

SUPREME COURT OF INDIA

Educational Society, Tumsar & Ors.

Vs.

State of Maharashtra & Ors.

C.A.No.670 of 2016

(A.K.Sikri and Abhay Manohar Sapre, JJ.)

01.02.2016

JUDGMENT

A.K.Sikri, J.

(Arising Out of Slp (C) No.3816 of 2015)

1. Leave granted.

2. This appeal raises a short but significant question of law. Appellants herein is a society running a school. Said school is an aided institution which is provided aid to the extent of 100% by the State of Maharashtra (respondent No.1). The aid includes the element of salaries that is payable to the Teachers and other staff employed by the school.

3. Services of respondent No. 4 were terminated by the appellants-society. This termination order was challenged by respondent No. 4 by filing an appeal in the School Tribunal, Nagpur which was pleased to set aside the termination with direction to reinstate respondent No. 4 and also pay back wages for the intervening period. Order of the School Tribunal was upheld by the High Court as the appellants and respondent No. 4 entered into a settlement whereby the appellants agreed to abide by the same. As per the direction of the School Tribunal, which has attained finality, respondent No. 4 is to be paid back wages. The issue is as to who is to ultimately bear this financial burden, namely, whether appellants are supposed to pay the back wages to respondent No. 4 out of its own pocket or is it to come from the coffers of the State which is granting financial aid to the school.

4. The detailed factual backdrop in which the said issue has come up for discussion needs to be traversed at this stage:

Appellant No. 1 Educational Society, Tumsar is the registered society, registered in the year 1983 under the Societies Registration Act. It is registered in the year 1983 under the provisions of Bombay (now Maharashtra) Public Trusts Act, 1950 having its registration PTR No. F-896(B). The trust is formed with object of spreading education. Appellant No. 1

Society is running appellant No. 3 school which is on 100% grant in aid by the Government of Maharashtra. Appellant No. 1 initiated departmental enquiry against its employee, respondent No. 4, who was working on the post of the Assistant Teacher in appellant No.3 school and was also acting as Incharge Headmaster for a short period. Respondent No. 4 was terminated vide order dated 20.09.2010. Respondent No. 4 was appointed on sanctioned post as per the provisions of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules, 1981. On 28.04.2011, the termination order was challenged by the respondent No. 4 before the School Tribunal, Nagpur. The School Tribunal, Nagpur was pleased to set aside the said termination order in Appeal No. A-56/2010 with a direction to reinstate the respondent No. 4 and pay back wages. The relevant portion of the direction given by the School Tribunal in this behalf reads as under:

“ORDER

“1. The appeal is allowed.

2. The termination order of appellant dated 20.09.2010 issued by the respondent No. 2 as President of respondent No. 1 is hereby quashed and set aside being illegal and contrary to law.

3. The respondents no. 1 and 3 are hereby directed to reinstate the appellant as Assistant Teacher in the said college with full back wages and all service benefits within one month from the date of order.

In the consequences, the respondent nos.1 and 3 shall pay the cost of Rs.5,000/- to appellant and bear its own costs.”

Respondent Nos. 1 to 3 in the said appeal are the appellants herein. In the appeal filed by respondent No. 4 herein, the Education Officer (Secondary), Zila Parishad, Nagpur was also impleaded as 4th respondent. However, there is no specific direction to respondent No. 4 to pay the aforesaid back wages. On 02.06.2011, the appellants challenged the said order of the School Tribunal in Writ Petition No. 2704/2011. During the course of hearing of the writ petition, in view of the respondent No.4's retirement, appellants settled the matter with respondent No. 4 and filed a Joint Pursis dated 28.06.2011 based on out of court settlement and respondent No. 4. The said Joint Pursis, which was taken on record and petition disposed of in terms thereof by the High Court, reads as under:

“JOINT PURSIS

The humble Petitioners and Respondent no. 1 most respectfully submit as under:-

That the Petitioner Management agree to reinstate the Respondent No.1/ appellant on the post of Assistant Teacher in compliance of the judgment and order dated 28.4.2011 at Annexure P1 passed by the learned School Tribunal, Nagpur w.e.f.

29.6.2011. The Respondent No. 1 is satisfied with the judgment and order passed by the learned School Tribunal, Nagpur and he will not challenge the same in future.

Hence, this pursis.

(M.B. Nikhade)

Petitioners

Working President

The Educational Society, Tumsar

(V.T. Bhoskar)

Counsel for Petitioner

(S.M. Padole)

Respondent No.1

(A.Z. Jibhakate)

Counsel for Resp No.1”

It is clear from the above that even this agreement was arrived at between the appellants and respondent No. 4 herein, to which the Education Officer was not a party. On 03.09.2011, the appellants reinstated respondent No. 4 and forwarded the proposal of payment of back wages of respondent No. 4 to respondent No. 3 herein i.e. Education Officer. Respondent No. 3 returned the same vide letter dated 03.09.2011 with the remarks that management has to pay the back wages. Since back wages have not been paid, on 03.10.2011 respondent No. 4 filed Criminal Complaint No.190 of 2011 in the Court of Judicial Magistrate, First Class, Tumsar, which is still pending. The appellants made representations to respondent No. 3 for payment of back wages of respondent No. 4. However, respondent No. 3 refused to make payment of back wages, but released the retirement benefits, pension etc. in favour of respondent No. 4. At this stage, the appellants filed Writ Petition No. 1014 of 2013 for direction to the respondents to pay back wages of respondent No. 4. The same was permitted to be withdrawn vide order dated 05.09.2013 to make further representation in accordance of Government Resolution dated 14.03.1978.

5. The appellants made further representations which were also rejected by the respondent-authorities. In these circumstances, the appellants again approached the High Court by filing Writ Petition No. 5182/2014 which has been dismissed by the impugned order dated 10.10.2014. The High Court has dismissed the said writ petition, giving two fold reasons which are:

(a) The Education Tribunal had specifically directed the appellants to pay the back wages to respondent No. 4. That order was challenged by the appellants in the writ petition but the matter was compromised between the appellants and respondent No. 4 whereby, again, it is the appellants who agreed to pay the back wages. In view of these clear orders of the Court, the liability could not be fastened on the Education Officer.

(b) The appellants had challenged the order of the Education Officer refusing to pay the back wages by filing writ petition earlier which was withdrawn without seeking any liberty to file a fresh petition. Therefore, second petition on the same cause with same prayer was not permissible in view of the judgment of this Court in *Sarguja Transport Service v. State Transport Appellate Tribunal*¹, Gwalior and others'.

6. It is in this backdrop that the issue formulated above has to be decided in the present appeal.

7. Learned counsel for the appellants contended that the Government of Maharashtra had passed Government Resolution dated 14.03.1978 which prescribes that in case an employee of an aided school is terminated by the Management, but his termination is subsequently set aside in appeal by the competent authority, the Government would pay the back wages to the said employee subject to the satisfaction of two conditions, namely, that no other person has been appointed on the post during the intervening period and payment of back wages would not result in additional financial burden to the Government. On that basis, it is argued that the financial burden is to be borne by the Government. He submitted that, no doubt, the Tribunal specifically passed the order directing the appellant to pay the salary. If general rule is applicable, this direction may not be of much consequence inasmuch it is the appellant who is supposed to pay the back wages to respondent No. 4 as the employer employee relationship is between the appellant and respondent No. 4. The learned counsel argued that the issue is as to whether appellant is entitled to recover this amount from the Government on the ground that the Government is providing 100% aid. The Government of Maharashtra had itself passed Resolution dated 14.03.1978 in this behalf particularly taking care of such situations. A reading of this Resolution would show that the precise question which drew the attention of the Government was as to whether an employee whose services was terminated and who is reinstated by the Management in pursuance of the final decision of the competent appellate authority of the Department could be paid their arrears of salary and allowances by the Department itself. After considering this problem, the Government decided to pay the same which can be discerned from the reading of para 2 of the aforesaid Resolution dated 14.03.1978. To quote:

“2. Government is pleased to direct as follows:-

A) Where the management of a non-Government Sec. School has reinstated the employee in pursuance of the order of the Competent Appellate Authority of the Department (issue on a representation/ appeal made by the aggrieved employee or the management, as the case may be), if his past arrears of salary and allowances, or any portion thereof, relating to the period from the date of termination of his service (which was held to be wrongful by the competent appellate authority of the Department) till the date of his reinstatement have remained to be paid to him, these should be directly paid by the Education Officer/Educational Inspector under the Scheme of payment of salary and all allowances through Cooperative Banks' in all such cases, no cut should be applied to the non-salary grant due to the school if all the following conditions are fulfilled.

i) Salary and allowances of the substitute, if any, appointed by the Management in place of the employee whose services were terminated, have not been paid by the Department.

ii) That the payment of due arrears of salary and allowances of the employee who has been reinstated would not involve any additional expenditure to Government over and

above the expenditure which would in any case have been incurred on the salary etc. of the total teaching and non-teaching staff admissible to the school on the basis of the total teaching work-load and other norms prescribed in that behalf by the Government.”

It is further submitted that since the school run by the appellants society is 100% aided institution, therefore, burden of back wages of respondent No. 4, which is nothing but the salary for the intervening period, should fall on the Government.

8. Learned counsel for the official respondents, on the other hand, submitted that Government Resolution dated 14.03.1978 is no longer valid as thereafter the Legislature enacted the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as the 'Act') which became operational from 20.03.1978. He submitted that since the position is governed by the provisions of the aforesaid Act, which are statutory in nature, the aforesaid Government Resolution dated 14.03.1978 loses its force. He further submitted that in any case that Government Resolution is applicable and merely because the school is 100% aided institution would not make any difference on the facts of this case wherein specific direction was given by the Tribunal to the appellant society to make the payment of back wages after recording a finding that the termination order was without jurisdiction.

9. We have considered the aforesaid submissions of the learned counsel for the parties and have gone through the statutory provisions. It cannot be denied that as per normal principle, whenever a terminated employee of an aided school challenges the termination and termination is held to be illegal by a competent judicial forum/Court and order is passed for payment of back wages etc., the Government is supposed to bear the said burden. The reason for the same is that such back wages or any other payment are in the nature of salary for the intervening period or other compensation in lieu thereof which is to be paid to the employee who would have earned these benefits had he remained in service. In that eventuality, obviously, the Government/Education Department would have paid those benefits in terms of financial aid provided to such a school. However, if there is a specific provision contained in any statute which contains contrary position, then such provision would prevail upon the aforesaid general rule. Likewise, if there is any administrative order which is contrary to the aforesaid general rule, the said administrative order shall prevail as in that situation, it would be treated that the aid is given subject to the conditions contained in such administrative order.

10. Insofar as present case is concerned, we are of the opinion that it is not necessary to go into the issue as to whether Government Resolution dated 14.03.1978 is no more valid or whether provisions of the Act or Rules are contrary to the aforesaid Resolution and, therefore, would govern the field. For the reasons recorded hereinafter, we find that the manner in which action was taken by the appellants against respondent No. 4 and the findings of the Tribunal thereupon, it is the appellants who are obligated to pay the back wages to respondent No. 4. We find that in the peculiar facts of the present case, the School Tribunal consciously put the burden of paying back wages of respondent No. 4 upon the

appellant school authorities. It may be worth noting that an aided school is bound to follow the dictat of the relevant provisions of applicable rules etc. for conduct of Departmental enquiries and termination of services of an employee present thereto. In the instant case, the concerned rules are Maharashtra Employees Private School Rules, 1981 (hereinafter referred to as the 'Rules') and the concerned provisions applicable were the Act, 1977 (which came into force from 20.03.1978, as noted above). The School Tribunal while holding the termination to be illegal gave a specific finding to the effect that appellant No. 2, who initiated the enquiry, was not lawfully empowered to do so without the decision of the Enquiry Committee being supported by the Managing Committee. Issues No. 1 and 2 framed in this behalf were specifically decided against the appellants. It was further found that no Enquiry Committee as per the Rules was constituted. The findings of the School Tribunal are also to the effect that the mandatory provisions of law were not followed. It is, therefore, a case where appellants acted without jurisdiction and without adhering to the provisions of the Act and the Rules. Had the provisions of Rules been followed, that would have initiated participation of the representatives of the Government in the decision making process right from decision to initiate the enquiry to the dismissal of respondent No. 4. This would have led to a situation where the State Government/Education Officer would have given its imprimatur to the entire proceedings including order of termination of respondent No. 4. Had termination order been set aside under such circumstances, it would have amounted to setting aside the order of the Government making the Government responsible for payment of back wages, as the act of termination, found ultimately illegal, would have been with the blessings of the Government/Education Officer. However, in the present case, what is found is that the State Government/Education Officer had no role to play in passing the order of termination and the school authorities acted without jurisdiction thereby transgressing their powers to terminate. Specific findings to this effect are recorded by the School Tribunal. For these reasons, even when Education Officer was impleaded as a respondent in the appeal filed by respondent No. 4, the School Tribunal consciously did not give any direction for payment of these back wages by the Education Department.

11. For the aforesaid reasons, we are not inclined to interfere with the orders passed by the High Court in the facts of the present case. The appeal is, thus, devoid of any merit and accordingly dismissed.

Judgment Referred.

¹AIR 1987 SC 88