

PROGRESSIVE EDUCATION SOCIETY & ANR. A

v.

RAJENDRA & ANR.
(Civil Appeal No. 1318 of 2008)

FEBRUARY 15, 2008

[A.K.MATHUR AND ALTAMAS KABIR, JJ] B

Service Law:

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 – rr. 14, 15 and 15 (6) – Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 – s. 5(3) – Appointment – On probation – Termination of employee by Management before completion of probation period on the ground of unsatisfactory performance – Justification of – Held: Requirements of r. 15(6) and r. 14 not complied with prior to invocation by School Management of the powers u/s 5(3) of the Act – Also documents produced on behalf of School Management to justify the order of termination suspicious in nature – Thus, termination not justified – Order of tribunal as well as High Court upheld. C D E

Appellant no. 1-Society, appointed respondent no. 1 on probation for two years. However, the Management of the appellant-society terminated the services of the respondent before completion of the probation period on the ground of unsatisfactory performance. Respondent no. 1 challenged the termination order on the ground that there was nothing wrong with his performance or conduct; that the termination was in contravention of s. 5 (3) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977; and that the Management did not have any material before it to justify the termination order. The tribunal set aside the termination order and directed the appellant to reinstate the respondent. In writ petition, the High court upheld the F G

A order of the tribunal and dismissed the writ petition. Hence the present appeal

Dismissing the appeal, the Court

B HELD: 1.1 The law with regard to termination of the services of a Probationer is well established and it has been held that such a 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 is attached to the termination or 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. [Para 13] [1012-D-F]

E 1.2 In case of the termination of services of a probationer, the satisfaction required to be arrived at under sub-Section (3) of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 has to be read along with Rule 15 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, with particular reference to sub-Rule (6) which provides that the performance of an employee appointed on probation is to be objectively assessed by the Head during the period of his probation and a record of such assessment is to be maintained. If the two provisions are read together, it would mean that before taking recourse to the powers vested under sub-Section (3) of Section 5 of the MEPS Act, the performance of an employee appointed on probation would have to be taken into consideration by

the School Management before terminating his services. A
[Para 14] [1012-G-H; 1013-A-B]

1.3 While Rules 14 and 15 of the MEPS Rules, 1981
cannot override the provisions of sub-Section (3) of
Section 5 of the MEPS Act, it has to be said that the
requirements of sub-Rule (6) of Rule 15 would be a factor B
which the School Management has to take into
consideration while exercising the powers which it
undoubtedly has and is recognised under sub-Section
(3) of Section 5 of the Act. [Para 15] [1013-C] C

1.4 The Confidential Report which was 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. This merely
goes to show that the said documents are not above D
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. [Paras 16 and 17] [1013-E;
1014-A] E

1.5 In such circumstances, the views expressed by
the School Tribunal as well as the High Court are
concurring with and there are no grounds to interfere with
the impugned order. [Para 18] [1014-B] E

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1318 F
of 2008.

From the Judgment and Order dated 15.12.2006 of the
High Court of Judicature at Bombay, Nagpur Bench, Nagpur in
Writ Petition No. 939 of 1997. G

Shivaji M. Jadhav for the Appellants.

S.S. Shinde, Asha G. Nair, P.C. Madkholkar, Manish Pitale,
Deepak Gupta and Chander Shekhar Ashri for the
Respondents. H

A The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted.

B 2. The Appellant No.1 herein is a Society which runs a school wherein the Respondent No.1 herein was appointed on probation on 4th August, 1992. Pursuant to the order of appointment, the Respondent No.1 joined his duties in the school on 8th August, 1992 and his appointment was approved by the Respondent No.2, The Education Officer (Secondary) Zilla Parishad, District Wardha, Bombay, on probation for a period of two years from 8th August, 1992. Ordinarily, the period of probation would have come to an end on 7th August, 1994, but before completion of the said period, the service of the Respondent No.1 was terminated by the Management of the Appellant-Society with effect from 31st July, 1994, although the order of termination was dated 1st August, 1994, on the ground that his work was found to be unsatisfactory during the period of probation. While terminating his services, the Appellant-Society also paid a sum of Rs.3076/- to the Respondent No.1 as notice pay.

E 3. The Respondent No.1 challenged the order of termination of his service before the School Tribunal under Section 9 of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as the "MEPS, Act"). The basic ground of challenge taken by the Respondent No.1 was that there was nothing wrong with his performance or conduct and that the results in Mathematics, which was his subject, was cent percent. The Respondent No.1 also contended that his termination was in contravention of Section 5(3) of the MEPS Act and the Management did not have any material before it to justify the termination order.

G 4. The aforesaid appeal preferred by the Respondent No.1 was strongly opposed by the Management and it was reiterated that the services of the Respondent No.1 had to be terminated on account of the fact that his performance was not satisfactory.

5. The School Tribunal, however, found in favour of the Respondent No.1 mainly on two grounds. It came to a finding that as required under Rules 14 and 15 of The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as the "MEPS Rules, 1981"), no assessment of the work of Respondent No.1 had been done by the Appellant-Society and that what had been produced on behalf of the Management had been prepared later on. The Tribunal also found that the Society had not taken any resolution to terminate the services of the Respondent No.1 and that the document on which the Management is said to have relied, reached the Management only on 6th August, 1994 when the services of the Respondent No.1 had already been terminated. On account of the above, and in particular violation of Rule 15(6) of the MEPS Rules, 1981, the Tribunal allowed the appeal and set aside the order of termination with a direction on the Appellant-Society to reinstate the Respondent No.1 in the same post from 1st April, 1997 and to pay him his arrears of salary from 1st August, 1994 till the date of re-joining his duties in the school.

6. The said order of the School Tribunal was challenged by the Society before the Nagpur Bench of the Bombay High Court by way of Writ Petition No.939 of 1997. Affirming the view taken by the School Tribunal, the High Court dismissed the Writ Petition against which the instant appeal has been filed.

7. Notwithstanding the findings of the School Tribunal, the High Court also went into the matter in some detail and had occasion to consider the effect of the provisions of Section 5(3) of the MEPS Act, Rules 14 and 15 and in particular sub-Rule (6) of Rule 15 of the MEPS Rules, 1981. The High Court found that the power to terminate the services of a Probationer was available to the Management under sub-Section (3) of Section 5, but that sub-Rule (6) of Rule 15 had also to be taken into consideration while exercising power under sub-Section (3) of Section 5 of the MEPS Act.

A 8. Basing its decision on the manner in which the services
of Respondent No.1 had been terminated without a proper
assessment of his work during the probation period and also in
view of the fact that the Management did not, in fact, have any
occasion to consider the documents which were alleged to have
B been prepared by the Head Mistress of the School, the High
Court affirmed the findings of the School Tribunal and dismissed
the Writ Petition.

9. On behalf of the Management of the Society, which is in
appeal before us, it has been urged that both the School Tribunal
C as well as the High Court had misconstrued the materials which
had been prepared by the Head Mistress and produced on
behalf of the School and had been relied upon by the
Management of the Appellant-Society to terminate the services
of the Respondent No.1. It was submitted that the Annual
D Confidential Report along with all its Annexures had been duly
shown to the Respondent No.1 on 7th July, 1994 which would
be evident from his signature and the date against it on the form
itself. It was submitted that the Respondent No.1 had been duly
E informed of his performance and the assessment made on the
basis thereof which would clearly disprove the case of the
Respondent No.1 that no assessment had been made of his
performance during his period of probation or that he was not
F informed of the same before his services were terminated. It
was urged that the requirement of Rules 14 and 15, and, in
particular 15(6) of the MEPS Rules, had been strictly complied
with, which enabled the Society, which was in Management of
the School, to take a decision to terminate the services of the
Respondent No.1. It was also submitted that both the Tribunal
G and the High Court had erred in holding otherwise and that if
the interpretation sought to be given both by the Tribunal and
the High Court is to be accepted, it would result in the Rules
having an overriding effect over the statute itself which vested
the authority with powers to terminate the services of a
H Probationer if in its opinion the performance of the Probationer
during the period of probation was found to be unsatisfactory.

10. Opposing the submissions made on behalf of the Appellant-Society, the learned counsel for both the Respondent No.1 and the Respondent No.2 contended that no interference was called for with the judgment both of the School Tribunal as also the High Court on account of the suspicious nature of the documents which had been produced before the Tribunal and the High Court on behalf of the School Management and in particular the Annual Confidential Report for teaching staff, which under sub-Rule (6) of Rule 15, the Management was under an obligation to maintain. It was reiterated by learned counsel appearing for the Respondent No.1 that the said Report itself, as has been discussed both by the School Tribunal as well as the High Court, would go to show that the same had been prepared only for the purposes of documentation and that the same had not been considered by the Management when the order of termination of the services of the Respondent No.1 was passed. It was pointed out that the letter addressed by the Head Mistress of the School to the Secretary of the Progressive Education Society, the Appellant herein, enclosing a copy of the Confidential Report, is dated 24th June, 1994, whereas the Report itself is dated 4th July, 1994, which, in no uncertain terms, established that the forwarding letter of the Head Mistress alleged to have been sent on 24th June, 1994 was an afterthought or had been prepared when the Report itself was not ready. In addition to the above, it was also pointed out that at the end of the Assessment Form the signature of the Reviewing Authority did not indicate any date on which it had been signed, once again giving rise to the suspicion that the document had been prepared only for the purposes of the record but not for the purpose indicated in sub-Rule (6) of Rule 15 of MEPS Rules, 1981 read with sub-Section (3) of Section 5 of the MEPS Act.

11. It was lastly pointed out that the first page of the Confidential Report bears a date on the right top hand corner, namely, 6th August, 1994 which has been tried to be explained as being the date of official dispatch of the records of the School Management. It has been submitted that the said date could

A also indicate that the said document was not before the Management of the School when the order of termination had been passed earlier on 1st August, 1994.

B 12. Similar submissions were advanced on behalf of Respondent No.2 and it was urged that neither the order of the School Tribunal nor the order of the High Court warranted any interference.

C 13. On a consideration of the submissions made on behalf of the respective parties, the main issue which, in our view, requires determination in this appeal is whether the provisions of Rules 14 and 15, and, in particular sub-Rule (6) of Rule 15 of the MEPS Rules, 1981, would control the powers vested in the Management of the School under Sub-Section (3) of Section 5 of the MEPS Act. The law with regard to termination of the services of a Probationer is well established and it has been D repeatedly held that such a 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 E 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 is attached to the termination or the Probationer is called upon to show cause for any shortcoming which may subsequently be the cause for termination of the Probationer's F 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.

G 14. The facts of this case are a little different from the normal cases relating to probation and the termination of the services of a Probationer in that the satisfaction required to be arrived at under sub-Section (3) of Section 5 of the MEPS Act has to be read along with Rule 15 of the MEPS Rules, 1981 with particular reference to sub-Rule (6) which provides that the performance of an employee appointed on probation is to be objectively H

assessed by the Head during the period of his probation and a record of such assessment is to be maintained. If the two provisions are read together, it would mean that before taking recourse to the powers vested under sub-Section (3) of Section 5 of the MEPS Act, the performance of an employee appointed on probation would have to be taken into consideration by the School Management before terminating his services.

15. Accordingly, while Rules 14 and 15 of the MEPS Rules, 1981 cannot override the provisions of sub-Section (3) of Section 5 of the MEPS Act, it has to be said that the requirements of sub-Rule (6) of Rule 15 would be a factor which the School Management has to take into consideration while exercising the powers which it undoubtedly has and is recognised under sub-Section (3) of Section 5 of the Act.

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.

A 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.

B 18. In such circumstances, we are inclined to agree with the views expressed by the School Tribunal as well as the High Court and we see no grounds to interfere with the order impugned in this appeal.

C 19. The appeal, therefore, stands rejected. There will be no order as to costs.

N.J.

Appeal dismissed.