

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

FIRST APPEAL NO.1025 OF 1989

Ram Krishna Ram ..Appellant
V/s.
B.I. Ruia (Multipurpose) High School & Anr. ..Respondents

Mr.UdayP. Warunjikar for the Appellant.

Mr.N.R. Bubna for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 13th JANUARY 2021

P.C.

1. This appeal involves a dispute as to the termination of the services of the petitioner way back in the year 1974.

2. The respondent No.1 is a school run by the respondent No.2-Trust. In the year 1969 the appellant was appointed as an Assistant Teacher in the said school. According to the appellant he was a trained and qualified teacher. He was initially appointed on probation and was confirmed in the post of the Assistant Teacher after one academic year.

3. One Amarnath Singh was appointed as a Supervisor of the Primary Department where the appellant was working as an Assistant Teacher. According to the appellant Amarnath Singh was disqualified for holding the post of the Supervisor. The petitioner raised his grievance in his regard. According to the appellant Amarnath Singh being in good books of the School Management, this did not go well with the management, as a result of which the appellant was served with a show cause notice on 15th March 1974. The only charge leveled against the appellant was that he asked Amarnath Singh not to meddle/play with the means of livelihood of the appellant.

4. Be that as it may, the appellant sent his reply to the show cause notice. However, the appellant was placed under suspension on 16th March 1974 and by a subsequent letter dated 18th March 1974 the services of the appellant came to be terminated, without holding any inquiry and affording any opportunity to the appellant.

5. The appellant challenged the same in Short Cause Suit No.3524 of 1974 before the City Civil Court at Mumbai. The appellant *inter alia* sought a declaration that the order dated 18th

March 1974 is illegal and for setting aside the same and for reinstatement with all monetary benefits.

6. The respondents resisted the suit. All the adverse allegations were denied. It was contended that the appellant was suspended for a day on 16th March 1974 as he had misbehaved and misconducted himself, despite an apology tendered on 16th March 1973. It was the material defense that the school is recognized and aided primary school in Greater Bombay, governed by the Grant-in-Aid Code applicable to the Private Primary Schools. According to the respondents the services of the appellant were terminated as per Rule 5(vi) read with Rule 13 of the Appendix-7 of the Grand in Aid Code. The adverse allegations pertaining to Amarnath Singh and his alleged proximity with the Management were denied.

7. The learned Trial Court framed the following issues :-

<u>ISSUES</u>	<u>FINDINGS</u>
1. Whether the plaintiff proves that the order dated 18.3.74, terminating the services from the Defendant's School is illegal and was passed without holding any Departmental Enquiry ? If the answer to this issue is in the affirmative, then	No

2. Whether the plaintiff is entitled to all the arrears and emoluments from the date of dismissal till his re-instatement ?	No
3. What order, relief and costs ?	As per final order.

8. At the trial the appellant examined himself. No evidence was led on behalf of the respondents. The parties produced documents.

9. The learned Trial Court answered issue Nos.1 and 2 in the negative and dismissed the suit by a judgment and decree dated 07th December 1988 which is subject matter of challenge in this appeal.

10. It may be mentioned that after this appeal was admitted, the same came to dismissed for want of prosecution on 08th May 2013. The appellant filed Civil Application No.2749 of 2018 for restoration of the appeal. By an order dated 16th December 2020 in Civil Application No.2749 of 2018, the appeal has been restored to file.

11. I have heard Mr.Warunjikar, the learned counsel for the appellant and Mr.Bubna, the learned counsel for the respondents. With the assistance of the learned counsel for the parties, I have gone through the record.

12. It is submitted by the learned counsel for the appellant that the Trial court failed to see that the services of the appellant could not be terminated without compliance with Rule 14 of the Grant in Aid Code and without holding a departmental inquiry. It is submitted that the learned Trial Court was in error in holding that the present case is not governed by Rule 14 and by holding that instead Rule 13 of Grant in Aid Code, would apply. It is submitted that Rule 13 contemplates termination simplicitor, and in the present case the termination was clearly punitive in nature for the alleged act of misconduct and therefore, the matter was clearly covered by Rule 14 of the Grant in Aid Code. It is submitted that even application of Rule 13 requires prior approval of the Education Officer as per Circular SAS/13 dated 06th November 1981 which has admittedly not been obtained by the respondents. It is submitted that the Management could not take resort to Rule 13 as a device to circumvent the strict requirements of Rule 13, when termination of the service was clearly punitive in nature.

13. It is alternatively submitted that even otherwise the reliance placed on Rule 13 is misconceived, inasmuch as, the said Rule is void as being opposed to public policy and thus against the provisions of Section 23 of the Contract Act. It is submitted that same is violative of Article 14 of the Constitution of India. It is submitted that service of the appellant are in the nature of the public employment in a fully aided school and therefore same would be governed by Article 14 of the Constitution of India. Reliance is placed on the decision of the Supreme Court in ***Central Inland Water Transportation Limited & Anr V/s. Brojo Nath Ganguly & Anr.***¹.

14. The learned counsel submitted that the appellant has attained the age of the superannuation long back and therefore the relief of reinstatement no longer survives. He however, submits that the appellant may be granted all the monetary benefits till the date of his retirement superannuation along with appropriate compensation in lieu of reinstatement as the action on the part of the Management is per say illegal and highhanded.

1 (1986) 3 Supreme Court Cases 156

15. Mr.Bubna, the learned counsel for the respondents has supported the impugned judgment. It is submitted that the termination is relatable to Rule 13 of the Grant in Aid Code which is framed under Section 62(c)(3) of the Bombay Municipal Corporation Act and which has been approved and sanctioned by the Education Department of the State Government on 05th August 1964. It is submitted that thus no exception can be taken to the termination particularly when the appellant had put in not more than 10 years of service. It is submitted that the enquiry would be necessary only where the concerned teacher has put in more than 10 years service. He submitted that the appellant was also not diligent in prosecuting the appeal, which is apparent from the fact that although the appeal was dismissed for want of prosecution in the year 2013 an application for restoration was made only in the year 2018.

16. I have carefully considered the rival circumstances and the submissions made. It is undisputed that the appellant was appointed on 23rd June 1969 and was confirmed in service on 25th March 1970. The record further discloses that the appellant had furnished an apology letter on 16th March 1973. It appears that on 26th November 1973 the Supervisor Mr. Amarnath Singh went to

the class where the appellant was teaching the subject “Animals & Its Environment” (Prani Tatha Uska Paryawaran) and made certain remarks in the observation book. The appellant also appended his remark. Subsequently a show cause notice was issued to the appellant and he was placed under suspension for a day on 16th March 1974. On 18th March 1974 his services were terminated under Rule 13 of the Grant in Aid Code.

17. In order to appreciate the rival contentions it is necessary to set out the termination letter which reads thus :-

“B. L. RUIA (MULTIPURPOSE) HIGH SCHOOL

*Mahant Road, Vile Parle (E),
Bombay – 400 057 AS.
Date : 18th March, 1974.*

*Shri Ram Krishna Ram,
Asstt. Teacher,
Primary Section.*

Sub:- Termination of Service.

This is to inform you that your services as an Assistant Teacher in the Primary Section of this School are terminated w.e.f. 18th March, 1974, under Rule 13 of the Grant-In-Aid Code of the Municipal Corporation of Greater Bombay, Primary Section, which please note.

The Cheque No.AO 139459, dated 18.3.1974 for Rs.2,036.05 (Rupees Two Thousand and Thirty Six Paise five only) on the Bank of Baroda, Vile-Parle (East) Branch, is enclosed herewith being the amount of full compensation of

six months salary payable to you as per the rule mentioned above and your wages upto 18th March, 1974.

You are requested to hand over any articles belonging to the School in your possession within 24 hours of the receipt of this letter by you.

Yours faithfully,

sd/-

(Dr. M. S. Ruia)

Hon. Secretary

Encl. Cheque No.AO 139459, dated 18.3.74”

18. According to the respondents the termination is permissible under Rule 13 while according to the appellant the termination being for misconduct is relatable to Rule 14 of the Grant in Aid Code and therefore the termination could not have been effected without holding a Departmental Enquiry.

19. Rule 13 and 14 of the Grant in Aid Code read thus :-

“Rule – 13

The services of a permanent teachers may be terminated by the Management without assigning any reasons on giving 12 months’ salary (i.e. pay and allowances, if any) to the teacher if he has been, in the service of the School for ten years or more and 6 month’s salary (Pay and Allowances, if any), if he has been in the service of the School for less than ten years. The Management shall immediately inform the

Department of the action regarding the discharge of any payment made to such a teacher.

Rule - 14

In all other cases, of the termination of services of the permanent teachers, a regular charge-sheet shall be given to the teacher concerned and a proper inquiry held by the Management. During the inquiry the teacher shall be given an opportunity of furnishing a written statement as well as of leading evidence, if any. In case the teacher does not present himself before the Inquiry Committee after due notice, an ex-parte decision will be given, which will be binding on the teacher.”

20. It can thus be seen that under Rule 13 the Management is clothed with powers to effect termination simplicitor after paying six months salary, where the teacher has put in service for less than 10 years and 12 months salary, if he has put in services for 10 years and more Rule 14 envisages termination on account of misconduct which contemplates serving of a charge-sheet and holding a proper enquiry.

21. The question is whether the termination in the present case can be sustained under Rule 13 of the Grant in Aid Code which was applicable to the employment of the appellant.

22. A bare perusal of the letter of termination as reproduced above would show that it does not cast any stigma and is purportedly issued on the basis of Rule 13 of the Grant-in-Aid Code in Aid. It is true that there are certain antecedent incidents in which a show cause notice was issued to the appellant and he was placed under suspension. However, that itself cannot make the termination being attached with any stigma particularly when Rule 13 of the Grant in Aid Code, clothes the management, with a power to effect such termination.

23. The learned counsel for the respondent submitted that six months salary was paid by cheque and the same has been accepted by the appellant. Be that as it may in my, considered view, once there is a statutory power conferred on the Management to effect such termination simplicitor, without casting any stigma and termination order as reproduced above does not refer to any misconduct or cast any stigma on the appellant, no exception can be taken to the same.

24. It is necessary to state that although certain contentions are raised in the appeal above the validity of Rule 13 based on Section 23 of the Contract Act and Article 14 of the Constitution of India, I am afraid the validity cannot be examined in an appeal arising out of a civil suit challenging the termination. It is now well settled that in a given case, the management can choose to effect termination/discharge simplicitor, provided there is a statutory power vested in that regard in the management.

25. I have carefully gone through the impugned judgment and I do not find that it suffers from any infirmity so as to require interference. The appeal is without any merit and it is dismissed. In the circumstances, there shall no order as to costs.

Decree be drawn accordingly.

C.V. BHADANG, J.