

(1999) 03 BOM CK 0111**Bombay High Court****Case No:** Writ Petition No"s. 2937 and 3708 of 1997

Trustees of S.P.R. Jain
Kanyashala Trust and Sarvajanik
Education Society and others

Vs

Shri Abdul Kaleem and others

APPELLANT

RESPONDENT

Date of Decision: March 4, 1999**Acts Referred:**

- Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 - Rule 6

Citation: (1999) 2 ALLMR 297 : (1999) 4 BomCR 104 : (2000) 1 MhLJ 94**Hon'ble Judges:** T.K. Chandrashekhar Das, J**Bench:** Single Bench**Advocate:** Y.V. Divekar and M.M. Vashi, instructed by Divekar and Co, for the Appellant;
A.N. Maniyar and P.C. Kansara, A.G.P., for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

T.K. Chandrashekhar Das, J.

These two writ petitions arise out of a common order passed by the School Tribunal in Appeal No. Bom./15/96 and Appeal No, Bom./28/96, dated 16th May 1997. Writ Petition No. 2937/ 1997 has been filed by the Trustees of S.P.R. Jain Kanyashala Trust and Sarvajanik Education Society and Writ Petition No. 3708/1997 has been filed by Ms. Lata Rukhana, who is working as an Asstt. Teacher under the aforesaid Trust, in S.T. Mehta Women's Jr. College of Arts, at Cama Lane, Bombay. This common order, as indicated above, is under challenge in these writ petitions and they were heard together. Therefore, I am disposing of these petitions by this common judgment.

2. The controversy involved in these writ petitions centres round the order passed by the Deputy Director of Education, Greater Bombay dated 22nd February 1996, whereby he had pointed out to the Principal, S.T. Women College, Kama Lane, Ghatkopar (W), Bombay-86, that the petitioner -Smt. Lata Rukhana was not entitled

to be appointed as full time teacher in preference to one Shri Abdul Kaleem, who is a fully qualified teacher, available for appointment. Shri Abdul Kaleem is impleaded as respondent No. 1 in Writ Petition No. 2937/97 and as respondent No. 3 in Writ Petition No. 3708/97. Thus Smt. Lata Rukhana's appointment as full time teacher was found to be illegal and Shri Abdul Kaleem was directed to be appointed as full time teacher by the Dy. Director. In pursuance to this Order dated 22-2-1996, the Management as per their Order dated 22.2.1996, appointed Shri Abdul Kaleem as a full-time lecturer in Psychology from 22-2-1996 to 30-4-1996. By virtue of this Order Shri Abdul Kaleem, who was newly appointed as a part time lecturer was made full time lecturer and Smt. Lata Rukhana was made a part time teacher. Being aggrieved by this Order, Smt. Lata Rukhana filed an Appeal before the School Tribunal. In the meantime, the service of Abdul Kaleem was sought to be terminated by the management on the pretext that his performance during his probation was not satisfactory, as per Order dated 19th March 1996. Against this Order Abdul Kaleem has also filed an Appeal before the School Tribunal. These two Appeals were heard together by the School Tribunal and as stated earlier it passed the impugned Order dated 16-5-1997, which is being challenged in these two writ petitions.

3. As narrated by the School Tribunal, Smt. Lata Rukhana was appointed in the year 1988, as a temporary teacher on clock hourly basis and thereafter, she was re-appointed on year to year basis as part time and full time teacher on a temporary basis. She was not having a B.Ed. qualification as prescribed under the Maharashtra Employees and Private Schools Regulations Act, 1997, hereinafter referred to as the Act. She was having only M.A. degree and at that time she was doing her M. Phil. She was serving the school on year to year basis and the last appointment of Smt. Lata Rukhana was on 17th June 1995 till 30th April 1996.

4. Shri Abdul Kaleem was initially appointed as part-time temporary lecturer for the period from 25th July 1995 to 30th April, 1996 and his services were to be terminated from 30th April, 1996. Subsequently he made a representation to the School Management as well as to the Deputy Director of Education, complaining that as he was fully qualified teacher, having M.A., M. Phil and B.Ed. qualifications, he ought to have been appointed as full time lecturer in the place of Smt. Lata Rukhana who, according to him, is an unqualified teacher. It is in this background that the Dy. Director of Education has passed the aforesaid order dated 22-2-96, recognising the superior claim of Shri Abdul Kaleem to be appointed as a full time teacher over Smt. Lata Rukhana. The School Tribunal after hearing both the sides and the management, held that Shri Abdul Kaleem ought to have been appointed as a full time teacher and accordingly direction was given to the concerned authority. The School Tribunal has also set aside the order of termination passed by the management against Shri Abdul Kaleem on the ground that no sufficient ground has been made out by the management to terminate the services of Shri Abdul Kaleem. Thus the order of the Deputy Director of Education about superior claim of Shri Abdul Kaleem over Smt. Lata Rukhana was confirmed and the subsequent order

passed by the management against Abdul Kalim was set aside by the School Tribunal.

5. I have heard the learned Counsel for the petitioner and the respondents in both the petitions as also the Government Pleader. The learned Counsel Shri M.M. Vashi appearing in Writ Petition No. 3708/97 has submitted that the order passed by the School Tribunal, holding that Smt. Lata Rukhana is not qualified to be appointed as full time teacher, was passed relying on the wrong and irrelevant rules by the Tribunal. He pointed out that the School Tribunal has wrongly applied Rule 6 of the Rules to the facts and circumstances of this case. Shri Vashi, taking me to the observations made by the School Tribunal in the impugned order, particularly, in paragraph 24, of the order, submitted that the School Tribunal has committed a grave error of law in applying its mind to Rule 6. He also drew my attention to the Rule 6 of the Maharashtra Employees of Private Schools Regulation Rules, 1981. According to him, Rule 6 prescribed the minimum qualification for the posts of teachers and the non-teaching staff in the primary schools, secondary Schools, Junior Colleges and Junior Colleges of Education, as shown in Schedule B of the Rules.

Rule 6 also contains proviso, which reads as follows:-

Provided that, the Education Officer may allow Managements to appoint untrained Science graduate teachers for teaching Mathematics and Science subjects or untrained Arts or Commerce graduates for teaching other subjects in secondary schools in exceptional circumstances, such as non availability of trained graduates. Such appointments shall, however, be allowed on year to year basis, on the clear understanding that they shall have to obtain training qualification at their own cost and further subject to the condition that their services shall be liable for termination as soon as trained graduate teachers become available.

(Provided further that the untrained graduate appointed as a teacher after obtaining the permission from the Education Officer before the commencement of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and who continues to be in service in any school on the date of commencement of the Maharashtra Employees of Private Schools (Conditions of Service) (Amendment) Rules, 1984 shall, be continued in service on the condition that he obtains the prescribed training qualifications at his own cost before 1st June 1987, unless he has already obtained such qualifications, failing which his services shall be terminated).

6. On reading paragraph 24 of the order of the School Tribunal, it seems, that the Tribunal entirely rested its decision on the strength of the proviso of Rule 6 of the Act. Shri Vashi has rightly pointed out that the proviso does not apply to the facts of this case. In fact, the proviso specifically states that it applies only to the secondary school. Here, as we are dealing with the Junior College, which is excluded by implication, there is substance in this contention raised by Shri Vashi, the learned

Counsel for the petitioner. The School Tribunal has placed reliance to this proviso and held that Smt. Lata Rukhana is an unqualified teacher, continuing in the school at the time of appointment of Abdul Kalim, who is fully qualified. This observations is, therefore, illegal and liable to be set aside.

7. The learned Counsel for the petitioner Shri Vashi also pointed out Item No. III under Schedule (B), which deals with the qualifications of the teachers in Junior Colleges. This item will no doubt enable the management to appoint the teachers who are having no B.Ed. qualifications, provided they are entitled for relaxations of qualifications from the Director of Education for enabling the management to make temporary appointments. Shri Vashi argued that in view of these provisions and as observed by the Educational Tribunal, there is no prohibition under the Act and the Rules made thereunder to appoint a teacher who is having no B.Ed. qualification. Therefore the whole questions of the rival claims, between Smt. Lata Rukhana and Shri Abdul Kalim has to be decided afresh by the School Tribunal in view of the qualifications prescribed under item HI of Schedule B of the Act along with other relevant operations of the Act and its Rules.

8. The learned Counsel Shri Maniyar appearing for Shri Abdul Kaleem pointing out the provisions prescribed for appointment of a full time teachers in the Junior Colleges, has contended that Smt. Lata Rukhana was not qualified when Shri Abdul Kaleem was appointed as a part time teacher. Therefore, the order of the School Tribunal which is recognising the superior claim of Abdul Kaleem, cannot be set aside. As this matter is required to be re-considered by the School Tribunal in the light of the reasons as stated above, Shri Abdul Kalim can very well address this argument before the school Tribunal. I am only directing the School Tribunal to consider the rival claims of these two teachers in view of Item III of Schedule B read with Rule 6 of the Act and any other Rules that are relevant for the purpose of this case. Counsel Shri Maniyar also submitted that the observations made in the impugned order passed by the School Tribunal with regard to reinstatement of Shri Abdul Kaleem does not require any modifications. On considering the facts and circumstances of this case, the Counsel is right in making this submission. I do not find any material case has been made out against Shri Abdul Kalim by the management. Therefore, the School Tribunal was right in observing, in paragraph 35 of its judgment/ order that the impugned order of the management, terminating the services of the appellant Abdul Kalim is illegal and improper and is against the provisions of M.E.P.S. Acts and Rules and therefore, the appellant Abdul Kalim deserves to be reinstated to the original post. This direction has to be confirmed and the petitioner in Writ Petition No. 2937 of 1997 is directed to reinstate Shri Abdul Kalim forthwith as a part time teacher, if the petitioner has not already done so.

9. The School Tribunal after considering the matter afresh should pass appropriate order according to law. In the event of the School Tribunal found that Shri Abdul Kaleem has no superior claim by virtue of his qualification with reference to the

relevant rules, he is not entitled to be appointed as a full time teacher. Then the School Tribunal may give appropriate directions to the management to act according to law. In case the School Tribunal found that Shri Abdul Kaleem is entitled to be appointed as a full time teacher, it is necessary that the directions should be given to the management to appoint Smt. Lata Rukhana, as a part time teacher in his place also.

10. In the result, the writ petitions are partly allowed with following directions to the School Tribunal:-

(i) The School Tribunal shall decide the rival claims of Smt. Lata Rukhana and Shri Abdul Kaleem to the post of full time teacher that arose in 1995 in the light of the observations made herein above and give appropriate directions to the management. The petitioner in Writ Petition No. 2937/97 is directed to reinstate Shri Abdul Kaleem forthwith in the part time post till final order is passed by the School Tribunal.

(ii) The order passed by the School Tribunal, setting aside the termination of the service of Shri Abdul Kaleem, is hereby confirmed.

(iii) The School Tribunal is directed to decide the matter, as directed above on or before 31st May 1999.

11. Both the writ petitions are disposed of accordingly. In the circumstances of the case there is no order as to costs.

12. Rule in both the petitions is also disposed of accordingly.

13. Certified copy expedited.

14. Petitions partly allowed.