

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2695 OF 2001

- 1 Bharat Education Sanstha,
Omerga, Dist.Osmanabad.
Through its Secretary,
Nanasaheb Sidram Musande,
Age : 66 years, Occ : Secretary,
R/o Omerga, Dist.Osmanabad.
- 2 Principal,
Shri Chhatrapati Shivaji College,
Omerga, Dist.Osmanabad.
- 3 Principal,
Bharat H.S. High School,
Makani, Tal.Omerga,
Dist.Osmanabad.

...PETITIONERS

-VERSUS-

- 1 Balbhim Keshavrao Ingle,
Age : 49 years, Occ : Service,
R/o Munsii Plot, Ekondi Road,
Omerga, Dist.Osmanabad.
- 2 Education Officer (Secondary),
Zilla Parishad, Osmanabad.
- 3 Dy. Director of Education,
Aurangabad Division, Aurangabad.
- 4 Ramrao Nivrati Suryawanshi,
Age : Major, Occ : Service,
R/o Bharat Higher Secondary
Vidyalaya, Omerga, Dist.Osmanabad.

...RESPONDENTS

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Advocate for Petitioner : Shri R.N.Dhorde, Senior Advocate a/w Shri

Mobin and Shri V.R.Dhorde.

AGP for Respondents 2 and 3 : Shri D.R.Korde.

Advocate for Respondent No.1 : Shri Pratap Mandlik.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd December, 2015

Oral Judgment:

1 This matter was admitted on 02.06.2003. Interim relief in terms of prayer clause (C) was granted to the Petitioner- Management subject to depositing an amount of Rs.50,000/-, which was so deposited on 18.06.2003.

2 Prayer clause (C) reads as under:-

“(C) *Pending hearing and final disposal of the present Writ Petition, grant stay to the operation and implementation of the impugned order dated 15.12.2000 passed by the Presiding Officer, School Tribunal, Aurangabad in Appeal No.22/1997 and for that purpose issue necessary orders.”*

3 As a consequence of the interim relief in terms of prayer clause (C), the impugned judgment and order dated 15.12.2000 delivered by the School Tribunal, Aurangabad by which Appeal No.22/1997 preferred by Respondent No.1/ Employee was allowed, has been stayed.

4 The Petitioner / Management has primarily raised two grounds for challenging the impugned judgment. The first ground is that the impugned judgment is virtually an ex-parte judgment as the Management did not get a proper opportunity of participating in the proceedings. The second ground taken by the Petitioner is that since there was no sufficient work-load on account of reduced work-load, Respondent No.1/ Employee, who was working on Clock Hour Basis, had to be discontinued.

5 Shri R.N.Dhorde, learned Senior Advocate appearing for the Petitioner/ Management, has strenuously submitted that the impugned judgment of the School Tribunal was not a result of a contest on merits. It was purely an outcome of the contentions of Respondent No.1 having gone unchallenged and hence, the same cannot be termed as being a judgment on merits. He, therefore, prays for a remand and on such conditions as this Court may deem fit and proper.

6 He, however, hastens to add that costs of about Rs.10,000/- could be imposed on the Management and the matter could be remanded so as to be decided by the School Tribunal within a particular time frame.

7 Shri Pratap Mandlik, learned Advocate for Respondent No.1,

has strenuously supported the impugned judgment. He draws my attention to the affidavit in reply filed by Respondent No.1 on 08.10.2001. He submits that though Respondent No.1 was initially appointed as a Clock Hour Appointee, the approval was granted to Respondent No.1 w.e.f. 01.07.1995 by the competent Education Officer. He continued as such till 30.04.1996 and therefore, deemed to be permanent in the light of Section 5(2) of the MEPS Act, 1977.

8 He, therefore, submits that the termination of Respondent No.1 was a high handed act on the part of the Petitioner/ Management and that is the reason that the Petitioner did not participate in the proceedings before the School Tribunal as it realized that it had no case.

9 He further submits that the impugned judgment was delivered on 15.12.2000. The request of remand of the Petitioner if entertained by this Court, would cause irreparable harm and serious prejudice to Respondent No.1/ Employee since his appeal filed 18 years ago will have to be reopened only on the ground of negligence and laxity on the part of the Petitioner. A sleeping litigant ought not to be assisted and hence, the prayer of the Petitioner is more on sympathy than as a matter of right.

10 In the alternative, Shri Mandlik submits that if this Court is inclined to remit the matter back to the School Tribunal only because the impugned judgment is ex-parte, heavy costs in the nature of full back-wages be granted to Respondent No.1/ Employee so as to reduce his hardships and rigours of litigation.

11 I have considered the submissions of the learned Advocates as have been recorded herein above.

12 The impugned order reflects in paragraph 4 that after notices were issued to the Petitioner by the Tribunal, nobody cared to appear before the Tribunal. Neither any appearance was entered, nor was the Written Statement filed. There was no assistance by the Petitioner to the School Tribunal in adjudicating upon the appeal.

13 The appeal which was instituted in 1997 was decided on 15.12.2000. It is only after the impugned judgment was delivered that the Petitioner/ Management has woken up from their deep slumber and has preferred this petition on 03.04.2001.

14 However, it cannot be ignored that this Court after hearing the learned Advocates for the respective sides, admitted the petition and

expedited Rule. While doing so, the impugned judgment of the School Tribunal was stayed as prayer Clause (C) was granted by way of an interim relief. Consequentially, Respondent No.1/ Employee has neither been reinstated in service, nor is he earning his monthly salary.

15 I can very well see that the Petitioner/ Management has been grossly negligent and careless in dealing with the appeal before the School Tribunal. By not appearing before the Tribunal, they have permitted the Tribunal to proceed in adjudicating the Appeal. However, all the documents produced by Respondent No.1/ Employee and all his contentions have gone unchallenged. It is on account of there being no contradiction to the contentions of Respondent No.1 that the Tribunal came to a conclusion that the Petitioners have not justified the order of termination and as there is no denial, the impugned termination is rendered illegal as the procedure provided under Rule 28(1) of the MEPS Rules, 1981 has been violated.

16 Taking into account the fact that by an interim order of this Court Respondent No.1 is out of employment, if appropriate costs are awarded to Respondent No.1/ Employee in order to reduce his hardship and rigours of litigation, the appeal could be remitted to the Tribunal so as to be decided on its merits.

17 In the light of the above, the impugned judgment dated 15.12.2000 is quashed and set aside.

18 It is stated that the jurisdiction is now with the School Tribunal, Solapur. Therefore, Appeal No.22/1997 is remitted to the School Tribunal at Solapur on the following conditions:-

- (a) The amount of Rs.50,000/- deposited by the Petitioner/ Management in this Court on 18.06.2003, shall be withdrawn by Respondent No.1 / Employee along with accrued interest.
- (b) Tangible identity proof in the nature of Election Identity Card or Adhaar Card (UIDAI) or PAN Card (Income Tax) shall be produced by Respondent No.1 while withdrawing the entire amount as directed.
- (c) Since the amount is to be withdrawn by Respondent No.1 as costs, notwithstanding the decision of the School Tribunal in the Appeal, Respondent No.1 shall retain the said amount.
- (d) The litigating sides shall appear before the School Tribunal on 11.01.2016. Formal notices need not be issued to the litigating sides by the School Tribunal.
- (e) The litigating sides shall ensure that no adjournment is sought on unreasonable and trivial grounds. In the event such

an adjournment is sought, the School Tribunal is at liberty to reject such request.

- (f) The Petitioner- Management shall file its Written Statement in Appeal No.22/1997 along with all such documents which they may place reliance upon, on or before 16.01.2016, failing which it shall be presumed by the School Tribunal that the Petitioner- Management is not interested in filing its Written Statement and contesting the matter. If this so happens, the School Tribunal shall dispose of the Appeal and the judgment dated 15.12.2000 set aside by this order, shall stand restored.
- (g) The School Tribunal shall endeavour to decide the said appeal on or before 30.04.2016 considering the fact that the appeal dates back to 1997.
- (h) All the contentions of the litigating sides are kept open inclusive of the prayer of Respondent No.1/ Employee for 100% back-wages.

19 This Writ Petition is partly allowed and Rule is made partly absolute in the above terms.