 30 days from the date of the receipt of an authenticated copy of this order.

27 Writ Petition is accordingly allowed but without any order as to costs.

(UJJAL BHUYAN, J.)

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