

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1198 OF 2011

CHAIRMAN, MAHARANI R.V.VASATIGRAHA & ANR. ...Appellants

Vs.

MAHADEV MURLIDHAR GANBAWALE & ANR. ...Respondents

O R D E R

1. The respondent No.1 sought appointment as an Assistant Teacher with the appellant vide an application dated 1st August, 1994 and on the same date an appointment letter was issued, placing respondent No.1 on probation for a period of two years. It is a case of the appellants that the services of respondent No.1 were meant for Class 6th Division No 2. However, on 17th November, 1995, after verifying the report submitted by the Education Officer (Secondary) Zila Parishad, Kolhapur-respondent No.2, it was decided to reduce the division of this class to one. As a sequitur, the appellants were required to get the number of teaching and non-teaching staff decided from the Education Officer so that the Education Officer could inform the surplus teachers immediately and accommodate them according to the Rules. We may, however, note the stand of respondent

No.1 that he worked not only for the said Division but taught even other classes.

2. The appellants issued a letter dated 23rd January, 1996 to respondent No.1 intimating him of the decision of respondent No.2-Department, and thereafter issued a termination of services letter dated 29th March, 1996 noticing that respondent No.1 was on probation and his services were being terminated by giving one month's prior notice.

3. Respondent No.1 assailed this decision before the Education Tribunal at Kolhapur and in terms of the judgment dated 31st March, 1999, the appeal was allowed and the services of respondent No.1 were directed to be reinstated along with back wages from November, 1995 and all consequential benefits. This order was assailed by the appellants before the Bombay High Court, and in terms of the impugned judgment dated 25th September, 2008, the said writ petition was dismissed. Thereafter, the special leave petition was filed before this Court and leave was granted on 31st January, 2011 simultaneously, staying the contempt proceedings initiated by respondent No.1. The result is that the impugned order of the Tribunal and the High Court have remained unimplemented.

4. We have heard learned counsel for the parties. The concurrent finding which emerges is that respondent No.1 was appointed against a clear and permanent vacancy and that he had continued to work in the appellants's school

from 4th August, 1994 till 1st July, 1997 and that his services were dispensed with later, and not as alleged by the appellants. The sequitur was that respondent No.1 had completed more than two years of service and he was thus being continued as a permanent employee, treated as a person who had been absorbed, and thus his services could not be terminated with one month's notice alone.

5. We have no reason or material on record to set aside this concurrent finding.

6. Learned counsel for the parties faced with the aforesaid position, more specifically, learned counsel for the appellants submits that in view of the aforesaid position, the services of respondent No.1 could have only been retrenched in accordance with Rule 26 of The Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977, an aspect on which both the respondents are *ad idem*. This is so as the said Rule applies to permanent employees. Such retrenchment can take place *inter alia* on the ground of "reduction of establishment owing to reduction in the number of classes or divisions", if such retrenchment was to take place as per sub-rule (i) of clause 1 of Rule 26 of the said Rules, the same was to be subject to the conditions as specified in clause 2. For convenience of reference, we reproduce the said Rule:

"26.Retrenchment on account of abolition of posts
- (1) A permanent employee may be retrenched from

service by the Management after giving him 3 months' notice, on any of the following grounds, namely:

- (i) reduction of establishment owing to reduction in the number of classes or divisions;
- (ii) fall in the number of pupils resulting in reduction of establishment;
- (iii) change in the curriculum affecting the number of certain category of employees;
- (iv) closure of course of studies;
- (v) any other *bona fide* reason of similar nature.

(2) The retrenchment from services under sub-rule (1) shall be subject to the following conditions, namely:

- (i) The principle of seniority shall ordinarily be observed;
- (ii) Prior approval of the Education Officer in the case of Primary and Secondary Schools or, of the Deputy Director in the case of Higher Secondary Schools and Junior Colleges of Education shall be obtained by the Management in each case of retrenchment including such cases in which the principle of seniority as proposed to be departed from and a senior member of the staff is proposed to be retrenched when a junior member should have been retrenched, stating the special reasons therefor;
- (iii) The employees from aided schools, whose services are proposed to be retrenched shall be absorbed by the Education Officer in the case of Primary and Secondary Schools or by the Deputy Director in the case of Higher Secondary Schools and Junior Colleges of Education. The order of absorption of such employees shall be issued by

registered post acknowledgement due letter and till they are absorbed, the Management shall not be permitted to effect retrenchment on account of any reasons mentioned in sub-rule(1).

(3) ...

(4) ...

(5) The retrenched person who may have been absorbed in other school, shall have an option either to get repatriated to his original school or to continue in school in which he has been absorbed."

7. A reading of the aforesaid Rules would show that the conditions include maintenance of the principle of seniority ordinarily, and thus a list was required to be maintained so that such employees could be absorbed by the Education Officer either in that school or in some other school. The person who is so absorbed would have an option either to get repatriated to his original school or to continue in the school in which he has been absorbed (sub-rule 5).

8. The aforesaid course of action has undisputedly not been followed and thus the consequence would be that the name of respondent No.1 would have to be entered in the list of such employees and given the benefit of seniority from the date when he was treated as retrenched, with all consequences of the right to get employment in that school or another school.

9. We require the aforesaid exercise to be carried out by respondent No.2 within a period of three months from today. So far as the question of back wages is concerned, it is not as if respondent No.1 would not be working any where (in the interim period) and thus we deem it appropriate to quantify a lumpsum amount towards back wages. We deem it appropriate to grant back wages to the tune of Rs.8,00,000/- (Rupees eight lakhs).

10. There is some disagreement between counsel for the parties as to who will bear the consequences i.e.appellant No.1, being an aided institution, or whether respondent No.2 would bear the consequences. In this behalf our attention has been invited to certain observations made in the order of the Tribunal referring to a letter dated 12th January, 1996 of the Education Officer to the appellants, requiring the services of respondent No.1 to be terminated, and it is the say of the learned counsel for the appellants that, thus, the action to terminate respondent No.1 on probation was a sequitur to the same. However, this letter has not been placed on record and thus learned counsel for respondent No.2 disputes the liability to pay the back wages.

11. In the absence of the relevant material before us, it is not possible for us to opine on the same, but we would like to set down the principle qua this aspect. If communication was issued by the Education Officer to the

appellants calling upon them to terminate the services of respondent No.1, then only the act of the appellants of termination would be attributed entirely to what was directed by the Education Officer and the liability in such a situation will be of the State Government. However, if the communication to the appellants does not state so and any such action is taken by the appellants without approval, then we are afraid that the appellants would have to bear the consequences of the same.

12. The amount of back wages be remitted within a period of three months from today.

13. The appeal is disposed of in terms aforesaid, leaving the parties to bear their own costs.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[K.M. JOSEPH]

New Delhi;
February 11, 2020.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 1198/2011

CHAIRMAN, MAHARANI R.V.VASTIGRAHA & ANR. Appellant(s)

VERSUS

MAHADEV MURLIDHAR GANBAWALE & ANR. Respondent(s)

Date : 11-02-2020 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE K.M. JOSEPHFor Appellant(s) Mr. Sudhanshu S.Chaudhari,Adv.
Mr. Yogesh Kolte,Adv.
Mr. Mahesh P.Shinde,Adv.
Mr. Govind Venugopal,Adv.
Mr. Naresh Kumar, AORFor Respondent(s) Mr. Sachin Patil, AOR
No.2 Mr. Rahul Chitnis,Adv.
Mr. Aaditya A.Pande,Adv.
Mr. Geo Joseph,Adv.For Res.No.1 Mr. Prashant Padmanabhan,Adv.
Mr. T. Harish Kumar, AORUPON hearing the counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

The appeal is disposed of in terms of the signed
order.Pending application, if any, shall also stand
disposed of.(ANITA MALHOTRA)
COURT MASTER(PRADEEP KUMAR)
COURT MASTER

(Signed order is placed on the file.)