

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4031 OF 1994

1. Shri Ganesh Shikshan Prasarak Mandal,
at Selu, Tq.Ausa, District : Latur,
Through its President - Shri Baburao
S/o Dhondiram Singarpure,
R/o Selu, Tq. Ausa, District : Latur,

2. Gangadhar Tulsiram Dande,
Head Master of Shri Ganesh Vidyalyaya,
(School), at Selu, Tq. Ausa,
Dist. Latur

PETITIONERS

VERSUS

1. The State of Maharashtra,

2. The Education Officer (Secondary),
Zilla Parishad, Latur,

3. Dhondirao Baguram Kamble,
Age-Major, Occu-Agricultural Labour,
R/o Selu, Tq. Ausa, Dist. Latur,

4. Angad S/o Ganpatrao Mane,
Age-Major, Occu-Secretary
of Shri Ganesh Shikshan Prasarak
Mandal, Selu, Tq.Ausa

RESPONDENTS

Mr.R.P.Bhumkar, Advocate for the petitioners.
Mr.D.R.Korde, AGP for respondent No.1.
Mr.N.N.Shinde, Advocate for respondent No.3.
Mr.B.N.Patil, Advocate for respondent No.4.
Mr.N.P.Patil Jamalpurkar, Advocate for respondent No.5.
Respondent Nos. 2 and 6 served.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 09/10/2015

ORAL JUDGMENT :

1. This petition was admitted on 12/03/1998. Prior thereto, interim relief in terms of prayer clause 'C-1' was granted on 15/12/1994. Prayer clause 'C-1' reads as under :-

“[C-1] During the pendency and final hearing of this petition operation, execution and implementation of Clauses-III, IV and V of operative order of judgment and order dated 17.09.1994 passed by learned School Tribunal, Aurangabad in Appeal No.97 of 1992-M i.e. regularisation, reinstatement and payment of salaries of respondent No.3 in this petition Dhondiram Baguram Kamble be stayed.”

2. An unusual challenge is posed by the petitioners in this petition.

3. It is submitted that respondent No.6 herein had challenged his termination dated 15/05/1992 in Appeal No.97/1992 filed u/s 9 of the M.E.P.S.Act before the School Tribunal, Aurangabad. The petitioners were respondent Nos. 1 and 2. Respondent No.3 Dhondiram was respondent No.4 in the appeal. Respondent No.4 herein Angad was respondent No.3 in the Appeal purportedly as the Secretary of the petitioners/Society. Respondent No.5 herein namely Ratan was not a party to the appeal. Respondent No.6 herein

Prabhakar was the appellant before the Tribunal.

4. Mr.Bhumkar, learned Advocate for the petitioners submits that Prabhakar had challenged his alleged termination dated 15/05/1992 u/s 9 of the M.E.P.S.Act. Dhondiram sought intervention in the appeal and is said to have been permitted to be arrayed as respondent No.4 in the appeal.

5. The only grievance put forth by the petitioners is that Prabhakar had filed the appeal challenging his termination and the School Tribunal ended up in setting aside the termination of Dhondiram dated 01/07/1991 and directed the petitioners to reinstate Dhondiram with continuity and arrears of pay from 01/07/1991. He, therefore, submits that u/s 9 of the M.E.P.S.Act, the School Tribunal was required to scrutinize whether the challenge posed by Prabhakar had any merit and if the Tribunal arrived at a conclusion that it was an unmerited challenge, the appeal could only be dismissed.

6. Mr.Shinde, learned Advocate submits on behalf of Dhondiram that neither was Dhondiram terminated nor did he have any grievance against the petitioner/Management. He was working with

the petitioners and had neither filed an appeal for alleging any purported termination, nor had he put forth any prayer seeking reinstatement. Mr.Shinde submits that this situation emerges from the judgment of the School Tribunal.

7. He iterates that Dhondiram is still working and has settled in employment and therefore his service should not be disturbed.

8. Mr.N.P.Patil, learned Advocate appearing on behalf of Ratan submits that he was not a party to the appeal proceedings. No relief was granted to him and could not have been granted to him by the School Tribunal. He has been arrayed in this petition only because he was appointed in place of Prabhakar and there was a possibility that the outcome of this petition could have affected his service conditions.

9. None appears for Prabhakar/respondent No.6, the original appellant, despite court service.

10. The issue raised for the consideration of this Court is whether the School Tribunal could grant any relief to Dhondiram without his challenge to any action of the employer. So also, the question arises

as to whether the Tribunal could grant any reliefs to any of the respondents / employees when it has come to a conclusion that there was no merit in the appeal preferred by Prabhakar and after dismissing the appeal in its entirety.

11. It would be apposite to reproduce paragraph Nos. 28, 29 and the operative part of the impugned order hereinbelow :-

“28. In view of my finding above that the appellant was not appointed according to law, he was not eligible for continuation in the service and the notice of termination dtd. 15.5.92 issued by the respondent No.3 cannot be said to be illegal. I hold accordingly and answer point No.1 in the negative. In view of my finding of point no.1 in the negative and that he has no right to continue in service on the basis of illegal appointment order dt.12.8.91 issued by the respondents 1 and 2, the appellant is not entitled to reinstatement at all. I, therefore, hold point no.2 in the negative.

29. In view of my finding for the reasons stated in paras no.23, that the respondent no.4 was appointed by the School Committee and he was employed by the respondent school and that his appointment is legal and valid according to law, the respondent No.4 is entitled to be continued in the service as peon in the respondent/school. Consequently, his services will have to be regularized by the management. In view of my findings of points 1 and 2 in the negative, I will have to dismiss the appeal and pass the following order :

ORDER

- (i) *The appeal is dismissed hereby.*
- (ii) *The interim stay granted and confirmed on 10.2.93 is hereby set vacated.*
- (iii) *The services of the respondent no.4 shall be regularize by the respondents 1 to 3 from the date of his initial appointment from 1.7.1991 with continuity of service and back wages.*
- (iv) *The respondents no.1 to 3 are directed to reinstate the respondent no.4 from 1.7.91 within 60 days.*
- (v) *The respondents 1 to 3 are further directed to pay him his salaries and arrears of pay from 1.7.1991, within 90 days, failing which the equal amount be deducted from the grant due or that would be due to the management and be paid to the respondent no.4 directly.*

Copy of this order be issued to Education Officer (Secondary) Zilla Parishad, Latur for information and further action."

12. It is apparent that the School Tribunal came to a conclusion that the appellant Prabhakar had no merit in his appeal. His termination cannot be said to be illegal and he has no right to continue in service of the petitioners on the basis of an illegal appointment.

13. In paragraph No.29, it appears that the School Tribunal has

expressed an opinion that Dhondiram was legally appointed by the School Committee and his appointment was in tune with the procedure laid down in law. However, the petitioners have specifically challenged the relief granted to Dhondiram as seen from prayer clause B and C-1 set out in the petition.

14. It cannot be lost sight of that prayer clause C-1 has been granted by way of interim relief, owing to which the reliefs granted in favour of Dhondiram have been stayed.

15. Mr.Bhumkar, learned Advocate for the petitioners makes a categorical statement that Dhondiram is not working with the petitioners ever since the orders passed by this Court by way of interim relief.

16. Mr.N.P.Patil, learned Advocate, appearing on behalf of Ratan makes a statement that Dhondiram has joined Government Service in the year 2000 and this information is supplied to the learned Advocate by Ratan, who is present in the Court today.

17. Mr.Shinde, learned Advocate submits that when he appeared in this matter, Dhondiram was in employment. He is not aware about

his present status.

18. It requires no debate that in an appeal u/s 9 of the M.E.P.S. Act, the appellant comes forward with a personal cause of action. For the sake of clarity, Section 9 of the M.E.P.S. Act is reproduced as under :-

“9. (1) Notwithstanding anything contained in any law or contract for the time being in force [any employee in a private school –

(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management ; or

(b) who is superseded by the Management while making an appointment to any post by promotion,

and who is aggrieved, shall have a right of appeal and may appeal against any such order or supersession to the Tribunal constituted under section 8 :]

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July 1976.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the

order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be :

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

(3) Notwithstanding anything contained in sub section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

(4) Every appeal shall be accompanied by a fee of (five hundred rupees), which shall not be refunded and shall be credited to the Consolidated Fund of the State.”

19. The School Tribunal is expected to exercise its jurisdiction duly vested in it by Law and it cannot exercise jurisdiction not vested in it by Law. When the Tribunal, in my view, had arrived at a conclusion that the challenge to the termination of Prabhakar had no merit and the appeal deserved to be dismissed, the Tribunal should have dismissed the appeal without entering into any other issue, which was not addressed to it in accordance with the procedure and the law applicable. Once it concluded that the appeal deserved to be dismissed as it sans merit, it should have dismissed the appeal. Clause 3, 4 and 5, which are specific directions issued and reliefs

granted by the School Tribunal, is bound to surprise this Court as neither respondent No.4 Dhondiram had raised any grievance of his purported termination, nor had he put forth any grievance and prayed for reliefs.

20. In the above backdrop, it needs to be concluded that the School Tribunal has exercised jurisdiction not vested in it by Law in granting substantive reliefs to Dhondiram without the said issue being subject matter of adjudication in the said appeal.

21. In the light of the above, this petition deserves to be allowed. Mr.Shinde and Mr.B.N.Patil appearing on behalf of respondent Nos.3 Dhondiram and respondent No.4 Angad submit that this Court may exercise its jurisdiction under Article 226 so as to ensure that if Dhondiram is in employment from the date of his appointment and continues in service, he be protected and be given breathing time to pose a challenge within the ambit of Section 9 in the event he has any grievance to be put forth. Mr.Shinde further submits that if Dhondiram is in employment, it would not affect the petitioner / Management for the reason that Ratan has been appointed in place of Prabhakar and not by replacing Dhondiram.

22. In the light of the above and to ensure that ends of justice are met, the service of respondent No.3 Dhondiram, if in employment from 01/07/1991, should not be disturbed without following the due procedure of Law. For clarity, in the event he is not in employment and has in fact joined Government Service, this protection shall cease to be applicable to him.

23. Rule is, therefore, made absolute in the above terms.

24. Mr.N.N.Shinde, learned Advocate representing Dhondiram Baburam Kamble submits that his Contempt Petition Stamp No.28546/1994 which is pending in this Court, may be disposed off in the light of this judgment. Recording the said statement, the contempt petition is disposed off. Pending civil applications, if any, do not survive and hence stand disposed of.

(RAVINDRA V. GHUGE, J.)