

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO. 1859 OF 2002**

Mohammed Ishtiaque Mohd. Yakub

... Petitioner

Versus

The State of Maharashtra and Ors.... Respondents

Mr. A.N. Maniyar for Petitioner.

Mrs. S.M. Dandekar, A.G.P. for R. No. 1.

Mr. A.G. Kothari for R. Nos. 3,4,7 and 10.

Mr. S.A. Shaikh for R. Nos. 6 and 11.

**CORAM : F.I. REBELLO,J.  
DATED : AUGUST 31, 2005**

**P.C.**

. The Petitioner who was appointed as Probationer in the school run by Respondent No. 3 preferred an appeal to the second respondent against his termination. That appeal came to be dismissed by order dated 8.2.2002. The appeal was dismissed along with other appeals which were preferred. The appeal preferred by the Petitioner herein was numbered as Appeal No. 41 of 1996. The learned tribunal while passing the impugned order has observed in Para 16 that the services of the Petitioner herein along with some other appellants were terminated for unsatisfactory work. It is further noted that in so far as Petitioner is concerned, there was complaint dated 5.1.1996 of Imrana Nazreen Fatima, Raziya and complaint dated 19.2.1996 of the parents of the student Reshma. Thereafter in Para 17 the tribunal has noted that the observation reports has recorded in log book of the performance of the appellant in which on occasions entries were made therein highlighting the deficiencies in their work. The tribunal also

noted that there is no evidence on record to show that the complaints were procured from the students by exercising undue influence on them. Apart from that the tribunal noted that the complaints of the students were prior to the filing of the respective appeals. The learned tribunal thereafter in para 18 observed that there is nothing on record to show that the alleged complaint of the students and observation reports in log book are fabricated documents prepared after filing of the respective appeals. After considering the entire material, the tribunal came to the conclusion that the termination of the Petitioner herein was not illegal and consequently dismissed the appeal. It is this order which is subject matter of the present petition.

. At the hearing of this petition, on behalf of the petitioner, their learned counsel submits that the termination of the petitioner is arbitrary and or mala fide. It is submitted that the Petitioner had placed on record that the Management of the society has during the last several years, terminated 41 teachers for extraneous or ulterior reasons. The submission is that as these teachers did not agree to pay to the trustees the money from the salaries received by them, their services are

terminated. It is therefore, submitted that considering the termination is for reasons other than unsatisfactory performance and consequently the order should be set aside. The learned counsel has placed reliance on an unreported judgement of this court dated 18.8.1993 in Writ Petition No. 1094 of 1985 in the matter of Mohd. Sabu Siddiqui Institution and others Vs. State of Maharashtra and Ors. The learned Division Bench of this court by the impugned order was pleased to observe that in so far as performance of the probationer is concerned, there is no question of issuing any memo to the probationer for his unsatisfactory performance and or that is necessary for the Management to produce plausible documentary evidence to demonstrate that the services of the Petitioner were not satisfactory. The learned Division Bench observed that unless there is material on record to show that the order of termination was actuated by malice or ulterior motive, it is not for the courts to interfere with the assessment of the work of a probationer.

. In the instant case, the respondent Management has filed reply before this court and also filed their reply before the school tribunal. In so far as specific averments that the services of 41

teachers had been terminated this is what the management had set out in Paragraph 11 :

"It is denied that the services of 41 staff members have been terminated during the period of 12 years."

. The learned counsel in the reply filed before this court has produced at Exh. 1 the list of teachers in the school who were appointed right from the year 1984 and in the very statement have set out as to who were continued, who had resigned and who had been terminated. This chart showing remarks is not a document created by the Management for the first time. In fact in respect of an appeal arising from Writ Petition No. 959 of 1996 and review filed in this petition, in respect of the similar contention that there is modus operandi of the Management in terminating the teachers. The same annexure which was also Exh. 1 to the affidavit filed by Siddiqui in Appeal No. 689 of 1999 in Writ Petition No. 959 of 1998 was annexed. An appeal was preferred against the order of the learned Single Judge whereby the petition preferred by the teacher had been dismissed by order dated 25.3.1999. After the affidavit had been filed, the

appeal came to be dismissed by order dated 24.8.1999. A review thereafter came to be filed wherein it was set out that the affidavit filed in appeal No. 689 of 1999 was not by the trustees but by the Head Mistress. The learned Bench of this court refused to entertain the review application which was dismissed by order dated 3.4.2000.

. In the background of this, the question that arises for consideration is whether it can be said that the services of the Petitioner have been terminated by way of colourable exercise of powers and or is ulterior or mala fide. As pointed out the School Tribunal whilst disposing of appeal preferred by the Petitioner has relied upon the material which was placed before it. That material consisted of complaints by the students/parents and secondly the record of performance of the Petitioner. It is open to the Management in the course of the probationary period to find out based on the record available as to whether the Petitioner's performance is such as to retain the services or not. The order of termination need not give any reasons as otherwise it may be alleged that it casts a stigma. In the instant case, the tribunal came to the conclusion that the complaints of the students were genuine and not fabricated.

In answer the only contention as advanced and or urged on behalf of the Petitioner is that the conduct of the management considering that 41 teachers have been terminated in the past would indicate that the action is arbitrary. The Management has denied the said contention. They have filed an exhibit showing which teachers have been terminated and which teachers have been left. This material was earlier placed before an appellate Bench of this Court.

. In the light of that, in my opinion, the impugned order does not suffer from any error apparent on the face of record. Once that be the case, there is no merit in the petition which is liable to be dismissed. In the light of that, rule discharged. No order as to costs.

**(F.I. REBELLO,J.)**