

Khamgaon Education Society, Khamgaon, Distt. Buldana

Vs

Director of Education, State of Maharashtra and Others

Civil Appeal Nos. 4484-85 of 1989

(L. M. Sharma, Dr. T. K. Thommen JJ)

24.10.1989

ORDER

1. Both these special leave petitions are directed against the judgement of the Bombay High Court quashing the decision of the Director of Education, respondent 1, and restoring respondent 3 and 4 to their posts with consequential benefits. The High Court has mentioned the facts respondent 3 in some detail and has said that the case of respondent 4 is similar. The learned counsel for the parties have also advanced their arguments before us with reference to the facts concerning respondent 3.

2. Respondent 3 was an employee under the petitioner - Society. A disciplinary proceeding was initiated against him in which he was ultimately dismissed. This order was set aside by the Deputy Director of Education on December 18, 1980, and the petitioner filed an appeal before the Director of Education, respondent 1. While entertaining the appeal, respondent 1 passed an order on February 11, 1981, a true copy whereof is Annexure 'A' at pages 16 and 17 of the paper book. Respondent 3 moved the High Court with application claiming inter alia that the appeal before the High Court with a writ application claiming inter alia that the appeal before the Director of Education should be disposed of expeditiously. The High Court, accordingly, directed respondent 1 to dispose of the appeal within a period of one months. In pursuance of this judgement the Director of Education took up the hearing of the appeal and by his order (as in Annexure 'C' to the paper book) allowed the appeal, quashed the decision of the Deputy Director of Education and confirmed the order of dismissal of the respondent. Respondent 3 challenged the Director's decision before the High Court in Writ Petition No. 406 of 1985, which was allowed by the impugned judgment dated November 29, 1988.

3. We have heard the learned counsel for the parties. Special leave is granted.

4. The High Court has, in the impugned judgment, relied upon a resolution of the government dated October 7, 1983 (a copy whereof is Annexure 'B' at pages 18-22 of the paper book) which according to the respondent declares that if the Director of Education does not grant stay in an appeal preferred before him, Deputy Director's order becomes final and, therefore, unassailable. The petitioner interpreted the government resolution differently and alternatively contended that in view of the order of the Director of Education as contained in Annexure 'A' it is not correct to say that the Director had refused to grant stay. The High Court rejected the meaning of the government resolution suggested by the petitioner, and further held in the following terms that the Director, by his order had rejected the prayer for stay :

"We find that in the light of the categorical statement made on behalf of the Government Pleader before this Court that no stay was granted, there is no other

possibility to be construed from the order of the Director of Education except that the stay was refused."

Accordingly, the High Court held that the Director of Education had ceased to have jurisdiction over the appeal after he refused to pass an order of stay and his final judgment had, therefore, to be quashed.

5. Mr. U. R. Lalit, the learned counsel for the petitioner, besides reiterating the points urged by the petitioner before the High Court, has raised an additional point which involves a pure question of law. He placed reliance on the amended provisions of Section 15 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 amended by the Maharashtra Act 30 of 1987 with retrospective effect along with the further amendment introduced by Section 3 of the Maharashtra Act 23 of 1989. The argument is that assuming that the appeal before the Director of education became defective on account of non-grant of stay, the defect must be deemed to have been cured retrospectively as a result of the aforementioned amended provisions of the Act. Since this question could not be urged before the High Court, it does not find mention in the judgment.

6. Mr. Bobde, the learned counsel for the respondent, inter alia stated that the petitioner-Society has challenged the judgement of the Deputy Director of Education directly before the High Court in Writ Petition No. 675 of 1981, which is pending, and if the petitioner can establish a good case before the High Court, it will get the desired relief. The learned counsel also suggested that if this Court is not inclined to dismiss the present appeal, the question may be referred back to the High Court for consideration.

7. After hearing the learned counsel for the parties and considering all the circumstances of the case, we are of the view that the present case should be remitted to the High Court for re-hearing along with Writ Petition No. 675 of 1981. The petitioner shall be entitled to rely on the amended provisions of the Act in support of its argument that the defect in the appeal before the Director of Education, if any, must be deemed to have been removed with retrospective effect. The petitioner shall also be allowed to urge that the concession of the Government Pleader on the question as to whether the Director of Education must be deemed to have issued a stay order or not was not binding on the petitioner and that on a correct reading of the order (Annexure 'A') it should be held that the Director of Education had in substance granted stay. The appeals are accordingly allowed, the judgement of the High Court is set aside and the case are remanded to it for fresh decision in the light of the observations made above. The parties shall bear their own costs in this Court.

</html