

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 550 OF 1995

Ravindra Bhagwan Patil,
Age 31 years, Occ. Nil,
R/o 5, Jeevanmoti Society,
Mohadi Road, Jalgaon.

..Petitioner

Versus

1. The Chief Officer,
Jalgaon Municipal Council,
Jalgaon.

2. The President,
Jalgaon Municipal Council,
Jalgaon.

3. The Education Officer,
Zilla Parishad, Jalgaon.

4. The State of Maharashtra.

..Respondents

WITH
WRIT PETITION NO. 551 OF 1995

Sudhiranjan Balkrishna Rade,
Age 36 years, Occ. Nil,
R/o 15, Samarth Colony,
Zilla Peth, Jalgaon.

..Petitioner

Versus

1. The Chief Officer,
Jalgaon Municipal Council,
Jalgaon.

2. The President,
Jalgaon Municipal Council,
Jalgaon.

3. The Education Officer,
Zilla Parishad, Jalgaon.

4. The State of Maharashtra.

..Respondents

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Advocate for Petitioner : Shri V.T.Choudhari
AGP for Respondents 3 & 4 : Shri S.N.Kendre
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CORAM : RAVINDRA V. GHUGE, J.

Dated: December 03, 2015

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ORAL JUDGMENT :-

1. Both these matters have been admitted by the learned Division Bench of this Court on 1.3.1996. No interim relief was granted to both the petitioners.

2. Since the orders of termination and order under Appeal are involved in these matters, both the petitions have been placed before the Single Judge Bench of this Court.

3. Since both the petitioners are identically placed and their erstwhile employer is the same - Jalgaon Municipal Council (presently Jalgaon Municipal Corporation), both these petitions have been taken up together for final hearing.

4. After the learned Advocate for respondents 1 and 2 was elevated as the Honourable Judge of this Court, the respondents were served by Court notice. Learned AGP appears on behalf of respondent Nos.3 and 4. No appearance has been entered on behalf of respondent Nos.1 and 2 - erstwhile Municipal Council. Since these matters are pending final hearing

for the last about 20 years, I have heard the learned Advocate for the petitioners and the learned AGP on behalf of respondent Nos.3 and 4.

5. Shri Choudhary, learned Advocate for the petitioners fairly submits that both the petitioners were appointed on temporary basis and on honorarium of Rs.1,000/- per month in the secondary school of respondent No.1 by appointment orders dated 26.6.1990 and 12.7.1991 respectively. They were continued by order dated 11.2.1992 on temporary basis and on payment of honorarium of Rs.1,000/- per month. After a period of about two years, by order dated 24.6.1993, both the petitioners have been disengaged with effect from 25.6.1993. Since then, both are out of employment. The petitioner in the first petition is said to be about 55 years old and the petitioner in the second petition is said to have attained the age of superannuation.

6. Shri Choudhary submits that Section 2 of the the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 ("the MEPS Act" for short) stood amended to the extent of the inclusion of "Teachers" and "Employees" working under local authorities and Municipal Schools by Maharashtra Act XXIII of 1989 with effect from 7.8.1997. Owing to the amendment in the said definition clause, the School Teachers working in Schools under the local authorities / municipal councils were excluded from the ambit of the MEPS Act.

7. Shri Choudhary further submits that since the petitioners have worked continuously for about two years or more, they could be said to have attained the deemed status of permanency. So also, if their order of disengagement, dated 24.6.1993 is taken into consideration, both the petitioners can be said to have been terminated by levelling charges upon him. The said order, therefore, amounts to stigmatic termination. No opportunity of hearing was given to the petitioners.

8. He further submits that both the petitioners preferred Municipal Council Appeal No.3 of 1994 and 8 of 1993 respectively before the learned Divisional Commissioner, Nasik. Their appeals have been dismissed by an identical judgment, dated 13.5.1994, which is impugned in these two petitions.

9. He further submits that both the appeals have been dismissed purely on the ground that both the petitioners were appointed on temporary basis and on an honorarium of Rs.1,000/- per month, which gave them no right to raise any grievance against their termination since they had no vested right to continue in employment. He, therefore, submits that both the impugned orders deserve to be quashed and set aside and both the petitioners deserve to be granted all service benefits by reinstating them in service.

10. Learned AGP appearing on behalf of respondents 3 and 4 submits that both the petitioners were appointed on temporary basis and have been

discontinued. The impugned order of the learned Divisional Commissioner cannot be faulted as no right was created in the petitioners to seek continuance in employment. They have been out of employment for the last 22 years and after a span as long as 22 years, reinstatement would neither be pragmatic nor practical.

11. I have considered the submissions of the learned Advocates.

12. It is undisputed that both the petitioners were appointed temporarily after they preferred an application for employment. They were made aware of their temporary engagement. They were paid an honorarium of Rs.1,000/- per month. They were aware that no procedure for recruiting a Teacher was followed at the time of the issuance of temporary appointment orders. In my view, therefore, the conclusion of the learned Divisional Commissioner cannot be faulted.

13. However, it cannot be over looked that two charges were **levelled** upon both the petitioners in their termination orders. The first charge was they were incompetent to teach the students, which resulted in the fall of percentage of students passing out from the school and as a consequence, 50% of the grants, an amount of Rs.2,00,000/-, were wasted due to the incompetency of the petitioners.

14. The second charge **levelled** upon the petitioners is that in one

academic year, prior to their termination, they did not concentrate on imparting education and were busy fighting against each others and indulged in squabbles amongst each others. Due to such activities, the school was put to shame and the passing percentage of the students drastically fell.

15. It is apparent that neither an opportunity of hearing was given to the petitioners, nor a departmental enquiry was conducted. The petitioners were temporarily appointed. However, their termination is rendered stigmatic and punitive since the erstwhile municipal council concluded that they deserve to be terminated because of the charges levelled upon them. The order of termination, therefore, is rendered stigmatic and punitive in the light of the judgment of the Apex Court in the case of Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences [(1999) 3 SCC 60 = [AIR 1999 SC 983] and V.P. Ahuja Vs. State of Punjab and others [AIR 2000 SC 1080].

16. Notwithstanding the above, I find it impractical and unreasonable to reinstate the petitioners after a passage of 22 years of unemployment. It also cannot be ignored that they were appointed temporarily. As such, in these circumstances, I find it pragmatic to compensate the petitioners by directing respondent No.1, presently, the Jalgaon Municipal Corporation to pay an amount of Rs.25,000/- each to the petitioners.

17. These petitions are, therefore, partly allowed.

18. The impugned judgment of the Divisional Commissioner, dated 13.5.1994 is modified and the respondent - Municipal Corporation is directed to pay an amount of Rs.25,000/- to each of the petitioners as compensation within a period of twelve weeks from today. No other relief is being granted to the petitioners.

19. Rule is made partly absolute, in both the petitions, in the above terms.

(RAVINDRA V. GHUGE, J.)

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