

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4229 OF 1994

Shaikh Salimoddin Shaikh Issamoddin
age; 27 years, occu: service
R/o Parli Vaijnath, Old Railway station,
District: Beed

Petitioner

Versus

1 The Secretary,
Maheboobiya Education Society
Peth Mohalla, Parli Vaijnath

2 The Head Master
Imdadul-Uloom High School,
Near Old Power House
Parli vaijnath – 431 515
District : Beed.

3 The Education Officer
Zilla Parishad Beed

4 The School Tribunal
Aurangabad through:
Registrar

5 The State of Maharashtra

Respondents

Mr. D.R.Bhadekar advocate for the petitioner
Mr. V.V. Bhavthankar advocate for Respondent No.3
Mr. S.J. Salgare, AGP for respondent No.4.
None for respondent Nos.1, 3 to 5

CORAM : **RAVINDRA V. GHUGE, J**

Date : 15th OCTOBER, 2015.

ORAL JUDGMENT

1 This petition was admitted on 16.12.1996.

2 By order dated 12.4.1996 passed in Contempt Petition, preferred by the petitioner, the respondent Management was directed to deposit Rs.25,000/- in this Court, as per the earlier direction by this Court on 10.2.1995. The said amount has been deposited in this Court and invested in fixed deposit.

3 The petitioner is aggrieved by the Judgment & Order dated 19.9.1994 delivered by the School Tribunal, Aurangbad in Appeal No.114/93, which was filed by the petitioner. The appeal has been dismissed and the exparte stay granted on 19.7.1993 has been vacated.

4 The petitioner submits that, he was appointed as a Peon by the respondent School in June, 1986. He worked till 16.7.1993. He was orally terminated on 17.7.1993. The respondent No.1 Society operates a primary as well as a secondary school. There is no segregation of these two sections in the school. Serial number 4 in part (8) of Rule 'C' to the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 includes services of the petitioner in clause (v) set out under Sr. No.4.

5 Mr. Bhadekar, learned Advocate for the petitioner, therefore, submits that, a high school means and includes a primary school, unless in a particular high school education is not imparted to

class I to Class IV and there is no primary school at all. In the instant case, the respondent Education Society operates a primary cum high school.

6 He submits that, since the petitioner was orally terminated w.e.f. 17.7.1993, he preferred an appeal before the School Tribunal, which granted interim protection to the petitioner and consequentially, he continued in service till his appeal was dismissed on 19.9.1994.

7 Grievance is that, the School Tribunal has virtually abdicated its jurisdiction and has not gone into the legality and validity of the oral termination of the petitioner, on the ground that, the petitioner was not appointed in the high school, was appointed in the primary school, as a peon and the primary school has not been made party to the appeal.

8 Mr. Bhadekar, therefore, submits that, an issue at Sr.No.1 was framed as to whether the petitioner was a peon in the respondent high school and the said issue was answered in the negative. Consequentially, there was no order of reinstatement, since it was held that the petitioner was not working with respondent No.2 and hence, there could not have been any order of termination.

9 He points out a letter, issued by the President of the Education Society dated 1.10.1990, directing the petitioner to perform duties, under a particular time table. He indicates from a certificate issued by the Head Master of the primary school dated 10.7.1993, that the petitioner was working in the school from 1986 onwards till July, 1993.

10 Mr. Bhadekar, therefore, submits that, the School Tribunal should not have declined to consider the challenge to the oral termination, on the ground that the Head Master of the High School has not been made a party and the petitioner was not working in the High School. The School Tribunal lost sight of the fact that, the Secretary of the Education Society, which operates the said school, whether high school or primary school, was arrayed as respondent No.1 in the appeal. He, therefore, submits that, this petition deserves to be allowed and the petitioner is entitled to reinstatement with continuity and back wages.

11 Mr. Bhavthankar, learned advocate has appeared on behalf of respondent No.2 Head Master. He submits that, the Head Master, at the relevant time, has retired. However, he states that, presently, there is a new Head Master.

12 Mr. Bhavthankar submits that, the communication under the

signature of the President, would indicate that, the petitioner was working as a daily wager on temporary basis. He then refers to the Certificate dated 10.7.1993 and submits that, it was issued by the Head Master of the Primary school, which indicates that, the petitioner was working in a primary school.

13 He, therefore, submits that the School Tribunal has rightly dismissed the appeal and the only remedy available to the petitioner was to array the primary school as a respondent and canvass his case of oral termination against the said school. He prays for the dismissal of the petition. He also relies upon the affidavit in reply filed on 22.12.1994.

14 Respondent No.4, despite Court notice after issuing Rule and despite fresh notice issued by this Court vide order dated 7.11.2014, has chosen to remain absent, though served. No appearance has been entered on behalf of respondent No.1 Education Society. Learned AGP appears on behalf of respondent Nos.3 and 5. Respondent No.4 is a formal party.

15 I have considered the submissions of the learned Advocates.

16 Serial number 4 in part 8 of Rule 'C' of the 1981 Rules includes a Peon in the lower grade staff. Respondents have not pointed out any provision of law on the basis of which, a high

school being run in the same premises, can be segregated into two sections as primary school and high school, which includes a secondary school. This aspect seems to have been lost sight of, by the School Tribunal.

17 I do not find from the impugned Judgment that, the School Tribunal has considered the aspect that, the lower grade staff as stated in Sr. No.4 in part 8, is not restricted to a particular portion of the school. It provides that the lower grade staff will include all such categories set out therein, whether working in a particular section of a school. Had the School Tribunal considered this aspect, there is a possibility, it could have come to a different conclusion.

18 Despite the fact that Shri Bhavtankar has strenuously supported the impugned Order, I am not convinced by his submissions that the impugned Judgment cannot be said to be erroneous.

19 It appears from the impugned Judgment that, the petitioner succeeded in establishing that, he had worked from June 1986 till 16.7.1993. The school Tribunal, however, has not gone into the legality and validity of the oral termination of the petitioner w.e.f. 17.7.1993, only on the ground that, the primary school was not

made a party and it was only the high school, that was arrayed as a respondent.

20 I find that the School Tribunal has fallen in a patent error in drawing such conclusion, despite the fact that, the Secretary of the Education Society was impleaded as respondent No.1, before the Tribunal. Consequentially, the grievance of the petitioner has not been gone into as the School Tribunal has held in paragraph No.16 of the impugned Judgment that, he was not the employee of the High school and hence, he was not entitled to file the appeal under section 9 of the MEPS Act.

21 In the light of above and in view of the fact that none of the respondents could indicate any provision of law, by which the high school and the primary school in one premises and being operated in the same school building, can be legally said to be separable and can be legally segregated from each other.

22 All these issues need to be kept open for the school tribunal to consider in accordance with law. Consequentially, the impugned Judgment & order of the School Tribunal dated 19.9.1994 is quashed and set aside. Appeal No.114/1993 is remitted to the School Tribunal, Aurangabad. The litigating sides shall appear before the School Tribunal on 6.11.2015 at 11 a.m.. Formal notice

need not be issued by the School Tribunal to any of the litigating sides as they have been made aware of their date of appearance.

23 Needless to state, the School Tribunal shall consider the challenge of the petitioner, on its own merit and keeping in view Part 8 of Rule 'C' of The MEPS Rules, 1981 and the contentions of the litigating sides.

24 The Education Officer, who has not filed a Written Statement, shall do so as expeditiously as possible, in order to render proper assistance to the School Tribunal to decide the appeal. Since the appeal pertains to the year 1993, the School Tribunal shall endeavor to decide the same as expeditiously as possible and preferably on or before 5.3.2016.

25 Considering the rigors of litigation being suffered by the petitioner, the amount of Rs.25,000/- deposited by respondent No.2 in this Court, shall be withdrawn with accrued interest, by the petitioner, without conditions, subject to submitting tangible identity proof. In the event the petitioner succeeds before the School Tribunal and is granted back wages or any monetary relief, the amount withdrawn shall be adjusted against the said amount.

26 At this juncture, Mr. Bhadekar prays for leave to add the Education Officer (Primary) Zilha Parishad, Beed as party to the

proceedings. Mr. Bhavtankar submits that, even the respondent No.1 has chosen to remain absent. Notice will have to be issued to him.

27 In the light of the same, liberty to add Education Officer (Primary) as party is granted. The School Tribunal shall, therefore, issue notice to the added party and respondent No.1 herein.

28 Rule is made partly absolute in the above terms.

29 No costs.

(RAVINDRA V. GHUGE, J)