

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4372 OF 1994

1. Osmanabad District Swatantra
Sainik Samiti, (Through its
Secretary, Shri Dattatraya Yadavrao
Ganesh, aged 70 years, Occ. Social
Work, r/o Sanja Ves, Osmanabad),
Osmanabad.

2. The President,
Dharashiv Prashala School
Committee : Shri Rajendra
s/o Vithalrao Deshmukh,
Aged major, Occ. Legal
Profession, R/o Vidya Nagar,
Osmanabad) Osmanabad.

..Petitioners

Versus

1. Jagannath Pandurang Kshirsagar,
Aged 30 years, Occ. Headmaster,
Terna High School, Osmanabad.

2. The Education Officer (S),
Zilla Parishad, Osmanabad.

3. The Presiding Officer,
School Tribunal, Aurangabad.

..Respondents

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Advocate for Petitioner : Shri Ajinkya Kale h/f Shri S.B.Talekar
AGP for Respondent 2 : Shri V.G.Shelke
Respondent 3 : Deleted vide order dated 15.10.2015.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 03, 2015

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ORAL JUDGMENT :-

1. This petition was admitted on 17.2.1995. Interim relief in the nature of staying the direction to pay backwages was granted by the learned Division Bench of this Court. Subsequently, since the matter fell within the

realm of the Single Judge Bench, this petition is placed before this Court for final hearing.

2. None present on behalf of respondent No.1, despite service of court notice. Learned AGP appears on behalf of respondent No.2.

3. The petitioners have challenged the judgment of the School Tribunal dated 18.8.1994 in Appeal No.60 of 1990, by which the School Tribunal has set aside the oral termination of respondent No.1 and the petitioners are directed to reinstate him on the post of Headmaster with continuity of service and backwages.

4. Shri Kale, learned Advocate on behalf of the petitioners submits that respondent No.1 had brought a case of oral termination dated 12.6.1990 before the School Tribunal. His contention was that he was prevented from signing the Muster Roll with effect from 12.6.1990. Per contra, the petitioners had stated through their written statement that respondent No.1 was never terminated, much less orally. There was no cause of action as there was no termination. It was pointed out that respondent No.1 on his own request was posted as Headmaster of the Siddheshwar Nivasi Vidhyalaya, Warwanti by order dated 2.6.1990. Though he accepted the order, he had a change of thought and by refusing to acknowledge the receipt of the order, he took up a plea of oral termination.

5. Shri Kale further submits that in the backdrop of the contention /

stand put forth by the petitioners, respondent No.1 could have volunteered to report for duties as a Headmaster by moving an application before the School Tribunal. Of his own choice, he did not prefer to report for duties, despite the contention of the petitioner / management that he has not been terminated. It, therefore, indicates that he was more interested in pursuing his stand of oral termination and factually had no intention of reporting for duties.

6. Shri Kale further points out an inspection report placed on record from page Nos. 47 to 53. He submits that it is an inspection report of the Terana High School, Osmanabad, which was on "No grant basis". Date of inspection is 22.10.1994 at Sr. No.4 on page No.47. Date of last inspection is 29.12.1993. Respondent No.1 has signed as the Incharge Headmaster of the said School. His name is shown at Sr. No.1 in the list of Staff Members on Page 53 indicating his designation "Incharge Headmaster". As on 22.10.1994, he is shown to have put in four years in service out of a total service of eleven years.

7. Shri Kale submits that this document has not been refuted by respondent No.1, inasmuch as, it indicates that respondent No.1 had preferred to abandon his service with the petitioners and had joined the Terana High School, Osmanabad. As such, on the date of the institution of the appeal, in 1990, he had joined the Terana High School, by keeping the petitioners in dark. He, therefore, submits that the impugned judgment deserves to be quashed and set aside, only on account of respondent No.1

having played a fraud on the School Tribunal as well as on the petitioner.

8. Respondent No.1, who had initially appeared on Caveat and was represented by an Advocate, has not preferred to file his affidavit-in-reply.

9. Learned AGP submits that the Education Officer has no role to play in this matter.

10. I find from the impugned judgment that though a specific stand was taken by the petitioners that respondent No.1 has not been terminated and is remaining absent of his own accord, the School Tribunal could have disposed off the appeal by directing the appellant / respondent No.1 to report for duties with promptitude. If he had any grievance against the order dated 2.6.1990, he could have preferred a separate appeal for assailing the said order by which he was posted as Headmaster by the petitioners at their Siddheshwar Nivasi Vidhyalaya, Warwanti.

11. When the purported cause of action of oral termination was refuted by the management and when it was contended that the appellant has not been terminated and he could very well continue in service, I am of the view that the School Tribunal had no cause of action before it and the appeal should have been disposed off on the statement of the petitioners as set out in their written statement. For this reason alone, the impugned judgment is rendered unsustainable.

12. There is a curious angle to this proceeding. The Inspection Report dated 22.10.1994 of the Terana High School, Osmanabad indicates that respondent No.1 was an in-charge Headmaster. The said Inspection Report and the list of staff members has not been denied by respondent No.1. The said report is signed by respondent No.1 indicating that he had put in four years as in-charge Headmaster with the Terana High School Osmanabad, as on 22.10.1994 i.e. the date of inspection.

13. The report indicates that respondent No.1 teaches Marathi subject for the 7th and 10th standards. Photostat copy as well as the typed copy of the Inspection Report is on record. It, therefore, appears that respondent No.1 avoided reporting for duties with the petitioner school at Warwanti and joined the Terana High School, Osmanabad, immediately thereafter. This aspect was not within the knowledge of the petitioners before the School Tribunal. However, it cannot be ignored that respondent No.1 has not brought this aspect to the notice of the School Tribunal.

14. In the peculiar facts as above, I am of the view that respondent No.1 has suppressed his employment with Terana High School from 1990 onwards. He took a stand of oral termination in the face of a categoric denial of oral termination by the petitioners. Intention appears to be to join the Terana High School. Reason for suppressing these facts can only be for self serving purposes and for drawing an advantage from the same. In fact, respondent No.1 has succeeded in his ill motives in view of the fact that the School Tribunal allowed his appeal owing to suppression of material facts.

15. The Apex Court in the matter of Kishore Samrite Vs. State of U.P., [(2013) 2 SCC 398], has considered the case of playing a fraud on the Court and the abuse of the process of the Court. Paragraph Nos.32 till 32.8, 36, 37 and 38 of the Kishore Samrite's judgment (supra) read as under:-

“32. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

(ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

(iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been

reiterated by this Court.

(iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

(v) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

(vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

(vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

(viii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it.

"33. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in

polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer: Tilokchand H.B. Motichand and Ors. v. Munshi and Anr. : 1969 (1) SCC 110]; A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam and Anr. : (2012) 6 SCC 430]; Chandra Shashi v. Anil Kumar Verma : (1995) 1 SCC 421]; Abhyudya Sanstha v. Union of India and Ors. : (2011) 6 SCC 145]; State of Madhya Pradesh v. Narmada Bachao Andolan and Anr. : (2011) 7 SCC 639]; Kalyaneshwari v. Union of India and Anr. : (2011) 3 SCC 287)].

37. *The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiolem, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.*

38. *No litigant can play 'hide and seek' with the courts or adopt*

'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. K.D. Sharma v. Steel Authority of India Ltd. and Ors. : (2008) 12 SCC 481]."

16. Considering the totality of the fact situation as is recorded herein above, this petition is allowed. The impugned judgment and order dated 18.8.1994, delivered by the School Tribunal is quashed and set aside. Appeal No.60 of 1990, filed by respondent No.1 stands dismissed.

17. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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