

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

WRIT PETITION NO. 302 OF 2022

Sachin Dayaram Murav

...Petitioner

Versus

The President/secretary,

Nashik Shikshan Prasarak Mandal & Ors.

...Respondents

Mr. Sachin S. Punde, for Petitioner.

Mr. Mandar Limaye, for Respondent No.1.

Mr. P. P. Pujari, AGP for Respondent No.3.

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 12 OCTOBER 2023.

PRONOUNCED ON : 26 OCTOBER 2023.

JUDGMENT:

This petition is filed by Petitioner challenging Judgment and order dated 13 November 2019 passed by School Tribunal Nashik rejecting Appeal No. 108 of 2016.

2. Briefly stated, facts of the case are that Petitioner held eligibility criteria for being appointed on the post of Shikshan Sevak. Respondent No.1 is a Trust which runs Respondent No.2 High School. Petitioner was appointed as Shikshan Sevak by Respondent No.1 in Respondent No.2 School on 08 February 2011. He was placed on

probation for a period of 03 years. On completion of probation period of 03 years, Respondent-Management failed to issue confirmation order, instead order dated 24 March 2014 was issued by Respondent-Management terminating services of Petitioner with effect from 29 March 2014.

3. Petitioner challenged the termination order dated 24 March 2014 before School Tribunal by filing Appeal No. 108 of 2016. The Tribunal has preceeded to reject the Appeal by its Judgment and order dated 13 November 2019. Aggrieved by the decision of the School Tribunal, Petitioner has filed the present petition.

4. Mr. Punde, the learned counsel appearing for Petitioner would submit that Petitioner acquired deemed confirmation of services on completion of probation of 03 years under provisions of Section 5 (2) of the the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. That Petitioner completed 03 years of service on 08 February 2014. As on the date of issuance of termination order dated 24 March 2014, he had acquired status of permanent employee. That therefore his services could not be discharged without holding disciplinary enquiry. He would further submit that, in any case, Petitioner's termination is stigmatic as the same is based on allegations of misconduct. He would submit that the Tribunal has not properly appreciated the fact that Petitioner's services could not be terminated by passing a simple order of termination without giving him opportunity of

defending himself in respect of the allegations made against him. In support of his contention Mr. Punde would rely upon the following Judgments :-

- i) **Shivdutta Education Trust & Anr. Vs. Harishchandra Rajabali Yadav & Ors.**, 2012(4) All MR 14.
- ii) **Chotelal Rameshwar Prasad Yadav Vs. Shivdutta Education Trust & Ors.**, Letter Patent Appeal (Stamp) No.2975 of 2012 in Writ Petition No.10754 of 2011 decided on 15/03/2012. AND **Harischandra Rajbali Yadav Vs. Shivdutta Education Trust & Ors.**, Letters Patent Appeal (Stamp) No.2988 of 2012 in Writ Petition No.10753 of 2011.
- iii) **Ram Avadh Mahel Pal Vs. Shivdutta Educational Trust & Ors.**, 2007(6) Mh. L. J. 659.
- iv) **Progressive Education Society & Ors. Vs. Nitin Krisnharao Nimbalkar & Ors.**, 2006(5) All MR 95.

5. *Per Contra* Mr. Limaye, the learned counsel appearing for Respondent-Management would oppose the petition and support the order passed by the Tribunal. He would submit that services of the Petitioner have been terminated on account of his failure to satisfactorily complete the period of probation. That Petitioner's services were not found to be satisfactory as there were adverse remarks in his Annual Confidential Report. That despite grant of repeated opportunities, the Petitioner did not improve his performance. That the termination order is not founded on misconduct, but service of the Petitioner was discharged on account of failure to complete satisfactorily period of probation. Mr.

Limaye would place reliance on Judgment of this Court in **Shivdutta Education Trust and another versus Harischandra Rajabali Yadav & Ors.** 2012 (4) ALL MR 14 and **Secretary / Rector, Hyderabad Sindh National College Board, Mumbai & Ors. Vs. Deepak Indar Ahuja & Ors.**, (2006) 5 AIR (Bom)(R) 755.

6. Rival contentions of the parties now all for my consideration.

7. Petitioner was appointed as Shikshan Sevak on 08 February 2011. Under Proviso to Sub-Section 2 of Section 5, an Assistant Teacher (probationary) is required to complete probation for a period of 03 years. Sub-Section 2 of Section 5 provides confirmation of the Assistant Teacher (probationary) on completion of the probation period. However Sub-Section 3 of Section 5 provides that if the work or behaviour of any probationary Assistant Teacher during the period of his probation is not found satisfactory, the Management can terminate his service at any time during the period of probation after giving him one months' notice. Section 5 of the Act of 1977 reads thus :

S. 5. Certain obligations of Management of private schools:

(1) The Management shall, as soon as possible, fill in, in the manner prescribed, every permanent vacancy in a private school by appointment of a person duly qualified to fill such vacancy: [Provided that, unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay, the Education Officer, Zilla Parishad or as the case may be, the Director or the officer designated by the Director in

respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools; and in the event of such person being available, the Management shall appoint that person in such vacancy)

(2) 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:

Provided that, every person appointed as Assistant Teacher (Probationary) shall be on probation for a period of three years.

(2A) Subject to the provisions of sub-sections (3) and (4), Assistant Teacher (probationary) shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.

(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 for salary for honorarium of one month in lieu of notice.

(4) If the services of any probationer are terminated under sub-section (3) and he is reappointed by the Management in the same school or any other school belonging to it within a period of one year from the date on which his services were terminated, then the period of probation undergone by him previously shall be taken into consideration in calculating the required period of probation for the purposes of sub-section (2).

(4A) Nothing in sub-sections (2), (3) or (4) shall apply to a person appointed to fill a permanent vacancy by promotion or by absorption as provided under the proviso to sub-section (1).

(5) The Management may fill in every temporary vacancy by appointing a person duly qualified to fill such vacancy. The order

of appointment shall be drawn up in the form prescribed in that behalf, and shall state the period of appointment of such person.

8. Thus, by relying on the provisions of Sub-Section 2 of Section 5 of the Act of 1977, Petitioner has contended that he acquired the status of deemed confirmation on completion of period of 03 years of probation on 08 February 2014. On the other hand, Respondent-Management treated Petitioner as under probation and adopted resolution in the meeting of the Managing Committee dated 02 March 2014 for termination of his service at the end of the period of probation.

9. Perusal of the termination order would indicate that there are adverse remarks in the Confidential Reports of the Petitioner during the period of his probation. The termination order also refers to non-receipt of approval for appointment of the Petitioner from Deputy Director of Education, Nashik. The Tribunal perused the Confidential Reports for the year 2011-12, 2012-13, and 2013-14. The same contains adverse remark. It appears that complaints from students and parents against Petitioner were received. Also there is complaint of Petitioner not getting alongwith fellow teachers and about his failure to follow instructions of management, etc. Similarly, there were complaints against Petitioner engaging in private tuitions. The management has proved before the Tribunal that services of the Petitioner were not found satisfactory during the period of his probation.

10. Mr. Punde has relied upon the Judgment of this Court in ***Ram Avadh Mahel Pal*** (supra). The issue before the Full Bench was entirely different. On account of conflicting views of confirmation of Shikshan Sevak on completion of 03 years of services, the issue was referred to the full bench. The Division Bench of this Court had taken a view that the relationship of Shikshan Sevak with the appointing authority is purely contractual and that therefore various propositions concerning probationary appointment would not apply to such kind of contractual appointment. As against this another Division Bench of this Court had taken a view that satisfactory completion of 03 years services entitles absorption of Shikshan Sevak on regular post. Thus issue before the Full Bench was entirely different and the same would have no application to the facts of the present case where the management had recorded findings about services of the Petitioner during probation not being found satisfactory. In the Judgment of Division Bench of this Court in ***Chhotelal Rameshwar Prasad Yadav*** (supra) relied upon by Mr. Punde the issue was about method of computing period of 03 years for absorption and therefore the said judgment would have no application to the facts of the present case.

11. In ***Progressive Education Society*** (supra) the issue was about non issuance of one months' notice in advance before terminating services of probationer. In the present case Petitioner was not terminated during the period of his probation but his services are discharged after completion of period of probation. ***Shivdutta Education Trust*** (supra)

mandates issue of one months' notice only in the event of termination of services during the period of probation. Once the period of probation is completed, issuance of such notice would not be necessary.

12. The issue with regard to right of Management to discharge services of a probationer on completion of probation period is dealt with by this Court in Judgment in *Shivdutta Education Trust* (supra) which is relied upon both by Mr. Punde as well as by Mr. Limaye. This Court has recognised the principle that the Management can discharge the services of a probationer on account of unsatisfactory performance found at the end of probation and that there is no need of issuance of 1 months' notice. This Court held in paragraph Nos. 20 and 22 as under :

20. The question is whether at the end of probation period the management is entitled to inform a Shikshan Sevak that due to the opinion of the management his services would no longer be required? In other words, whether at the end of probation period, the management can stop the Shikshan Sevak getting benefit of deeming provisions of sub- section (2-A)? The answer, in my view, is in affirmative. If the management is entitled to terminate the services of Shikshan Sevak during the period of probation as provided in sub-section (3), one has to accept the possibility of the management deciding to express such opinion at the end of the probation period and deny such Shikshan Sevak the advantage of deeming provisions. **The question would still arise as to whether at such occasion, the management is required to give one month's notice or salary/honorarium in lieu of such notice. The answer of this is in the negative.** The probation period comes to an end by efflux of time. If management forms an opinion that performance of Shikshan Sevak was not satisfactory, they are at liberty to say so even at the end of probation. At such time, there is no need to give either a notice or salary of one month. The

need to give one month notice or salary would arise only if termination takes place during the period of probation. A similar situation arose in the case of (*Akbar Peerbhoy College Vs. Mrs. Pramila N. Kutty & ors.*), 1998(1) Bom. C. R. 1(O.S.): 1997(3) Mh.L.J. 195. The learned single Judge considered similar provision from MEPS Rules. The relevant paragraphs of the judgment would suffice the purpose.

12. Rule 28(1) of the Rules of 1981 reads thus:

“28. Removal or Termination of Service.- (1) The service of a temporary employee other than on probation may be terminated by the Management at any time without assigning any reason after giving one calendar month’s notice or by passing one month’s salary (pay and allowances, if any) in lieu of notice.

In the case of an employee entitled to vacation, the notice shall not be given during the vacation or so as to cover any part of the vacation or within one month after vacation.”

13. A look at the said rule would show that it provides that services of temporary employee who is not on probation may be terminated by the management at any time without assigning any reason provided one calendar month’s notice or one month’s salary (pay and allowances, if any) in view of such notice has been given. In the said rule it cannot be read that where the service of a temporary employee comes to an end automatically by efflux of time as stated in the appointment order yet the management is obliged to give one calendar month’s notice or to pay one month’s salary to such temporary employee in lieu of notice. Rule 28(1) is attracted in a situation where either there is no period stated in the appointment order of such temporary employee and his services are sought to be brought to an end or where the period is stated in the appointment order of such temporary employee and the management intends to terminate the services of such temporary employee earlier than the period stated in the appointment order. Rule 28(1) does not contemplate nor does it envisage a situation of its compliance where the services of the temporary employee other than on probation comes to an end on

the date stated in the appointment order. In other words, in a case where appointment of temporary employee is for a fixed period and the services of such a temporary employee comes to an end on the expiry of that fixed period, giving of the notice as contemplated under Rule 28(1) is not required nor any specific termination order is required to be passed because in the appointment order itself the period of appointment is fixed and on expiry of that period the appointment comes to an end automatically. It would be relevant to mention here that Schedule 'D' appended to the Rules of 1981 provides for format of order of appointment of a temporary employee and in terms of such format the management is required to mention in the order of appointment that appointment of such employee was purely temporary for a period of particular period and after expiry of the said period the services of such employee shall stand terminated without any notice."

22. I am afraid even this submission is not helpful to the respondents. It has come on record that from time to time the respondents were given warnings and communications in writing that the management was not finding their work satisfactory. They were given opportunities after opportunities for improvement. So it cannot be said that respondents were not communicated with the adverse remarks. It also cannot be said that the performance of the respondents were not properly assessed or that the record of such assessment was not maintained.

13. In **Secretary / Rector, Hyderabad Sindh National College Board Mumbai** (supra) this Court held that termination-simplicitor without casting any aspersions on a teacher would not necessitate conduct of any disciplinary enquiry. To this Court held in para 12 and 13 as under :-

12. The Tribunal has placed a considerable degree of emphasis

on the fact that a notice was issued by an advocate to the management on 20th December, 2005 making allegations against the first respondent and there were letters which were on the record of the Governing Body which adverted to the alleged collection of money by the first respondent from the students/parents in circumstances such as the present, the mere fact that the management is confronted with material adverse to a probationer cannot be a reason to hold that the order of probation is stigmatic. Obviously, the management cannot turn a blind eye to the material brought to its notice, but clearly, in law, there are two courses of action which are open. The management may decide to adopt a full fledged departmental enquiry and enquire into the allegations of misconduct. In such a case the action would be punitive if a full fledged enquiry were to be held involving allegations of misconduct and a finding of guilt were arrived there at. In such a case if termination takes place upon a finding of guilt, the termination would have to be regarded as punitive irrespective of the form of the order. That is however not the case here in the present case, the management decided not to hold or convene disciplinary proceedings and it was clearly open to the management to adopt the alternate course of taking recourse to a termination-simpliciter on an over all review of the work or conduct of the first respondent. The Tribunal has placed a considerable degree of emphasis on the time gap which ensued between the order of termination and suspension. That cannot be a conclusive factor. The Tribunal has sought to draw a distinction between the expression unsatisfactory work which is characterized as not punitive and unsatisfactory behaviour which the Tribunal records as stigmatic. This conclusion is directly in the teeth of section 5(3) of the Act which requires an assessment of the work and behaviour of the probationer.

13. For all these reasons I am of the view that the approach of the Tribunal was completely unsustainable and that the impugned order has to be quashed and set aside. The petition is accordingly allowed. The judgment and order of the Tribunal dated 14th September, 2005 is set aside. Rule is accordingly made absolute in terms of prayer clause (a).

14. In the present case, Petitioner has not satisfactorily completed the period of his probation. The management is therefore entitled to discharge his services. Confirmation in service can be achieved only if the period of probation is satisfactorily completed. In respect of a probationer whose, services are not found to be satisfactory, the deeming fiction would not be triggered. Just because Management took some time to take a decision for discharging services of a probationer, after end of his probation, would not confer any right of deemed confirmation on him.

15. In the result I am of the view that the Petitioner has failed to make out any case for interference by this Court in the order passed by the School Tribunal. Writ Petition, being devoid of merits, is dismissed without any order as to costs.

SANDEEP V. MARNE, J.

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