

Vidya Amin

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

WRIT PETITION NO. 195 OF 2020

Emanuel Education Society, through
Secretary & Anr.

... Petitioners

V/s.

Suryakant Manohar Kudale & Anr.

... Respondents

Mr. Tejpal S. Ingale for the petitioners.

Mr. N.V. Bandiwadekar i/b. Ms. Ashwini N. Bandiwadekar and Ms.
Neha N. Bandiwadekar for respondent no. 1.

Ms. Madhubala Kajale, 'B' Panel counsel for the State.

CORAM : G.S.KULKARNI, J.

DATE : 30 November, 2021

P.C.:

1. Heard Mr. Ingale, learned counsel for the petitioners and Mr.
Bandiwadekar, learned counsel for respondent no. 1.

2. The petitioners, who claims to be a Minority Educational
Institution is before the Court, challenging the judgment and order
dated 8 November, 2019 passed by the Presiding Officer, School
Tribunal, Kolhapur in Appeal No. 70 of 2018. By the impugned
order, the Presiding Officer, School Tribunal has allowed the appeal
filed by respondent no. 1 by the following order:

"1. The appeal is partly allowed as under.

2. Termination order of the appellant by the
respondent management dated 11.02.2015 is hereby
quashed and set aside.

3. The Respondent Management is hereby directed to reinstate the appellant on original post within 50 days from today.
4. It is hereby declared that the appellant is entitled to continuity of service and all other service benefits, but, his claim of back wages is rejected.
5. Parties to bear their costs."

3. At the outset, some admitted facts are required to be noted. In 2005, by an order passed by the Charity Commissioner, Board of Administrators came to be appointed on the petitioner-institution. An advertisement was issued sometime in August-September, 2008 by the Board of Administrators, to fill up certain teaching and non-teaching posts. Two posts of peons were also advertised. The selection process accordingly was undertaken, which culminated into respondent no. 1 being issued an appointment order dated 1 October, 2008. Respondent No.1 joined duties. It is not in dispute that respondent no. 1 thereafter continued to discharge his duties on the said post. It is also not in dispute that the post was an aided post and a proposal was forwarded by the management to the Education Officer seeking approval of his appointment. The Education officer initially granted an approval on 30 April, 2011 and thereafter final approval came to be granted on 3 March, 2012. Thus, as far as the appointment and approval to the appointment of respondent no. 1 was

concerned, the matter had attained finality.

4. On 11 February, 2015, the petitioner addressed a notice purportedly under Rule 28 of the Maharashtra Employees of Private Schools' (Conditions of Service) Rules, 1981 titled as "Termination notice". About 25 points were incorporated in the said notice so as to question respondent no. 1's appointment. In the last paragraph of the said notice, it was recorded that with such one month's notice, respondent no. 1's appointment would stand terminated on 11 March, 2015. A termination order was served on respondent no. 1 purportedly recording that respondent no. 1 had not submitted any clarification as called for in the notice dated 11 February, 2015. No procedure was followed to hold any enquiry before issuing such order.

5. Respondent no.1 being aggrieved by his termination filed an Appeal, bearing no. 70 of 2018, before the School Tribunal, Kolhapur. Although the appeal was filed with some delay, on a delay condonation application being filed by respondent no. 1, the School Tribunal after hearing the parties by an order passed on such application condoned the delay and directed that the appeal be heard on merits. The parties were finally heard on the appeal

and by the impugned order, the appeal filed by respondent no. 1 was partly allowed.

6. Mr. Ingale, learned counsel for the petitioners has made submissions in assailing the impugned order passed by the School Tribunal. Mr. Ingale has submitted that there was a ban on the appointments as made by the State Government which was effective from November 2005 till about 2009. It is his submission that in view of such ban, the Board of Administrators came to be appointed by the Charity Commissioner, who had no authority to make any appointments and hence the appointment of respondent no. 1 was required to be held illegal. Mr. Ingale's second contention is quite peculiar, namely, that the petitioner is a minority educational institution, that being so, the learned Charity Commissioner in appointing the Board of Administrators ought to have considered the constitution of the petitioner so that members of minority committee were required to be appointed as the board of administrators. It is his submission that although these points were urged they were not dealt by the tribunal. Mr. Ingle has drawn my attention to the discussion of the tribunal in that regard in paragraphs 10 to 12. On these two submissions, Mr. Ingale would submit that the impugned order passed by the tribunal is

required to be interfered by this Court and set aside.

7. On the other hand, Mr. Bandiwadekar, learned counsel for respondent no.1 in supporting the impugned order passed by the tribunal would submit that the issues as urged on behalf of the petitioner certainly were not relevant in the context in which proceedings arose before the tribunal. It is his submission that the issue before the tribunal was an adjudication on the legality of termination of his client and as to whether it was as per the rules. He submitted that it was undisputed position that approval was granted to the appointment of respondent No.1 by the Education officer as also there was no challenge in respect of the nature of constitution of Board of Administrators as appointed by the Charity Commissioner. Even if it is presumed that it has some relevance as far as appointment of respondent no. 1 was concerned, according to him, such issues were totally extraneous. He has accordingly prayed for dismissal of the petition.

8. Having perused the record and having perused the impugned order with the assistance of the learned counsel for the parties, I am not persuaded to accept the contentions as urged by Mr. Ingale. In my opinion, issue of ban of appointments as urged does

not have any relevance so far as termination of respondent no. 1 is concerned, who appears to have been appointed by following due procedure and whose appointment, on a proposal as forwarded to the Education Officer was approved by the Education Officer. Any illegality in respect of the appointment to an aided post is an issue which is required to be considered by the Education Officer. In the present case, the Education Officer having applied his mind on all the issues, had granted approval to the appointment of respondent no. 1. Hence, in what manner such a issue would be germane to the termination of respondent no. 1, has not been spelt out by the petitioner. In such circumstances, it is difficult to attribute any relevance to such issue in regard to the matter of termination of respondent no. 1.

9. Insofar as second issue is concerned, it would be too far-fetched to accept Mr. Ingale's contention that the orders passed by the Charity Commissioner appointing Board of Administrators were not in accordance with the constitution of the petitioner-trust in its application to the proceedings before the School Tribunal. If such was to be the contention, it was always open for the petitioners to assail the orders passed by the Charity Commissioner. In my opinion, such a ground could not have been raised in defence in

the appeal of respondent no. 1 before the School Tribunal. Thus, both the issues raised by Mr. Ingale cannot be accepted.

10. In any event, the issue before the School Tribunal was limited, namely, to examine whether proper and lawful procedure was followed by the petitioner, prescribed under the said rules, in passing an order, to terminate the services of respondent No.1. It is clear from the record that neither a proper show cause notice was issued to respondent no. 1 nor Inquiry Committee was constituted in a manner known to law by the petitioner in issuing the order of termination. In these circumstances, the termination of respondent no. 1 was certainly illegal. No fault can be found in the order passed by the Presiding Officer, School Tribunal, in allowing the appeal filed by respondent no. 1.

11. In the above circumstances, petition is dismissed. No costs.

12. The petitioner is directed to permit respondent no. 1 to join duties within one month from today.

(G.S.KULKARNI, J.)