

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1740 OF 2013

Prashant Shantaram Yeole,
Age 38 years, Occ. Nil,
R/o Bhavsar Galli Chowk,
Erandol, Tq. Erandol,
District Jalgaon.

..Petitioner

Versus

1. Nutan Mahila Sarvodaya
Bal Vikas Sanstha, Pachora,
Dist. Jalgaon, through its
President Smt. Madhavitai Pratap
Taware, age major, Occ. household,
R/o Deshmukhwadi, Pachora,
District Jalgaon.

2. Ekvira Madhyamik Vidyalaya,
Veeruli (Kd), Tq. Pachora,
District Jalgaon, through its
Headmaster.

3. The Education Officer (S),
Zilla Parishad, Jalgaon.

..Respondents

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Advocate for Petitioner : Shri Deshmukh Bhausahab S.
Advocate for Respondents 1 & 2 : Shri Gangakhedkar S.S.
AGP for Respondent 3 : Shri Bhogle U.H.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 24, 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 petitioner is aggrieved by the judgment and order dated 14.10.2011, delivered by the School Tribunal in Appeal No. 63 of 2010, by which, the Appeal has been dismissed.

5. The petitioner contends that he was appointed on 12.6.1999, vide the appointment order dated 1.7.1999. It is contended that thereafter he continued upto 12.6.2004 as an Assistant Teacher. From 13.6.2004, the petitioner was disallowed from marking his attendance and from appearing on duties. An appeal was preferred by the petitioner on 31.1.2008 along with an application for condonation of delay. The said application was rejected. The petitioner preferred Writ Petition No. 3844 of 2009, which was allowed by this Court by order dated 27.10.2010. The delay was condoned and the Misc. Application was allowed.

6. The petitioner submits that after the Appeal was registered, he moved an application dated 5.8.2011, praying for permission to produce photostat copies of certain documents. By the impugned judgment dated 14.10.2011, the appeal was dismissed. Grievance is that the photostat copies were not properly considered by the Tribunal. The original muster roll, which was filed by the same management in another proceeding Appeal No.11 of 2005, was considered by the Tribunal. The petitioner did not get an opportunity to contradict the said original attendance register.

7. Further grievance is that despite having worked for about five years, the appeal has been dismissed on the ground that the petitioner could not adduce such evidence which would indicate that he had worked from 12.6.1999 upto 12.6.2004.

8. Shri Deshmukh strenuously submits that the School Tribunal should have considered the photostat copies produced on record, which showed the attendance of the petitioner upto 2003. The Tribunal should not have relied upon the original muster roll for the same period of service, which the management had produced before the same School Tribunal in a different appeal. It is, therefore, submitted that without giving an opportunity to the petitioner to go through the muster roll is a good ground for remand.

9. Shri Gangakhedkar, learned Advocate for respondent Nos.1 and 2 draws my attention to the appointment order issued by the management. He submits that the petitioner was appointed temporarily for the period 1.7.1999 to 30.4.2000 (wrongly typed as 1999). In clause 8 of the appointment order, it was specifically mentioned that his service is honorary. After the expiry of the said period, his service would stand terminated without notice as stated in that order.

10. He further submits that after 30.4.2000, the temporary services of the petitioner came to an end by efflux of time. He was not continued any

time thereafter. He produced photostat copies of certain documents, which according to the management, were not genuine and authentic. The original muster register, pertaining to the same period, was produced before the same Tribunal in Appeal No.11 of 2005, pertaining to another employee of the same management.

11. As such, the said original register could not have been produced in the appeal preferred by the petitioner. However, the Tribunal took efforts and went through the said original record with reference to the case of the petitioner and considered the original record and concluded that after April 2000, the name of the petitioner, neither appeared in the attendance register nor his signature appeared at any place.

12. He further points out from paragraph Nos.28, 29, 33 and 34 that the photostat copies produced by the petitioner indicated his signature at some places. However, the original register for the same period indicated that neither his name appeared, nor his signature. The Tribunal has, therefore, rightly inferred that the original record is the evidence in the matter and not the photostat copies / documents. He, therefore, submits that this petition is devoid of merits and deserves to be dismissed.

13. I have considered the submissions of the learned Advocates and the record available.

14. The petitioner has taken up a plea that the Education Officer did not

file an affidavit. This grievance is being made before this Court. It is undisputed that the petitioner did not move any application for seeking a direction to the Education Officer for filing his Written Statement. Similarly, the petitioner proceeded with the matter as it is and did not file any counter affidavit to contradict the contents of the affidavit filed by the management. The management has specifically taken a stand that the petitioner was temporarily appointed and never worked beyond 30.4.2000.

15. I find from the record that the petitioner did not seek production of documents from the respondent. Similarly, he made no efforts to seek production of any document from the record of the Education Department. The School Tribunal considered the original muster roll for the period during which the petitioner claimed to be in employment and found that the said attendance record did not indicate the name of the petitioner, much less, his signatures. The scrutiny of the original record in comparison to the photostat copies produced by the petitioner needs no debate. The original record needs to be believed. I also find that the appointment of the petitioner was for a limited period on temporary basis.

16. In the light of the above, I do not find that the impugned judgment could be termed as perverse or erroneous. Similarly, the request of the petitioner to remand the proceedings for retrial / decision afresh cannot be accepted since remand of a matter is not for filling up the lacunae in the evidence of the appellant.

17. With the result, this petition is dismissed. Rule is discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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