

Chatrapati Shivaji Shikshan Prasarak Mandal & Others

v.

Dattatraya Rupa Pagar & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

Civil Appeal No. 3563 Of 2012 (Special Leave Petition (Civil) No. 18327 Of 2011) | 13-04-2012

Leave granted.

The question which arises for consideration in this appeal are whether the termination of the service of respondent No.1 Dattatraya Rupa Pagar, by the management of the appellants was legally infirm and the Presiding Officer, School Tribunal, Nashik rightly ordained his reinstatement with back wages and continuity of service.

Appellant No.1 is a registered trust and society and is running a school in the name of Nayanrao Sarjerao Deshmukh Vidyalaya at Malegaon. The school is aided by the State Government. Respondent No.1, who possess the qualification of B.A., B.P.Ed was appointed in the school against the leave vacancy for the period from 5.3.1999 to 31.1.2000. After a gap of about one year the Chairman of appellant No. 1 vide his letter dated 3.9.2002 appointed respondent No. 1 as Shikshan Sevak for the period from 1.4.2001 to 31.3.2004. The relevant portions of that letter are extracted below:

"You are intimated that you as per the appointment of Shikshan Sevak Secondary School Scheme you are selected as Shikshan Sevak. Your appointment as Shikshan Sevak is made under the following terms & conditions after giving consent letter for the acceptance of terms & conditions you will be given an appointment as Shikshan Sevak.

1) Your appointment as Shikshan Sevak will be for the period from 1/4/2001 till 31/3/2004.

2)xxx xxx xxx

3)xxx xxx xxx

4) You are not eligible for facilities given to the regular appointed teachers or Govt. employees.

5) After completing three years satisfactory service as Shikshan Sevak you will be held eligible for the appointment of teacher in the prescribed pay scale. Your service rendered as Shikshan Sevak will be considered after retirement for pension and other benefits.

6) xxx xxx xxx

7) You will be paid monthly honorarium Rs. 4000/- as Shikshan Sevak.

8) During the period of appointment you will have to perform following duties :

1) To keep relation or contacts with parents for the purpose of regular attendance of the students in the school.

2) To attend regularly in time during the school hours to school / Jr. College / D.Ed College / Vidya Niketan / Military school.

3) To collect sufficient Material for education as per prescribed syllabus.

4) To prepare and study the subjects given for teaching.

5) To attend training camps organized by the Govt.

6) To work under the instructions of the Head Master/Principal and to obey their orders from the period of education and administration.

7) To assess the home work and performance of students of class.

8) To participate education and other programs etc. sports completion as organized.

9) To examine work as prescribed by Maharashtra State Secondary and Higher Secondary Board."

The service of respondent No.1 was discontinued vide letter dated 16.7.2004. He challenged the same by filing an appeal under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, 'the Act'). The Presiding Officer of the Tribunal quashed the action of appellant No.1 by observing that on the expiry of three years period, respondent No.1 will be deemed to have completed the period of probation and confirmed and, as such, his service could not have been terminated by the management. This is evident from the following portion of the Tribunal's order:

"It transpires from the order of appointment dt.18.06.2000 that appellant was appointed as an assistant teacher for the academic year 2000-2001 from 19.06.2000 to 30.04.2001. The said order of appointment does not disclose that appellant was appointed in the leave vacancy. It means, appellant was appointed in a clear and permanent vacancy. It is not in dispute that in pursuant to the scheme introduced by the government with respect to shikshan sevak (education employee) order of appointment (shikshan sevak) for a period from 13.06.2000 to 30.04.2003) i.e. for a period of three years. It is not in dispute that the appellant has completed the probation period of three years. As a result of the amendments made by Maharashtra Act XIV of 2007, it has been provided that every person appointed as Shikshan Sevak shall be on probation for a period of three years. Moreover, subject to the provisions of sub sections (3) and (4) of Section 5 a Shikshan Sevak shall on completion of the probation period of three years be deemed to have been appointed and confirmed as a teacher. The respondent institute has terminated the service of appellant on the ground that the Education Officer has refused to accord approval of the appointment of appellant. It is well settled the grant of approval by the Education Officer is a condition precedent to a valid order of appointment. It has been held by the Hon'ble Lordship of Bombay High Court in a case St. Ulgi High School V/s. Devendraprasad Jagannath Singh & another reported in 2007 597 is that

"(b) Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 13 of 1978, S 9 and Maharashtra Employees of Private Schools (Conditions of Service) Rule 1981, R.9-Grant of approval by the Education Officer is not a condition precedent to a valid order of appointment - Approval relates to disbursement of grant-in-aid by the State and the management and want of approval will not invalidate an order of appointment."

Therefore, in the light of above ratio and dictum laid down by the Hon'ble lordship of Bombay High Court, I have no hesitation to conclude that the act of the management of respondent institute terminating the services of appellant only on the ground that Education Officer has refused to accord approval to the appointment of appellant is illegal."

The writ petition filed by the appellants was dismissed by the learned Single Judge of the Bombay High Court by a rather cryptic order dated 10.12.2010.

When the special leave petition, out of which this appeal arises, was listed for admission hearing, learned counsel appearing for the appellants had made a statement that his clients would have no objection to pay the wages which respondent No.1 was entitled to receive till the date of termination of the service. After taking cognizance of this statement, the Court issued notice restricted to the question of legality of the termination of the service of respondent No.1.

We have heard learned counsel for the parties and perused the record. In our view, the order passed by the Presiding Officer of the Tribunal was ex-facie erroneous and the High Court committed serious error by refusing to quash the same. A reading of the terms and conditions embodied in letter dated 3.9.2002 issued by the Chairman of appellant No.1 shows that respondent No.1 was appointed for fixed period with a clear stipulation that he will not be treated at par with regular teachers or Government employees and after completing three years satisfactory service as Shikshan Sevak, he will be eligible for appointment as teacher in the prescribed pay-scale and the service already rendered by him will be considered for post-retiral benefits. It is neither the pleaded case of respondent No.1 nor any document has been produced before this Court to show that respondent No.1 had been appointed as a teacher after regular selection and he was appointed on probation. Therefore, the Tribunal was clearly in error in holding that respondent No.1 had been appointed on probation and on completion of three years, he will be deemed to have been confirmed.

The service of respondent No.1 was terminated strictly in accordance with the terms and conditions of his appointment. Therefore, the issue of approval or non-approval of his appointment by the Education Officer was inconsequential and even if one of the reasons put forward by the appellants to justify their action was legally unsustainable, the termination of the service of respondent No.1 could not have been declared illegal by relying upon the High Court's judgment in *St. Ulgi High School v. Devendra Prasad*.

The learned Single Judge of the High Court, who decided the writ petition filed by the appellants did not even advert to the issues raised therein and dismissed the same and that too without taking cognizance of the fact that respondent No. 1 had been appointed as Shikshan Sevak for fixed period and he was never appointed as a teacher on probation so as to justify a conclusion by the Presiding Officer of the Tribunal that on completion of three years' period of probation he stood confirmed.

In the result, the appeal is allowed. The orders passed by the Tribunal and the High Court are set aside and the direction issued for reinstatement of respondent No.1 with back wages and continuity of service is quashed.

