

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 355 OF 2012

1. Prabhat Shikshan Prasarak Mandal,
Nanded, Samarthnagar, Dhanegaon,
Nanded, through its President,
Gangadhar Venkatrao Ingle,
Age 39 years, Occ. President,
R/o at Ibrahimpur, Post. Khanapur,
Tq. Degloor, District Nanded.

2. Kundleshwar Residential
Handicapped School, Kundalwadi,
At present Samarthnagar, Dhanegaon,
Nanded, Taluka and Dist. Nanded
through its Headmaster.

..Petitioners

Versus

1. The Divisional Social Welfare Officer,
Latur Division, Latur.

2. District Social Welfare Officer,
Grade I, Zilla Parishad, Nanded.

3. Santosh Shamrao Husekar,
Age 32 years, Occ. service,
R/o Chinchala, Tq. Biloli,
District Nanded.

..Respondents

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Advocate for Petitioners : Shri Bagal Suraj R.

AGP for Respondent 1 : Shri Bhogle U.H.

Advocate for Respondent 2 : Shri Ingole Patil R. K.

Advocate for Respondent 3 : Shri Warad S.V. h/f Shri Rodge P.G.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 19, 2015

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioners challenge the order dated 15.9.2009, delivered by the Divisional Social Welfare Officer - cum - Appellate Authority - respondent No.1 herein, by which Appeal No.5 of 2008 has been allowed and respondent No.3 has been granted reinstatement with continuity and backwages.

5. The contention of the petitioners is that the third respondent alleged oral appointment on 15.5.1995. He claimed oral suspension on 30.1.2008. He filed Appeal No.5 of 2008 on 27.2.2008.

6. The petitioner Society has come up with the plea that respondent No.3 was terminated on 27.5.1999 by an order bearing No. 135. Prior to issuance of the said order, respondent No.3 was served with a show cause notice dated 17.5.1999, bearing No.119.

7. An application for condonation of delay was filed by the third respondent dated 27.2.2008, alleging that though his signatures, marking his attendance, appear on the records upto 1999, he was prevented from signing his attendance and was finally suspended on 30.1.2008.

8. Grievance of the petitioners is that the competent authority believed the statement of the third respondent that he was orally terminated by being orally suspended from 30.1.2008, despite the fact that the termination of the third respondent was borne out by the records available. The delay application was not dealt with and the appeal was decided on 15.9.2009, wherein it has been concluded that the delay deserves to be condoned.

9. The petitioners further submit that the third respondent has been reinstated on 6.6.2011 and continues to work under the orders of the learned Division Bench of this Court dated 24.3.2011 in Writ Petition No.8276 of 2010.

10. Shri Warad learned Advocate appearing on behalf of respondent No.3 submits that he was orally appointed on 15.5.1995. He was permitted to work till 27.5.1999. He was an Art Teacher in the residential school for the handicapped. Since 3.5.1999, the said school lost its licence. The said license was restored / renewed on 8.11.2001.

11. He kept on orally requesting the management for reinstating him in employment, which fell on deaf ears. Finally he was constrained to file his appeal on 27.2.2008 since he was orally suspended on 30.1.2008 and the said oral suspension amounts to oral termination as is stated in the application for condonation of delay.

12. He submits that he was never terminated by the petitioners. There is no record of termination. He was orally prevented from marking his attendance from 28.5.1999 till his reinstatement in 2012. Though the application for condonation of delay has not been independently dealt with, the appeal has been allowed, wherein, it is recorded that the appeal is filed within limitation.

13. He further makes a grievance that there was total non-cooperation from the petitioners before respondent No.1 authority. Despite several opportunities, the petitioners appeared only on 8.9.2009. They have deliberately delayed the proceedings. Even after the appeal was allowed on 15.9.2009, the petition was filed on 10.1.2012. 50% of the back wages have been deposited by the petitioners in this Court on 17.2.2012, which is an amount of Rs.1,21,900/-.

14. He, therefore, submits that the impugned order of the first respondent deserves no interference taking into account the over all facts situation.

15. I have considered the submissions of the learned Advocates and have gone through the petition paper book with their assistance.

16. It is undisputed that respondent No.3 was orally appointed on 15.5.1995. It is also undisputed that he was born on 4.7.1979. He was, therefore, 15 years and 11 months old when he claims to have been

appointed.

17. It is undisputed that respondent No.3 has filed an application for condonation of delay. In the first paragraph he has averred that he was orally suspended on 30.1.2008. He has not marked his attendance after 1999 as he was prevented from doing so. In the second paragraph, he has contended that his oral suspension amounts to oral termination. In the third paragraph, he has averred that there is no delay.

18. Per contra, the petitioners have come out with a case before the first respondent authority that the show cause notice dated 17.5.1999 was issued vide letter No.119 and by order dated 27.5.1999, respondent No.3 was terminated. The said letter bears No.125.

19. I find that the above stated rival contentions have not been considered by the respondent No.1 Authority. Application for condonation of delay has not been dealt with, much less, being decided. The petitioners remained unavailable in the proceedings till 8.9.2009 and appeared for the first time. It appears, therefore, that the first respondent has registered the appeal despite the delay application being pending.

20. In my view, it should have dealt with the application for condonation of delay, since there was a stark contrast and a huge span in between the contention of the petitioners that respondent No.3 was terminated on 27.5.1999 and the contention of the latter that he was orally suspended on

30.1.2008, which is to be construed as his date of termination.

21. The issue, therefore, is as to what is the actual date of the cause of action and as to whether it is purely suspension or is it termination. Without deciding this issue, respondent No.1 has allowed the appeal by concluding that the oral suspension dated 30.1.2008 is illegal. To the contrary, in the body of the impugned order, the first respondent concludes that the petitioners should have invited the third respondent for reporting for duties after its license was restored on 8.11.2001.

22. With due circumspection, I find that the first respondent has conducted these proceedings in the most haphazard manner. It was under an obligation to proceed in accordance with law by deciding the application for condonation of delay. If the delay was condoned, it could have registered the Appeal. Without doing so, it has decided the main appeal, in which, a passing reference is made that the cause of action is on the basis of the oral suspension dated 30.1.2008.

23. In the light of the above, I pass the following order:-

(A) This petition is partly allowed.

(B) The impugned order dated 15.9.2009, by which, Appeal No.5 of 2008 filed by the third respondent is allowed, stands quashed and set aside.

(C) The statement of the petitioners that the third respondent will be continued in employment till a fresh decision by the first respondent is arrived at, is accepted.

(D) Appeal No.5 of 2008, along with the application for condonation of delay is remitted back to the first respondent.

(E) The litigating parties to the said proceedings shall appear before the first respondent on 11.9.2015.

(F) The amount deposited in this Court shall be transmitted to the office of the first respondent along with accrued interest, which shall be subject to the result of the proceedings before the first respondent.

(G) The third respondent will be continued in service and shall draw regular salary for the days on which he has worked and his continuance shall be subject to the result of the said Appeal.

(H) Till the proceedings are decided by respondent No.1, the respondent No.2 authority shall ensure that the appellant / respondent No.3 herein is paid his monthly salary strictly as per the scale, which is payable for the similarly situated and comparable employees.

(I) In the light of the fact that the third respondent has withdrawn about Rs.1,00,000/- in Contempt Petition No.383 of 2001 before this Court, by way of costs, on account of the laxity on the part of the petitioners, he shall withdraw an amount of Rs.25,000/- from the first respondent office, after the amount is transmitted from this Court in the office of the first respondent as directed above.

(J) The first respondent shall deal with the application for condonation of delay in the light of the contentions of both the sides with regard to the cause of action as recorded above and in the event the delay is condoned by the order of the first respondent, it shall thereafter, proceed to decide the Appeal No.5 of 2008 on its own merits.

(K) The application for condonation of delay shall be decided on/or before the 5th day of December, 2015.

(L) The litigating sides shall note that they are at liberty to produce such documents as they deem fit and proper while the delay condonation application is decided by the first respondent.

24. Rule is, therefore, made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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