

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.300 OF 1999

Smt. Shila Trimbak Dighule,
Age: 26 years, Occu: Service
(at present Nil). R/o Prabhuwadgaon,
Post: Kham Pimpri, Tq. Sevgaon,
District: Ahmednagar

... Petitioner

Versus

Shri. Hanuman Gramin Vikas Samshodhan
Mandal, Panaswadi & Others

... Respondents

...

Mr. Pradip Palve h/f Mr. Abhishek V. Palve, Advocate for Petitioners
Mr. V. D. Sapkal, Senior Advocate for Respondent Nos.1 & 2
Mrs. G. L. Deshpande, AGP for Respondent Nos.3 & 5

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 5th JULY, 2022

PER COURT :

1. By this petition filed under Article 226 and 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 12-08-1998, passed by the School Tribunal, Pune Region, Solapur in Appeal No.112/1996, thereby dismissing the appeal filed by the petitioner challenging her termination.

2. The petitioner filed the said appeal contending that she is B.A, B.P.Ed. The respondent no.1/educational institute runs and manages schools in the Ahmednagar District. She was

appointed as Assistant Teacher by respondent no.1 in the year 1993. She was only given a letter, which was submitted by her in the school. She joined the service on 10-08-1993. Her service was continued for the year 1994-1995 without any break. Her appointment was in a clear and permanent vacancy and on probation for two years. The respondents have not paid any amount towards salary to her on the ground that the school was non-aided. Her service was continued in the year 1995-1996 and her work and behaviour during the said period was satisfactory and she did not receive any memo from the respondents. The Education Officer (Secondary), Zilla Parishad, Ahmednagar has approved the appointment of the petitioner on probation of two years.

3. On reopening of the school, on 13-06-1996, when she went to join to the school, she was restrained from joining and was not allowed to join duty. The respondents orally informed her that her service is terminated w.e.f. 13-06-1996. Therefore, by filing appeal, she challenged her oral termination and sought relief of reinstatement with continuity of service and full back wages.

4. The respondents opposed the said appeal by filing a written statement contending that the appeal is not maintainable under Section 9 of the said Act, it is time barred, it was denied that the petitioner was Assistant Teacher in respondent no.2 school w.e.f.

10-08-1993 on probation for a period of two years. It was further denied that her appointment was on clear and permanent vacancy. The respondents denied that performance of the petitioner was satisfactory. The respondents came out with a specific case that the petitioner was appointed in the school by appointment order dated 08-08-1995. She worked in the school in the academic year 1995-1996 only on temporary basis. The performance of the petitioner as well as her behaviour during her appointment was not satisfactory, her moral behaviour was objectionable and therefore, she was unfit to continue in the school as Assistant Teacher, as the school was only for girls. Thus, in short, the respondents claimed that work of the petitioner was not satisfactory and her moral behaviour was not good. Since her appointment was purely on temporary basis, as the post on which, she was appointed, was reserved for Schedule Tribe category, her service was legally terminated.

5. After hearing the parties, the School Tribunal has dismissed the said appeal. Hence, the present petition.

6. Heard the learned Advocate for the petitioner, learned Senior Advocate for respondent nos.1 & 2 and the learned Assistant Government Pleader for respondent nos.3 & 5/State.

7. The learned Advocate for the petitioner has strenuously urged

that the petitioner was appointed on 10-08-1993. By relying on the experience certificate allegedly issued by the headmistress of the school dated 30-04-1996, which states that the petitioner has worked with a school during the academic years 1993-1994 and 1995-1996 satisfactorily, he submits that this proves that the petitioner was appointed in the year 1993. He further relied on the list of appointments placed on record at Page No. 27, wherein, the petitioner's name is at Sr. No.2. He further submits that the petitioner has attended training conducted at Abasaheb Kakde Vidhyalaya, Shevgaon between 01-07-1994 to 04-07-1994. He further relies on the approval granted by the Education Officer to the appointment of the petitioner. He therefore submits that there is sufficient material on record to indicate that the petitioner was appointed in the year 1993 on probation and therefore, her service could not have been orally terminated by the Management. This aspect is not properly appreciated by the Tribunal and the Tribunal's judgment therefore is unsustainable.

8. In support of his contentions, he relied on **Progressive Education Society & Anr. Vs. Nitin Krishnarao Nimbalkar & Ors.** reported in **2006 (4) Mh.LJ 747**, wherein, it is held that at the time of termination of probationer's service, one month notice is required to be given or at least salary of one month in lieu of such notice is to be paid.

9. On the other hand, the learned Senior Advocate for respondent nos.1 & 2/Management supported the impugned judgment of the School Tribunal. By pointing out the averments made in the appeal memo of the petitioner, he submits that, the petitioner has not raised any contention about non-payment of one month salary or notice in her appeal memo. The petitioner has challenged her otherwise oral termination, which cannot be in the facts of the present case, termed as stigmatic. The documents placed on record, according to him, clearly indicate that the petitioner was appointed on 08-08-1995. The approval granted by the Education Officer also confirms this fact that the petitioner was appointed on 08-08-1995 on probation. During the course of service of the petitioner, her performance was not found satisfactory and therefore, her service is legally terminated by the Management. The Management is entitled to terminate the service of the probationer, if the performance is not found satisfactory. He therefore submits that there is no substance in the petition and the same is liable to be dismissed.

10. In support of his submissions, he relied on **Priyadarshini Education Trust and Others Vs. Ratis (Rafia) Abdul Rasheed and Others** reported in **2007 (6) Bom. C. R. 79, Krishnadevaraya Education Trust and Another Vs. L. A.**

Balakrishna, reported in **AIR 2001 SC 625** and **Pratibha Gunwantrao Thakre Vs. Aadarsh Shikshan Sanstha Bhugaon** reported in **2020 (5) ABR 686**.

11. As per appointment order dated 08-08-1995 (Exhibit-A), the petitioner was appointed on probation from 10-08-1995. It is claimed by the petitioner that she was orally terminated w.e.f. 13-06-1996 i.e. before completion of probation period and her termination was within a period of one year from the date of her appointment. It is a settled legal position that, the service of a person on probation if found unsatisfactory, can be terminated by the Management.

12. In Krishnadevaraya Education Trust and Another (*Supra*), the Apex Court has held :

"5. There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit/appointee has to be seen. If his services are not satisfactory which means that he is not suitable for the job, than the employer has a right to terminate the services as a reason thereof. If the termination during probationary period is without any reason, perhaps such an order would be sought to be challenged on the ground of being arbitrary. Therefore, normally services of an employee on probation would be terminated, when he is found not to be suitable for the job for which he was engaged, without assigning any reason. If the order on the face of it states that his services are being terminated because his performance is not

satisfactory, the employer runs the risk of the allegation being made that the order itself casts a stigma. We do not say that such a contention will succeed. Normally, therefore, it is preferred that the order itself does not mention the reason why the services are being terminated.

6. If such an order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. Mere fact that in response to the challenge, the employer states that the services were not satisfactory would not ipso facto mean that the services of the probationer were being terminated by way of punishment. The probationer is on test and if the services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services.

7. In the instant case, the second order which was passed terminating the services of the respondent was innocuously worded. Even if we take into consideration the first order which was passed which mentioned that a Committee which had been constituted came to the conclusion that the job proficiency of the respondent was not upto the mark, that would be a valid reason for terminating the services of the respondent. That reason cannot be cited and relied upon by contending that the termination was by way of punishment”.

13. In *Pratibha Gunwantrao Thakre (Supra)*, Co-ordinate Bench of this Court has held that it is the right of the employer to terminate the services of a person on probation, if it is not satisfied with the services of the employee, is clearly spelt out statutorily from the provisions of Section 5(3) of the said Act.

14. It is not even the case of the petitioner that any termination order is issued and the petitioner has categorically come out with a

case that her service was orally terminated. Therefore, the petitioner cannot claim that the termination order is stigmatic. The petitioner cannot rely on the reply given by the Management to justify her termination to contend that since, in the reply, the Management has claimed that her moral behaviour was not right and her performance was not satisfactory, and therefore the order of termination is stigmatic.

15. The Tribunal has recorded a finding that the record indicates that petitioner was appointed by order dated 08-08-1995 on probation, w.e.f. 10-08-1995 on D.Ed scale, for a period of two years and her services were otherwise terminated in June-1996. The Tribunal by referring to the letters given by the petitioner as well as by the complaints of the guardians/parents has held that from time to time, warnings were given to the petitioner. The petitioner was not obeying the order and not doing work as per directions of Head Mistress of School. Thus, the behaviour and work of the petitioner was not satisfactory and there were many complaints against her filed by the guardians of girl students about her behaviour and work. The Tribunal has therefore held that since the petitioner was terminated within one year from the date of her appointment and since the Management on the ground of unsatisfactory work, the Management can terminate the employee

before completion of probation period. The Tribunal negated the contention of the petitioner that she was in service from 1993. The Tribunal has recorded sound reasons, while dismissing the appeal, which are placed on record before the Tribunal.

16. It is, therefore, clear that the petitioner has failed to prove that she was validly appointed in the year 1993 by following prescribed procedure under the Act and Rules. The Tribunal has passed a well reasoned order. In view of the settled legal position, facts of the case, record and findings recorded by the Tribunal cannot be faulted with. There is no legal or factual infirmity in the order impugned in the present petition. The petition, being devoid of substance, is dismissed. No costs.

17. In view of dismissal of present writ petition, civil application stands disposed of.

[NITIN B. SURYAWANSHI, J.]

Sameer