

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.582 OF 2012

VISHRAM UDDHAV PATIL

PETITIONER

VERSUS

ASHOK UTTAM PATIL AND OTHERS

RESPONDENTS

Mr.S.R.Kolhare, Advocate for the petitioner.

Mr.V.D.Sapkal, Advocate for respondent No.1.

Mrs.V.A.Shinde, AGP for respondent No.4.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 08/06/2015

PER COURT :

1. I have heard Mr.S.R.Kolhare and Mr.V.D.Sapkal, learned Advocates for the petitioner and respondent No.1 respectively. I have also heard the learned AGP on behalf of respondent No.4. Respondent Nos. 2 and 3 have not entered an appearance despite court service.

2. While extensively hearing the learned Advocates for the respective sides, Mr.Sapkal has delved upon the affidavit in reply filed by the contesting respondent No.1. He has referred to paragraph Nos. 2, 3, 4 and 5 which are reproduced hereinbelow :

“2. At the outset, I say and submit that, the writ petition is

not maintainable because the management had already passed resolution and the appointment of the petitioner is cancelled and present deponent is appointed with effect from 1st of November, 2009 on the post of Supervisor by order dated 9th January, 2012. I say and submit that on 24th January, 2012 resolution is passed by the Management and appointment of Shri Vishram Uddhav Patil i.e. the petitioner dated 01/11/2009 is cancelled. The copy of resolution dated 24/01/2012 is annexed herewith and marked at Exhibit 'R-1'. The copy of order of appointment dated 09/01/2012 issued in favour of the deponent is annexed herewith and marked at Exhibit 'R-2'.

3. I say and submit that, the Head Master of the School intimated the fact to the Account Officer of Zilla Parishad on 06/02/2012 mentioning the fact that the present deponent is appointed as Supervisor and his appointment is approved by the Education Officer. The copy of communication dated 06/02/2012 is annexed herewith and marked at Exhibit 'R-3'. Whereas the approval issued in favour of deponent by the Education Officer is annexed herewith and marked at Exhibit 'R-4'.

4. I say and submit that, if at all the petitioner is aggrieved he should challenge the resolution dated 24/01/2012 passed by the Management under which his appointment order dated 01/11/2009 is cancelled.

5. I say and submit that the petition has become infructuous because there is fresh cause of action to the

petitioner to challenge the cancellation order. I say and submit that admittedly the petitioner is junior to the petitioner. I say and submit that the School Tribunal has considered all the contentions which were pressed by the petitioner. I say and submit that, the petitioner cannot press before this Hon'ble Court the point which was never pressed before the School Tribunal. If the point is argued and then it is not referred, the petitioner can approach to the same Court by making grievance. I say and submit that the point which the petitioner has raised, has already concluded by the Division Bench of this Hon'ble Court. In case of Sharamma Varghese reported in 1990 Vol .1, Bombay Cases Reporter, 185. The Division Bench has held as under ;

“Thus higher pay scale is not relevant for the purpose of fixation of seniority of the teacher. A teacher with B.A.B.Ed. wherever he teaches will take his place according to the date of appointment and continuous officiation.”

3. Mr.Sapkal, therefore, has canvassed that the appointment of the petitioner as a Supervisor has now been cancelled by the employer /Educational Society vide Resolution dated 24/01/2012, which is subsequent to the filing of this petition. By communication dated 06/02/2012, respondent No.1 has been granted promotion and pay scale. By communication dated 30/01/2012, respondent No.4

Education Officer-Secondary has granted approval to the appointment of respondent No.1 as a Supervisor.

4. Mr.Sapkal has, therefore, canvassed that presently respondent No.1 has been appointed as a “Head Master” and in the event the petitioner desires to independently challenge the order of the employer dated 24/01/2012, he may do so and respondent no.1 would then face such a challenge on its own merits.

5. Mr.Sapkal has also relied upon the Division Bench judgment of this Court in the case of Sharamma Varghese, reported in 1990(1) BCR 185 and the judgment of this Court in the matter of Mangala Vasant Yadav Vs. Poona Seva Sadan Society, reported in 2008(2) BCR 107.

6. In the light of the above, Mr.Kolhare, learned Advocate for the petitioner submits on instructions that he would prefer to raise a challenge to the order dated 24/01/2012 passed by the respondent / employer as well as the approval granted by the Education Officer, before the appropriate Forum. Though he had tried to assail the impugned judgment dated 01/12/2012 delivered by the School Tribunal in Appeal No.17/2010, he submits that he would raise a

challenge to the order dated 24/01/2012 as it amounts to a fresh cause of action.

7. He, therefore, prays that this petition be disposed of, as being infructuous and the petitioner be granted liberty to raise all contentions for challenging the order dated 24/01/2012 and the consequential promotion of respondent No.1 as the “Head Master” of the said school. Mr.Sapkal has no objection.

8. In the light of the above, this petition is disposed of as being infructuous with liberty to the petitioner to question the order dated 24/01/2012 passed by the respondent / employer and events consequential thereto. Needless to state, the contentions of all the litigating parties as regards the order dated 24/01/2012 are kept open.

(RAVINDRA V. GHUGE, J.)