

Shivshankar Shivram Singh and ors. Vs. Pramila R. Dwivedi and ors.

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Court : Mumbai

Decided On : May-06-1997

Reported in : 1997(4)BomCR541

Judge : S.H. Kapadia, J.

Acts : Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 - Sections 4 and 4A; Grants-in-aid Code Special Rules - Rules 5, 12, 13, 14 and 21

Appeal No. : Writ Petition No. 308 of 1997

Appellant : Shivshankar Shivram Singh and ors.

Respondent : Pramila R. Dwivedi and ors.

Advocate for Def. : J.P. Deodhar, Adv. for Respondent No. 1 and ;A.K. Savla, Adv. for Respondent Nos. 2 to 5

Advocate for Pet/Ap. : M.U. Pandey, Adv.

Judgement :

S.H. Kapadia, J.

1. Respondent No. 1 was appointed as a part-time Craft teacher for the period November 13, 1984 upto April 30, 1985. She was continued as a Part-time teacher

upto June 30, 1989. She was, thereafter appointed as a Probationer on 1st July 1989 as a full-time teacher for the period from 1st July 1989 to April 30, 1990. Her services were terminated on 30th April 1990 on the ground that her performance was not satisfactory. She was once again appointed on probation from June 30, 1990 upto 30th April 1991. Finally, her services were terminated vide Order dated 26th March 1991 with effect from 30th April 1991. Being aggrieved by the termination Order, respondent No. 1 preferred an Appeal to the Superintendent of Primary Schools. On 10th July 1991. Superintendent directed reinstatement. However, the Management contended that the Superintendent had no jurisdiction to pass such order of reinstatement and therefore, they did not implement the said Order. Consequently, respondent No. 1 filed Writ Petition No. 372 of 1992. On 7th December 1994, this Court directed respondent No. 1 to prefer an Appeal against the Order of termination dated 26th March 1991. Accordingly, respondent No. 1 preferred her Appeal to the Education Officer claiming that she had become permanent teacher which was denied by the Management. By the impugned Order passed by the Education Officer, the contention of respondent No. 1 was accepted and respondent No. 1 was directed to be reinstated with full back-wages. By the impugned Order, the Education Officer further directed that the amount of back-wages from the date of her termination to the date of her reinstatement will not be admissible for the grant and the Management was accordingly directed to pay full back-wages from their own Account. Being aggrieved by the said Order dated 31st January 1995 passed by the Education Officer, the Management preferred an Appeal to the Corporation. By the impugned Order dated 19th December 1996, Deputy Municipal Commissioner, Zone III, dismissed the Appeal. Being aggrieved by the two Orders passed by the Education Officer and the Deputy Municipal Commissioner, the Management has filed the present writ petition.

2. Mr. Pandey, the learned Advocate appearing on behalf of the management contended that the Education Officer had no authority to direct the Management to reinstate the teacher. Mr. Pandey contended that in the present case, the Corporation grants financial aid to the School which does not empower the Education Officer to control the power to appoint a teacher or a power to dismiss a teacher in a Primary School. Mr. Pandey contended that the Education Officer erred in coming to the conclusion that respondent No. 1 was a permanent teacher.

Mr. Pandey contended that each of the above letters clearly indicated that the teacher was appointed for a fixed period and on the expiry of the said period, she herself applied for fresh appointment and in the circumstances, respondent No. 1 was not entitled to claim a status of a permanent teacher. Mr. Pandey further contended that respondent No. 1 was appointed for a fixed duration and on the expiry of a stipulated period, her services came to an end by efflux of time. Mr. Pandey further contended that on facts of the present case, the decision of the Management to terminate the services of respondent No. 1 cannot be termed as mala fide. Mr. Pandey further contended that in the present matter, the respondent No. 1 was appointed for the period 1989 -1990 although her working was not found suitable. She was appointed on humanitarian consideration. Mr. Pandey further pointed out that the School was entitled to reorganize its own affairs and when Smt. Kaur was directed to be posted by the Education Department in the Hindi Section as a Craft teacher, the Management had no option, but to terminate the services of respondent No. 1 who was a temporary teacher. Mr. Pandey further contended that in the present matter even if respondent No. 1 is treated as a permanent teacher, the Management had a right to terminate the services of a permanent teacher under Rule 13 of Appendix VII which deals with terms of services of teacher in recognized and added Primary Schools in Greater Bombay. Mr. Pandey contended that under Rule 13, the services of permanent teacher may be terminated by the Management without assigning any reason., giving twelve months' salary i.e. Pay and allowances if any to the teacher if he /she has been in service of the School for ten years or more. Similarly, if the services of a permanent teacher, who has worked for less then ten years can be terminated by the Management, without assigning reasons on giving six months's salary (Pay and allowances, if any). Of course, this was subject to the Management informing the Department of the action taken by the Management to discharge the services of the permanent teacher and subject to the compliance of payment, as indicated by Rule 13. Mr. Pandey accordingly contended that in the present matter since the teacher was appointed on temporary basis, the Management was entitled to terminate her services on the expiry of the above period and that in any event, even if she is treated as permanent teacher, at the highest. Rule 13 was required to be complied with, which empowers the Management to terminate the services

of a permanent teacher without assigning any reason whatsoever and in the circumstances, according to Mr. Pandey, looking at the matter from either of the two angles, the Management was entitled to terminate the services of the teacher and in the circumstances, the Education Officer was not entitled to direct the Management to reinstate respondent No. 1 together with back-wages, as mentioned in the impugned Order. Mr. Pandey also contended that if one goes to the Preamble of the Grant-in-Aid Code alongwith the provisions of Bombay Municipal Corporation Act, it was clear that the Grant-in-Aid Code was required to be framed because it as a duty of the Corporation to spread free and compulsory primary education amongst all the children of the compulsory School going age. Mr. Pandey contended that the Grant-in-Aid Code only lays down the conditions on the fulfillment of which the Management was entitled to receive aid from the Bombay Municipal Corporation. Mr. Pandey, therefore, contended that the Education Officer had no authority, in the sense of judicial authority, empowering him to direct the Management to reinstate the teacher together with full back-wages, as is being done by any other Tribunal like Industrial Court or the School Tribunal which has been expressly given power under the Act and the Rules to reinstate, in appropriate cases, an employee, together with all back-wages and continuity or service. Mr. Pandey accordingly contended vehemently that in the present case, the Education Officer erred in coming to the conclusion that respondent No. 1 was entitled to the status of permanent teacher. Mr. Pandey contends that even assuming for the sake of argument that the said termination Order was illegal and bad in law, the consequences are mentioned in Rule 21 of the said Appendix VII to the Grant-in-Aid Code. Mr. Pandey, therefore, contended that the consequences are that if the Management refuses to comply with the directions issued by the Education Officer, then pursuant to Rule 21, the Corporation is entitled to stop the Grant or to withdraw the recognition, but it cannot direct the Management to reinstate a teacher, because there is no such power given to the Education Officer to direct reinstatement with or without back-wages. Mr. Pandey therefore, contended that if the Order of the Education Officer is upheld then there will be no distinction left between the Tribunal which is appointed pursuant to the powers given to it under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation

Act, 1977 an Education Officer who is appointed by the Corporation under the provisions of the Bombay Municipal Corporation Act who is only required to see that the conditions of the Grant are fully complied with in the circumstances. Mr. Pandey contended that the Education Officer is not empowered to direct the School to reinstate the teacher with full back-wages. Under the circumstances, he contends that the impugned Orders are liable to be set aside.

3. Mr. Deodhar, the learned Counsel appearing on behalf of the respondent No. 1, however, contended that under the Grant-in-Aid Code special Rules are laid down dealing with conditions of recognition. Mr. Deodhar invited my attention in particular to Rule 5 which lays down that while granting recognition, the Education Officer is required to consider whether the teaching staff is adequate and well qualified and further, he is required to consider as to whether there is any frequent changes in the teaching staff. Mr. Deodhar further contended that under Rule 5(vii) the Pay Scales and other conditions of service have been prescribed which are required to be followed and if those service conditions are flouted, then the Education Department is certainly entitled to take action by issuing appropriate directions to the Management. Mr. Deodhar accordingly contended that once the conditions of service are duly approved by the Education Department, the Management is required to follow those conditions and if there is breach of those conditions, the Education Officer is certainly entitled to issue appropriate directions including the directions for reinstatement of teacher who has been wrongly terminated from service.

4. The above contentions of Mr. Deodhar are also adopted by Ms. Savla, the learned Counsel appearing for the Corporation. She, however, contended that if the Management of Primary Schools which receives Grant-in-Aid from the Corporation is not vested with the power to issue directions even in cases where the Education Officer comes to the conclusion that there is a breach of the conditions of service approved by the Department, then the Management would be free to flout the said conditions and if the Department is not provided with adequate powers, then the entire object of the Grant-in-Aid will fail and the Management would be entitled to flout the conditions of service without any penal consequences. Accordingly, it is contended that the Education Officer is free to

issue directions to the Management to reinstate the teacher and if despite the said directions the Management fails to obey the directions, then the Education Officer is free to make the Grant inadmissible, to withdraw the recognition and even to direct the Management to pay the back-wages from its own Treasury. In the above circumstances, it has been contended by Mr. Deodhar and Ms. Savla that there is no interference called for to the Orders passed by the Education Officer.

5. The short point which arises for consideration in the present case is : whether the Education Officer was right in coming to the conclusion that respondent No. 1 became permanent on the completion of the period of one year. This point goes to the root of the dispute. For this purpose, I am required to consider the Rules. The Grant-in-Aid Code has been enacted for the purposes of granting recognition to Primary Schools in Greater Bombay. Primary education is required to be given to all children who belong to School going age. It is the duty cast on the Corporation. Appendix VII to the Grant-in-Aid Code prescribes conditions of service of teachers in Primary School. Rule II deals with termination of service of a temporary teacher. Rule 12 deals with confirmation of a teacher appointed on probation. Rule 13 deals with termination of permanent teacher without assigning any reasons, subject to payment of salary. Rule 14 deals with termination of services of a permanent teacher on the ground of misconduct after following the procedure prescribed by Rule 15, Rule 18, Rule 19 and Rule 20. Rule 21 deals with consequences of the Management failing in obeying the directions of the Education Officer. In the present matter, respondent No. 1 was appointed on probation. The facts clearly indicate that she cannot be treated as a teacher appointed on temporary basis or to a temporary post. Respondent No. 1 was appointed against substantive vacancy of a craft teacher. The question that arises in the present case is whether the Education Officer was right in coming to the conclusion that on the expiry of one year, respondent No. 1 became a permanent teacher. According to the Education Officer under Rule 12, on the expiry of one year, she was entitled to get the benefit of permanency. This interpretation is erroneous. Rule 12 in Appendix VII clearly indicates that in case of a probationer, the teacher does not ipso facto become permanent on the expiry of one year. The Management is entitled to continue the period of probation, if the employee is required to be given one more chance. Similarly, the Management is entitled to

terminate the services of the probationer if the Management is of the view that her work is not satisfactory. Rule 12 is worded affirmatively. It is not worded negatively as in the case of probationer governed by Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (See section 5 (2) of the said Act, 1977). In the above circumstances, Education Officer erred in coming to the conclusion that respondent No. 1 was a permanent teacher. However, on facts, it may be mentioned that the Education Officer was right in observing that there was no record produced by the Management to show that the services of the respondent No. 1 were satisfactory. On facts, the Education Officer found that he had called the Management to produce the relevant records to prove that her services were unsatisfactory as a probationer. No record was produced by the Management. The Education Officer has rightly come to the conclusion that even after the alleged unsatisfactory performance by respondent No. 1, she came to be reappointed and that itself indicates that her performance cannot be said to be unsatisfactory. In the circumstances, on facts, I am of the view that the Education Officer was right in giving a declaration that the teacher on probation had performed satisfactorily and she was entitled to claim benefit of permanency. On the contrary, the facts indicate that according to the Management the only ground on which her services were sought to be terminated was that Smt. Kaur who was appointed in the English Medium / Section was brought to the Primary School as Assistant Teacher and according to the Management on that ground, the services of respondent No. 1 came to be terminated. This ground itself indicates that the services of respondent No. 1 were not terminated on the ground that her performance was unsatisfactory. In the circumstances, on facts, this Court does not wish to interfere under Article 226 of the Constitution. Accordingly, the services of respondent No. 1 were wrongly terminated and to that extent, the Order of the Education Officer is upheld.

6. There is one more aspect which is required to be clarified. Rule 13 deals with termination of service of a permanent teacher, without assigning any reasons whereas Rule 14 deals with termination of services of a permanent teacher on the ground of misconduct. In cases where the Management seeks to terminate the services of a permanent teacher on the ground of misconduct, the Management is required to hold a domestic enquiry after giving chargesheet to the employee.

Similarly, on termination, the teacher has right to go in Appeal against the finding of misconduct. On the other hand, Rule 13 deals with termination of service of a permanent teacher by way of simple discharge. This difference is well known even in Industrial jurisprudence in certain cases where Management is not in a position to hold a Domestic Enquiry or in cases where holding of a Domestic Enquiry would be prejudicial to the interest of the School, the Management may invoke Rule 13 instead of Rule 14, but this will depend on the exercise of the power on the part of the Management in a bona fide manner. In such cases, the Management can always produce relevant records before the Competent Authority and prove their bona fides. It will not apply to cases of misconduct where serious allegations are made against a teacher and where a Domestic Enquiry could have been held and yet the Management has failed to hold a Domestic Enquiry. Similarly, in cases where the Management bona fide comes to the conclusion that it has lost confidence in permanent teacher, then Rule 13 can be invoked. Similarly, if the Management is of the view that services of a probationer are not satisfactory despite giving extensions from time to time, it can invoke Rule 13. However, in every case covered by Rule 13, there should be material on record placed before the Education Officer to prove the bona fides of the Management and in such cases, the Management should also prove that holding a Domestic Enquiry will be prejudicial to the interest of the Management. In the present case, the Education Officer repeatedly called upon the Management to produce the relevant records to show that the services of respondent No. 1 were not satisfactory even as a probationer. The said record was not produced. In the above circumstances, Education Officer was right in coming to the conclusion that the service of respondent No. 1 was satisfactory and that her services cannot be terminated on the ground that her performance was not satisfactory.

7. However, Mr. Pandey, the learned Advocate for the Management vehemently contended that the Education Officer had no authority to direct the Management to reinstate the employee with or without back-wages. Mr. Pandey contended that the Corporation is not the employer of the Management and in the circumstances, the Education Officer has no authority to direct reinstatement of the employee. On the other hand, Mr. Deodhar and Ms. Savla, the learned Counsel appearing on behalf of the respondents contend that the Education Officer had the authority to

direct reinstatement of the employee whose services are wrongfully terminated. They relied upon large number of authorities under the Income Tax and the Excise Law where a Tribunal in Appeal has implied power to direct the Competent Authority to pass appropriate Orders. They have also relied upon Rule 20 in Appendix VII to the Grant-in-Aid Code in support of their contentions. In the present matter, both the parties have adopted extreme contentions. When the Education Officer directs the Management to reinstate an employee, it is only pursuant to the powers given to him as an Approving Authority which is required to administer Grant-in-Aid Code. The Grant-in-Aid Code lays down several conditions on the basis of which the Management seeks Salary Grants and Non Salary Grants. If the conditions are violated then the Education Officer is entitled under Rule 21 to refuse the Grant or to withdraw the Grant and the recognition in accordance with law. Accordingly, when the Education Officer issues directions to the Management to reinstate the employee, he is not discharging any adjudicatory functions as in the case of Industrial Tribunal or a Labour Court. The Education Officer merely seeks to enforce the conditions laid down in the Grant-in-Aid Code and to that limited extent only, he is required to see that appropriate directions are issued for reinstatement of an employee in cases where Rules are violated by the Management. In the above circumstances, the Education Officer was right in coming to the conclusion that the services of respondent No. 1 were wrongly terminated and on that basis the Education Officer was right in directing the Management to reinstate the teacher.

8. The question still remains as to whether the Education Officer is entitled to saddle the Management with back-wages as compensation for wrongful termination of services.

9. In the above matter, as stated hereinabove, the Education Officer erred in coming to the conclusion that on the expiry of the above period of one year ipso facto, the first respondent became a permanent teacher. It is true that the Education Officer has called upon the Management to produce relevant records. The Management was not able to produce relevant record to show that her services were found to be unsuitable. But the question still remains as to whether the Education Officer was entitled to impose back-wages wages. In the present

matter, the order of the Education Officer indicates that he has proposed to levy back-wages wages by way of compensation/damages for wrongful action on the part of management in terminating services of respondent No. 1. It is well settled that in such matters back-wages are imposed only as and by way of compensation and back-wages are not to be understood as wages in the strict sense. If Education Officer is required to impose back-wages in a given case on the ground that the Management has not cooperated with him then in such an event opportunity should have been given by the Education Officer to the Management before imposing the said punishment. Further, Education Officer is required to lay down proper guidelines and yardstick and he is required to give reasons for imposing the back-wages as compensation or penalty on the management. In the present matter the Education Officer has not given any reasons and in circumstances it is not open to the Education Officer to impose the entire liability of back-wages on the Management. In the matter of this type one more fact is required to be mentioned. Where Education Officer seeks to impose liability by way of compensation/penalty on the Management, he is required to consider as to what would be the effect of imposition of financial liability on the management. In the matter of Primary School there are three parties who are connected with dispute, one is Government, other is the Management and the third party is, of course, the teacher. However, imposition of financial liability has certain serious consequences on the other teachers who are appointed by the management and also on the students who are studying in the school. In the present case I am informed that there are about 700 students. In the present case I am informed that only for the Hindi section, there are more than 15 teachers and to put the entire liability on the Management of back-wages would certainly prejudice the financial viability of the Management. Educational Institution is not an industry under the Industrial Disputes Act, 1947. In circumstances the Education Officer is certainly required to give parameters for imposition of financial liability on the Management. One more aspect needs to be mentioned that in the present matter, the Management has flouted the instructions/directions given by the Education Officer, but in the facts and circumstances of the case it cannot be said that the action of the Management is deliberate. In large number of matters, I find that after enactment of the Maharashtra Employees of Private Schools (Conditions of

Service). Regulation Act, 1977, the matters which have come to this Court indicate that the Management has no idea regarding the service law applicable to the teachers. Same thing happens with regard to the Education Officer's decisions. The reason being that there is no authoritative pronouncement of this Court and in the circumstances it cannot be said that the Management has wilfully flouted the provisions of the Act. For example, in the present case, Rule 12 of Appendix VII is totally misinterpreted by the Education Officer. Therefore, taking into account totality of the facts and circumstances of the case including the fact that 700 students are studying in Hindi section of the school, ends of justice would be met, if the order of termination is set-aside and teacher is notionally reinstated in service from the date of the order of termination so that on her retirement she would be entitled to terminal benefits and for that purpose she will be entitled to continuity of service. As far as imposition of back-wages is concerned, looking to the facts and circumstances of the case and including the question of the post of craft-teacher being held by teacher, I am of the view that the ends of justice would be met if amount of Rs. 25,000/- is ordered to be paid to the teacher. As stated hereinabove the Education Officer is not right in making the grant inadmissible on the ground that the petitioner had become employee ipso facto under Rule 12 of Appendix VII. To that extent the order is wrong and, in the above circumstances I am directing the Corporation to treat Rs. 25,000/- as an admissible grant and said payment can be made to the employee through the Management after the grant is released by the Municipal Corporation. The amount of Rs. 25,000/- is fixed after taking into account the last drawn salary of the teacher on the date of termination of her service. Rs. 25,000/- is also fixed after taking into account the burden which may fall in the Corporation. In the above circumstances, in view of the above totality of facts, the following order is passed :

ORDER

(a) The impugned order of termination dated 26th March-1991 is set aside, and, respondent No. 1 is directed to be reinstated in service from the coming Academic Year.

(b) Respondent No. 1 is directed to rejoin the institution as a craft-teacher from the coming Academic Year. She will be entitled to continuity of service from 26th March-1991 upto the beginning of the new Academic Year and the intervening period will not be treated as a break in service. She will also be entitled to receive Rs. 25,000/- from the Corporation and through the Management within six weeks from the date the Management processes the papers and forwards the same to the Education Officer. Education Department, Bombay Municipal Corporation.

(c) Mr. Pandey, the learned Counsel on behalf of the Management states that the process will be completed and the necessary papers will be forwarded to the Education Officer within two weeks from today.

(d) Accordingly, the impugned orders passed by the appellate authority is hereby set aside. The order of the Education Officer is partly restored.

(e) Writ petition is accordingly partly allowed with no order as to costs.

Issuance of certified copy expedited.