

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3487 OF 2014

1. Krantisurya Mahatma Phule
Education Society, Mahakali Nagar,
Mulund (E), Mumbai-81,
Through its Secretary.
2. The Head Master,
Krantiveer Raghoji Bhangare Secondary
School, Deogaon, Tq. Akole,
Dist. Ahmednagar.

..Petitioners

Versus

1. Anil s/o Nivrutti Wandekar,
Age : 43 years, Occu : Nil,
R/o Nimbrel, Tq. Akole,
Dist. Ahmednagar.
2. The Education Officer (Secondary)
Zilla Parishad, Ahmednagar,
(Copy to be served on A.G.P.
High Court of Bombay
Bench at Aurangabad)
3. Lahanu s/o Bhikaji Naikwadi,
Age : 42 years, Occu : Service,
R/o Navlewadi, Tq. Akole,
Dist. Ahmednagar.

..Respondents

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Advocate for the Petitioners : Mr. S.K. Shinde
AGP for Respondent/State : Mrs. M.L. Sangit
Advocate for Respondent No.1 : Mr. Amol N. Kakade i/b Mr. M.S. Taur
Advocate for Respondent No.3 : Mr. Atul B. Gatne

WITH
WRIT PETITION NO.3525 OF 2014

Lahanu s/o Bhikaji Naikwadi,
Age : 42 years, Occu : Service,
R/o Nawalewadi, Tq. Akole,
Dist. Ahmednagar.

..Petitioner

Versus

1. Anil s/o Nivrutti Wandekar,
Age : 43 years, Occu : Nil,
R/o Nimbrel, Tq. Akole,
Dist. Ahmednagar.
2. The Education Officer (Secondary)
Zilla Parishad, Ahmednagar,
(Copy to be served on A.G.P.
High Court of Bombay
Bench at Aurangabad)
3. The Head Master,
Krantiveer Raghoji Bhangare Secondary
School, Deogaon, Tq. Akole,
Dist. Ahmednagar.
4. Krantisurya Mahatma Phule
Education Society, Mahakali Nagar,
Mulund (E), Mumbai-81,
Through its Secretary.

..Respondents

...

Advocate for the Petitioner : Mr. Atul B. Gatne

AGP for Respondent/State : Mrs. M.L. Sangit

Advocate for Respondent No.1 : Mr. Amol N. Kakade i/b Mr. M.S. Taur

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CORAM : S.G. MEHARE, J.

DATED : FEBRUARY 28, 2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.
2. The petitioners in Writ Petition No.3487 of 2014 are the management/employer of respondent no.1, and the petitioner in Writ Petition No.3525 of 2014 is the employee appointed in place of respondent no.1. Both have impugned the same order of the Tribunal

passed in Appeal No.11/2008 dated 28.01.2014 allowing the appeal of respondent no.1 and declaring the termination order dated 10.06.2007 illegal.

3. This is a second round of litigation. After the remand by this Court, the matter was again heard. Bearing in mind the directions of this Court, the learned Tribunal has considered Section 5(3) of the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977 (for short 'Act of 1977) and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short 'Rules, 1981').

4. It was not disputed that respondent no.1 was appointed by following the due procedure of law on probation for two years by a written order dated 10.02.2006. However, before completing his probation by a written order dated 10.06.2007, his services were terminated as his performance was unsatisfactory. On hearing the respective counsels at length, a short question arises, whether the termination of respondent no.1 is as per Section 5(3) of the Act of 1977 read with Rules 14 and 15 of the Rules, 1981.

5. Rule 14 provides for the assessment of employees work. The employee/teacher has to prepare the plan for his academic programme at the beginning of each term and at the end of the academic year, prepare a report of his work and submit it to the head. The employee has to submit the self-assessment report in the

respective Form within one month after the end of the year. Rule 15 provides for writing of confidential reports, etc. The confidential reports should be written annually in respective Forms. The head of the employee is the reporting authority. The confidential report shall be written by the head of the employee who worked for six months or more during an academic year commencing in June. If the head or a teacher is the Secretary of the Management, the confidential report in his respect shall be written by the President of the Management. The confidential reports so written with respect to the employees and the head shall be reviewed by the chief executive officer and the President of management, respectively.

6. Rule 15(3) is relevant to the question raised before this Court, which provides that the respective reporting authority should arrange to communicate confidentially in writing adverse remarks, if any, to the concerned employee or the head, as the case may be, before the end of August every year. Communicating such confidential reports gives the employee an opportunity to make a representation against whom the adverse remarks have been recorded. Rule 15(5) is again important to decide the issue involved before this Court, which provides for effect on failure to write and maintain confidential reports and to communicate adverse remarks to the employees within the period prescribed in sub-rule (3). It has the effect that the work of

the employee concerned was satisfactory during the period under report.

7. Learned counsel for the management has argued that the management has exercised the power under Section 5(3) of the Act of 1977. The management assessed the performance of the respondent no.1. Therefore, his services were terminated by notice as required under the said section. He would submit that after the remand, the learned Tribunal ought not to have made the observations against the reasons recorded by this Court in the writ petition. However, the learned Tribunal, exceeding its powers went on interpreting the above Section and Rules and recorded the findings against the law. The learned Tribunal recorded the finding that the confidential reports submitted by respondent no.1 were not genuine. Therefore, the Tribunal ought not to have passed the order holding that the termination was illegal. The findings of the Tribunal are self-contradictory. He would submit that the learned Tribunal misread the ratio laid down by the Hon'ble Supreme Court in the case of Progressive Education Society and Anr Vs. Rajendra and Anr, AIR 2008 SC 1442. In addition, thereto, he would submit that another employee who had filed Writ Petition No.3525 of 2014 has been appointed in his place. As of today, there is no vacancy as such. The termination was legal, proper and in compliance with the Act and Rules. Therefore, the petition deserves to be allowed.

8. Before recording the reply of respondent no.1, the arguments of learned counsel for the petitioner in Writ Petition No.3525 of 2014 are recorded first because he has also assailed the same order on the ground that this order has affected his rights. The learned counsel has argued that compliance with Rules 14 and 15 of the Rules 1981 is not a mandate to exercise power under Section 5(3) of the Act of 1977. Section 5(3) of the said Act does not provide for communication of the reasons for termination. The sole requirement is either a month's notice or a salary of one month. That has been complied with. Rules 14 and 15 do not override Section 5(3) and this was exactly the ratio of the Hon'ble Supreme Court in the case of Progressive Education Society (supra). He would submit that the effect of not maintaining the confidential reports would be that the performance of the employee is good. He meant to say that even if the performance of the employee is good, the management has the power to terminate the services of the employee at any time before completing probation. He referred to the judgment of the Progressive Education Society (supra). Reading paras 15 and 17 thereof, he has argued that the management/employer has the liberty to terminate the services of the probationer without maintaining any performance assessment record. He prayed to allow the writ petition.

9. Per contra, learned counsel for respondent no.1 in both petitions, who is fighting against the management and the newly

appointed employee, has argued that compliance of Rules 14 and 15 of the Rules, 1981 is mandatory. Without assessing the performance of the employee, the management cannot exercise its power under Section 5(3) of the Act of 1977. He supported the impugned judgment and order of the learned Tribunal. To bolster his arguments, he relied on the case of V.P. Ahuja Vs. State of Punjab and others, AIR 2000 SC 1080, Progressive Education Society (supra) and Shri Vinayak Vidhyadayini Trust and anr Vs. Smt. Aruna T. Prabhu and Ors, 2011 (1) Mah.L.J. 550.

10. Perusal of the judgments relied upon by both parties, this Court is of the view that the answer to the question raised before the Hon'ble Supreme Court has been given in the case of Progressive Education Society (supra). The Hon'ble Supreme Court, in para 15, has observed that the law with regard to termination of the services of a probationer is well established, and it has been repeatedly held that such power lies with the Appointing Authority, which is at liberty to terminate the services of a probationer if it finds the performance of the probationer to be unsatisfactory during the period of probation. The assessment has to be made by the Appointing Authority itself, and the satisfaction is that of the Appointing Authority as well. Unless a stigma attached to the termination of the probationer is called upon to show cause for any shortcoming which may subsequently be the cause for termination of the probationer's service, the Management or

the Appointing Authority is not required to give any explanation or reason for terminating the services except informing him that his services have been found to be unsatisfactory. The Hon'ble Supreme Court, dealing with the provisions of the Act of 1977, has observed in para 16 and 17 which read thus :

"16. This brings us to the next question regarding the sufficiency of the materials before the School Management while purporting to pass the order of termination on 1st August, 1994. As has been discussed, both by the School Tribunal and the High Court, the Confidential Report which has been produced on behalf of the School Management does not inspire confidence on account of the different dates which appear both on Part-I and Part-II of the said Report. Part-I of the Self-Assessment Form gives the particulars of the concerned teacher and the remarks of the Reporting Authority, namely, the Head Mistress of the School. The date in the said Part is shown as 4th July, 1994, whereas the date at the end of Part-II, which is the Form of the Confidential Report giving details of the teacher's performance, is dated 24th June, 1994, which appears to be in line with the date given of the forwarding letter written by the Head Mistress to the Secretary of the Society. To add to the confusion created by the different dates on the Form, there is a third date which appears on Part-I of the Self-Assessment Form which shows that the documents were presumably forwarded to the Management of the School on 6th August, 1994, which is a date which is prior to the date of termination of the services of the Respondent No.1, namely, 1st August, 1994.

17. This merely goes to show that the said documents are not above suspicion and that the requirements of Rule 15(6) and Rule 14 had not been complied with prior to invocation by the

School Management of the powers under sub-Section (3) of Section 5 of the MEPS Act. "

11. Similarly, this Court in the case of Shri Vinayak Vidhyadayini Trust (supra), has also reiterated the same view considering the case of Progressive Education Society (supra).

12. The Act of 1977 provides for the termination of the services of an employee on probation and the factors for such termination.

13. The interpretation of the learned counsel Mr. Gatne for the petitioner i.e. the subsequent appointee, that Rules 14 and 15 cannot override the powers of the management under Section 5(3) of the Act of 1977 appears not correct on the facts. In the case of the Progressive Education Society (supra), the Hon'ble Supreme Court crystallized law on this point, which was reiterated continuously in many subsequent cases.

14. Admittedly, no adverse remarks were communicated to respondent no.1 during the period of his services for one year. However, the management has tried to stand on the legs of respondent no.1, who had filed the confidential reports, contending that the Tribunal observed that those are not genuine. Factually, the burden on the management is to prove compliance of Rules 14 and 15. Therefore, they cannot take advantage of the mistakes of respondent no.1. There is no force in the submission of the learned

counsel for the management that whatever the confidential reports were before the Tribunal were not genuine. Hence, their termination order is correct and legal.

15. In view of the facts and the law laid down by the Hon'ble Apex Court and this Court, this Court is of the view that the termination of respondent no.1 is in contravention of Section 5(3) r/w Rules 15 and 16 of the Act of 1977 and Rules, 1981.

16. Perusal of the impugned judgment and order reveals that it is free from infirmities and illegalities. There is no substance in both the petitions. Hence, both petitions stand dismissed.

17. No order as to costs.

(S.G. MEHARE, J.)