

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.61 OF 2010
IN
WRIT PETITION NO.8025 OF 2008**

Shreerang Education Society & AnrAppellants

V/s.

Janhavi Jayesh Gaikwad & Anr ...Respondents

Mr. S. V. Pitre for Appellants.

Mr. N. V. Bandiwadekar for Respondent No.1

Mr. A. I. Patel, Addl. G. P. a/w Mr. K. S. Thorat, AGP for State.

**CORAM : K.R. SHRIRAM &
RAJESH S. PATIL JJ**

DATED : 16th FEBRUARY 2023

P.C. :

1 The appeal is impugning an order dated 5th January 2010 allowing Writ Petition No.8025 of 2008 that was filed by respondent no.1. In that petition, respondent no.1 had impugned an order dated 17th September 2008 passed by the Presiding Officer, Additional School Tribunal, dismissing her appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (the said Act).

2 The relationship between appellants and respondent no.1 has been turbulent from the time respondent no.1 was appointed on probation as an Assistant Teacher. Respondent no.1 was appointed on probation w.e.f., 24th February 2006 in appellants' school. Respondent no.1 was initially served with an order of termination dated 22nd January 2007. The service of

respondent no.1 was terminated pursuant to a notice dated 22nd January 2007 to be effected on 22nd February 2007. Respondent no.1 challenged that order of termination before the Presiding Officer, Additional School Tribunal, Navi Mumbai, which was allowed. Appellants preferred a writ petition no.5332 of 2007 in this court, which writ petition was dismissed by an order dated 30th August 2007.

3 Thereafter, by a letter dated 30th January 2008, the services of respondent no.1 was once again terminated. The period of probation was to come to an end on 22nd February 2008. Respondent no.1 challenged the said order of termination before the School Tribunal. The School Tribunal dismissed the appeal of respondent no.1 by an order dated 27th March 2008. That order was challenged by respondent no.1 by way of a writ petition no.3800 of 2008. By judgment and order dated 23rd July 2008, order of the School Tribunal was set aside and the matter was remanded. The School Tribunal once again upheld the order of termination. That is how Writ Petition No.8025 of 2008 in which, this appeal is preferred, came to be filed.

4 The reason why the Learned Single Judge allowed the writ petition was because Rule 15(6) of the said Act and the Rules 1981, provides for performance of an employee appointed on probation shall be objectively assessed by the head during the period of probation and a record of such assessment shall be maintained. The Learned Single Judge rightly held that appellants had only considered the performance of respondent no.1 for the period 2006 to 2007 based on which, the impugned action was taken but

did not objectively assess the performance of respondent no.1 for the period upto 31st January 2008 when the letter of termination was issued. The letter of termination reads as under:

“Your performance thereafter is not satisfactory and you have been informed vide letter dated 30.07.2007 stating in detail the facts pertaining to your non-satisfactory performance and adverse entries to your Confidential Report 2006-2007 and in that behalf you have given false and frivolous reply dated 03-08.2007. There after also parents of the students of Std Xth of S.V.E.M. have lodged the complaint against you and Head Mistress of SVEM was informed on 22.08.2007 and finally on 26.11.2007 Head Mistress of SVEM has written letter to the under signed.”

5 Though letter of termination refers to the conduct of respondent no.1 post 2006-2007, the confidential report / objective assessment by the Head Mistress for the period thereafter upto the date of termination, is not reflected in the order of termination. In fact, the letter dated 30th July 2007 referred in the above quoted paragraph has been set aside by the High Court in its order of 30th August 2007.

6 In the circumstances, we find no error in the impugned order. Appeal dismissed with costs in the sum of Rs.50,000/- to be paid to respondent no.1 within four weeks from today. Mr. Pitre prays for stay of the order. Prayer refused. This is because it is the question of livelihood of a person, who has been out of job since last 15 years and unfortunately a teacher has been made to go through 3 rounds of litigation to stay in the job.

(RAJESH S PATIL, J.)

(K.R. SHRIRAM, J.)