

Hindustan Education Society and Another

Vs

Sk. Kaleem Sk. Gulam Nabi and Others

Civil Appeal No. 1971 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

10.03.1997

ORDER

1. Since Respondent 1, it is reported, has refused to receive the notice, it must be deemed to the sufficient notice. Respondents 5 and 7 have been served. But they are appearing neither in person nor through counsel.

2. Leave granted.

3. Since the respondents are appearing neither in person nor through counsel, we have taken the assistance of Shri Deshpande, learned counsel appearing for the appellants and gone through the relevant rules and orders of appointment. The admitted position is that Respondent 1 came to be appointed on 10-6-1992 against a clear vacancy with the following stipulation :

"Your appointment is purely temporary for a period of 11 months from 11-6-1992 to 10-5-1993 in the clear vacancy. After expiry of the above period your service shall stand terminated without any notice."

4. Thus, it could be seen that the appointment of the first respondent was only a temporary appointment against a clear vacancy. The appointments are regulated and controlled by the provisions of the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977. Section 5 of the Act postulates as under :

"5. Certain obligations of Managements of private school. - (1) The Management shall, as soon as possible, fill in, in the manner prescribed, every permanent vacancy in a private school by appointment of a person duly qualified to fill such vacancy :

Provided that, unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill in such vacancy, ascertain from the Educational Inspector, Greater Bombay, or as the case may be, the Education Officer, Zilla Parishad, whether there is any suitable person available on the list of surplus persons maintained by him for absorption in other schools; and in the event of such person being available, the Management shall appoint that person in such vacancy.

(2) Every person appointed to fill a permanent vacancy shall be on probation for a period of two years. Subject to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed.

(3) If in the opinion of the Management, the work or behaviour of any probationer, during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving him one month's notice, or salary of one month in lieu of notice.

(4) If the services of any probationer are terminated under sub-section (3) and he is reappointed by the Management in the same school or any other school belonging to it within a period of one year from the date on which his services were terminated, then the period of probation undergone by him previously shall be taken into consideration in calculating the required period of probation for the purposes of sub-section (2).

(4-A) Nothing in sub-sections (2), (3) or (4) shall apply to a person appointed to fill a permanent vacancy by promotion or by absorption as provided under the proviso to sub-section (1).

(5) The Management may fill in every temporary vacancy by appointing a person duly qualified to fill such vacancy. The order of appointment shall be drawn up in the form prescribed in that behalf, and shall state the period of appointment of such person."

5. In view of the above and the order of appointment, the appointment of the respondent was purely temporary for a limited period. Obviously, the approval given by the competent authority was for that temporary appointment. As regards permanent appointments, they are regulated by sub-sections (1) and (2) of Section 5 of the Act according to which the Management shall, as soon as possible, fill up, in the manner prescribed, every permanent vacancy in a private school by appointment of a person duly qualified to fill in such vacancy. Every person so appointed shall be put on probation for a period of two years subject to the provisions of sub-sections (4) and (5). He shall, on completion of the probation period of two years, be confirmed.

6. Under these circumstances, the appointment of the respondent cannot be considered to be a permanent appointment. As a consequence, the direction issued by the High Court in the impugned judgment dated 31-7-1996 in Writ Petition No. 5821 of 1995 that he was regularly appointed is clearly illegal and cannot be sustained.

7. The appeal is, accordingly, allowed. The order of the High Court stands reversed and the writ petition stands dismissed. No costs.