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Bombay High Court

Case No: O.O.C.J.W.P. No. 1524 of 1992

Akbar Peerbhoy College and others		APPELLANT
	Vs	
Pramila N. Kutty (Ms.) and others.		RESPONDENT

Date of Decision: June 11, 1997

Acts Referred:

- Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 - Section 7

Citation: (1998) 1 LLJ 1175 : (1997) 3 MhLj 195

Hon'ble Judges: R.M. Lodha, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

1. The Petitioner No. 1 Akbar Peerbhoy College of Commerce and Economics is a college affiliated to the University of Bombay for its degree classes and recognised by the Government of Maharashtra for its Junior college classes.

It receives grant-in-aid from the Government of Maharashtra. The respondent No. 1 Ms. Pramila N. Kutty was appointed pursuant to her application and interview as a full time lecturer in English in the junior section of petitioner No. 1 college with effect from July 27, 1981 on basic salary of Rs. 500/- plus usual allowances permissible as per the rules in the scale of Rs. 500-900. In the appointment order it was stated that her appointment was for the current academic year only and shall terminate automatically on the last working day of the year i.e. April 20, 1982. The respondent No. 1 is M.A. in English Literature having passed the said post graduate examination in the year 1978. She did her B.Ed. in the year 1981. It appears that the respondent No. 1 was given appointment subsequently by the petitioner for the academic years upto 1989. On June 22, 1989 the respondent No. 1 was again appointed as a full time lecturer in English in the petitioner No. 1 college with

effect from June 2, 1989 or the date she reports for duty. The said appointment was purely temporary for a period from June 26, 1989 to April 20, 1990. It was stated in the said appointment letter that after expiry of the above period her services shall stand terminated without any notice. The terms of her employment and conditions of service were in accordance with the provision contained in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules framed thereunder. On April 19, 1990, the Principal of the petitioner No. 1 College informed the respondent No. 1 that it would not be possible to continue with her services in the college with effect from April 21, 1990. Aggrieved by the said communication dated April 19, 1990, which according to the petitioner was her termination from the service, an appeal was preferred by her before the School Tribunal, Bombay. In the appeal, the principal contentions advanced by the respondent No. 1 herein were that she ought to have been issued notice before termination of her services in accordance with Rule 28 of the Maharashtra Employees of Private Schools Rules, 1981. According to her, she was denied fair and reasonable opportunity and the said termination was against the principles of natural justice. It as also contended in the appeal that the communication of termination was signed by the Principal who was not competent to issue termination order.

2. The appeal was contested by the present petitioner before the School Tribunal. According to the petitioner, the respondent No. 1 was employed on purely temporary post and her services came to an end on April 20, 1990 since her appointment was only upto that date. According to the petitioner, in view of the terms of the appointment order, no separate order of termination was required and the communication dated April 19, 1990 was not and could not he construed as a termination order. According to the petitioner, in the very nature of appointment of the respondent No. 1, compliance of Rule 28(1) of Rules of 1981 was not required. The petitioner also contended that the respondent No. 1 was not qualified for her permanent appointment as Lecturer in English, Junior College since she did not possess the requisite qualification. Thus, the petitioner prayed before the School Tribunal that the appeal filed by the respondent No. 1 had no merit and was liable to be dismissed.

3. The School Tribunal beard the arguments and by the order dated March 31, 1992 allowed the appeal filed by the respondent No. 1 herein and set aside the termination notice dated April 19, 1990 and directed the petitioner College to reinstate her to her original post and pay her the differences of emoluments, including pay and allowances from the date of termination of her services till she was reinstated. The order dated March 31, 1992 passed by the School Tribunal is impugned in the present writ petition.

4. Mr. Maniar, the learned counsel appearing for the petitioner assailed the correctness of the order passed by the School Tribunal and submitted that the Tribunal seriously erred in holding that the communication dated April 19, 1990 was termination notice of respondent No. 1 and hence suffered for non-compliance of provisions of Rule 28(1) of Rules of 1981. The learned counsel for the petitioner would submit that the communication dated April 19, 1990 was not a termination notice or order and, therefore, merely because it was

signed by the Principal, it did not suffer from any infirmity.

5. On the other hand, Mr. M. M. Vashi, the learned counsel appearing for respondent No. 1 submitted that the communication dated April 19, 1990 by the petitioner to respondent No. 1 was not communication simpliciter but a notice of termination and the Principal was not competent to issue such termination notice. He vehemently contended that the termination notice dated April 19, 1990 was not in accordance with the mandatory provisions of sub-rule (1) of Rule 28 of Rules of 1981 and, therefore, was bad in law. He thus submitted that the Tribunal cannot be said to have committed any error in allowing the appeal filed by respondent No. 1 and in passing the impugned order.

6. The Maharashtra Employees of Private Schools (Conditions of service) Regulation Act, 1977 (for short "the Act of 1977 ") was enacted to regulate the recruitment and conditions of service of employees of certain private schools in the State with a view to providing such employees security and stability of service to enable them to discharge their duties towards the pupils and their guardians in particular, and the institution and the society in general, effectively and efficiently. The Act also lays down the duties and functions of such employees with a view to ensuring that they become accountable to the management and contribute their mite for improving the standard of education. It came into effect on July 15, 1981. This Act applies to all private schools in the State of Maharashtra whether receiving grant-in-aid from the State or not except to the recruitment by a minority school or any other persons not exceeding three who are employed in such schools and whose names are notified by the Management to the Director or to the Dy. Director as the case may be for this purpose. Section 2 of the Act deals with the definition of various expressions occurring in the Act of 1977. Section 4 makes a provision for terms and conditions of service of the employees of private schools. Obligations of the management of private schools are dealt with in Section 5 while obligations of head of private schools are dealt with in Sec. 6. Section 7 of the Act of 1977 provides for procedure for resignation by employees of private schools. Section 8 of the Act deals with the constitution of School Tribunals and Section 9 confers a right of appeal to Tribunal by employees of private schools. Sections 10, 11, 12 and 13 deal with the general powers and procedure of Tribunal, powers of Tribunal to give appropriate reliefs and directions, decision of Tribunal to be final and finding and penalty to management for failure to comply with Tribunal''s directions, respectively. Section 14 excludes the legal practitioners from appearance in any proceedings taken out before the School Tribunal except with special permission of the Tribunal. Transfer of pending appeals with Tribunal is dealt with under Sec. 15. Section 16 empowers the State Government to make rules for carrying out the purpose of the Act by notification in the official gazette. In exercise of the powers conferred by Sub-sec. (1) and (2) of Sec. 16 of the Act of 1977 and all other powers enabling in that behalf the Government of Maharashtra made the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "Rules of 1981"). The said Rules provide for qualification and appointment of head of primary schools and secondary schools, responsibilities of

head of the schools, qualifications and appointment of Assistant Head and Supervisor, scales of pay and allowances of heads, assistant heads, supervisors, teachers and non-teaching staff in the primary schools,, secondary schools, junior colleges and junior colleges of education. It also deals with the appointment of staff, categories of employees, seniority list, assessment of employee''s work, superannuation and re-employment, duties and code of conduct, work-load, removal or termination of service, privileges, appointment of enquiry officer and procedure thereunder, resignation and other matters.

7. Schedule ''B'' appended to Rules of 1981 provides for qualifications for various types of and Part III therein deals with qualification for teachers in junior colleges and the said qualification reads thus :-

''III. Qualification for Teachers in Junior Colleges. - (1) Full-time Teachers : (a) Master''s Degree of a statutory University in second class in the respective subject plus B.Ed., or a Diploma or Certificate in Teaching, approved by the Department.

(b) Subject to the provisions of sub-clause (c) the qualifications of the teachers who are in service on the appointed date or appointed after the appointed date with the approval of the Deputy Director, shall be as follows, namely :

(i) A master''s degree of a statutory University at least in second class in Science with Physics, Chemistry or Mathematics, or a Master''s degree of the statutory University at least in second class in Arts with Mathematics or a master''s degree of a statutory University at least in second class in Commerce, or any higher qualification;

(ii) A bachelor''s degree of a statutory University at least in second class in Commerce and who is also a Chartered Accountant (such teachers are already having the professional qualification of Chartered Accountant and hence they shall not be required to acquire the professional qualification of bachelor''s degree in Education or Diploma or Certificate in teaching approved by the Department);

(iii) A bachelor''s degree of a statutory University at least in second class with a bachelor''s degree in Technology.

(iv) A master''s degree of a statutory University in Art in first class;

(v) A master''s degree of a statutory University at least in second class in any respective subject;

(vi) (a) A bachelor''s degree of the statutory University.

(i) either in second class with experience of teaching standard VIII to X or XI for a period not less than seven years, or

(ii) in pass class with experience of teaching standards VIII to X or XI for a period not less than ten years;

(b) a bachelor''s degree of a statutory University in Education and;

(c) appointed during the year 1975-76 or,

(vii) Any other qualification recognised as equivalent by Government or the Inter-University Board;

(c) The teachers possessing the qualifications referred to in sub-clauses (i), (iii), (iv) and (v) shall be required to acquire the professional qualification of a bachelor''s degree of a statutory University in Education or Diploma or Certificate in teaching approved by the Department on or before March 13, 1985 failing which they shall not be entitled to increments in the scale accruing after the date aforesaid;

(d) If persons possessing the qualifications referred to in clauses (a) and (b) are not available, the Director may relax the qualifications on the basis of the merits of each case and the person in whose favour such relaxation is allowed shall be appointed purely on temporary basis."

8. Rule 10 deals with the categories of employees according to which there shall be permanent or non-permanent employees. Non-permanent employees may be either temporary or on probation. A temporary employee is one who is appointed to a temporary vacancy for a fixed period.

9. There is no dispute that respondent No. 1 herein does not possess the requisite qualification of full time teacher in the junior college as provided in Schedule ''B'' and aforestated inasmuch as she does not possess Master''s Degree in English in Second Class nor she possesses bachelor''s degree in English in Second Class with experience of teaching standards VIII to X or XI for a period not less than seven years. She has passed her M.A. Degree only in pass class and bachelor''s degree also in pass class and she does not have the teaching experience of 10 years of teaching Standards VIII to X or XI. Since no qualified teacher in English was available, on the basis of the relaxation of the qualification by the Education Department, respondent No. 1 appears to have been appointed temporarily initially in the year 1981 and subsequently she was appointed afresh from year to year till April 20, 1990. Her last appointment order is of June 22, 1989 and the relevant portion of the appointment order reads thus :

"Your appointment is purely temporary for a period of one year from June 26, 1989 to April 20, 1990. After expiry of the above period, your services shall stand terminated without any notice."

10. On April 9, 1990, the Principal of the petitioner No. 1 College sent a communication to respondent No. 1 herein which reads thus :

"We regret to inform you that it will not he possible for us to continue your services in this college with effect from April 21, 1990."

11. The School Tribunal also held that the respondent No. 1 herein was appointed as Assistant Teacher in the year 1981 and continued till April 20, 1990 but she was not having the requisite qualification required for teachers in junior colleges as prescribed in Schedule "B" of Rules of 1981 and, therefore, she could not claim any permanency of her tenure and her appointment has to be considered purely on temporary basis. The question that falls for determination in the writ petition is, in view of the fact that the respondent No. 1 was appointed purely on temporary basis for the period from June 26, 1989 to April 20, 1990, whether for bringing her termination to a logical and legal end, notice under Rule 28(1) of Rules of 1981 was required to be given. If the answer is affirmative, obviously the order of the School Tribunal cannot be faulted since no notice as given as required under Rule 28(1) of Rules of 1981 and if the communication dated April 19, 1990 is treated as notice of termination, the same would be bad in law having been issued by Principal who was not competent to give such notice. But if the answer is in the negative the order passed by the School Tribunal will have to go and rendered unsustainable.

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 paying one month''s salary (pay and allowances 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 particular period and after expiry of the said period the services of such employee shall stand terminated without any notice. The relevant portion of the format of order of appointment as provided in Schedule "D" appended to the Rules of 1981 reads thus :

"From
To
Shri/Smt. .....

1. With reference to your application dated ..... I have the pleasure to inform you that you are hereby appointed as ..... on Rs. ..... per month in the scale of Rs. ..... with effect from ..... or the date you report for duty. You will be entitled to allowances such as compensatory local allowance, house rent allowance and dearness allowance as specially sanctioned by Government from time to time.

2. Your appointment is purely temporary for a period of ..... months/years from ..... in the level deputation vacancy. After expiry of the above period, your services shall stand terminated without any notice.

OR

3. The terms of employment and conditions of service shall be as laid down in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules made thereunder.

....."

14. If the appointment order of the present respondent No. 1 is seen in the light of the format as provided in Schedule D, it would be apparent that it is in accordance with the said format on material aspects and particulars and it is clearly stated in the appointment order dated June 22, 1989 that her appointment was purely temporary for a period from June 26, 1989 April 20, 1990 and after the expiry of the said period her services shall stand terminated without any notice. On the basis of this clause and the appointment order of respondent No. 1, the services of the respondent No. 1 was to come to an end on April 20, 1990 and hence no notice was required to be given to her. The letter dated April 19, 1990 is only in the nature of communication addressed to the respondent No. 1

herein that it would not be possible to continue her services in the college after expiry of period of her service as stated in the appointment order and the said communication dated April 19, 1990 by no stretch of imagination could be construed as a termination notice or order of termination. The services of respondent No. 1 were to come to an end on April 20, 1990 and accordingly her services stood terminated on that date which was clearly stated in the appointment letter itself and no further termination notice or order of termination was required to be given. The aforesaid observations should not be confused regarding the right of the Respondent No. 1 in filing appeal under Sec. 9 of the Act and challenging her termination dated April 20, 1990 in accordance with law if she had justifiable grounds for the said purpose.

15. The Tribunal in support of its order relied on two judgments of this Court namely, Madanlal Jagannath Dalmia v. R. R. Harijan in i Writ Petition No. 2205 of 1985 decided on April 16, 1986 and Chairman, Shree. Satpuda Vidyalaya, Lonkheda v. Shri Krishna Roopchand Karanje Chavan in Writ Petition No. 332 of 1984 decided on March 23, 1990 in support of its conclusion that provisions contained in Rule 28(1) were mandatory and having not been followed, the termination notice dated April 19, 1990 was bad in law and also that the head-master/principal was not competent to issue termination notice.

16. The judgment of this Court in Madanlal Jagannath Dalmia, Writ Petition No. 2205 of 1985 (supra) would only he applicable if the communication dated April 19, 1990 was held to be a notice of termination issued by the Principal. However, I have already held that the communication dated April 19, 1990 by the to principal was communication simpliciter and was not notice of termination and, therefore, the said judgment has no application in the facts and circumstances of the present case. As regards the judgment of this Court in Chairman, Shree Satpuda Vidyalaya Lonkbeda, Writ. Petition No. 332 of 1984 (Supra) is concerned, suffice it to observe that in the said judgment the Division Bench of this Court has considered the scope of Rule 28(2) of the Rules of 1981 and it has been held that the said provisions were mandatory. The Division Bench has not considered the nature of the provisions of Rule 28(1) of the Rules of 1981 since that was not the issue before this Court. I have already referred to the circumstances in which Rule 28(1) is attracted in relation to the termination of services of temporary employee and, therefore, the said judgment also has no application in the facts and circumstances of the present case.

17. It would not be out of place to mention here that from the academic year 1990 in fact a qualified teacher has already been appointed on the post of Lecturer, English by the petitioner College.

18. In view of the foregoing discussion, the writ petition is allowed and the order passed by the School Tribunal on March 31, 1992 is quashed and set aside. Rule is made absolute in aforesaid terms. No costs.