

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10112 OF 2014

Nirmala Dullabh Ahire,
Age-45 years, Occu-Service,
R/o.C/o D.B.Ahire,
Devalfali, Dhanrat Road,
Tq.Navapur, Dist.Nandurbar

-- Petitioner

Versus

1. Adivashi Education Society,
Karnji (Bk.) Tq.Navapur,
Dist.Nandurbar,
2. Adivashi Education Society,
Karnji (Bk.) Tq.Navapur,
Dist.Nandurbar,
Through its President,
3. Secondary & Higher Secondary
School, Karnji (Bk.), Tq.Navapur,
Dist.Nandurbar,
Through its Head Master,
4. Education Officer (Secondary),
Z.P.Nandurbar.

-- Respondents

WITH
WRIT PETITION NO.3772 OF 2015

1. Adivashi Education Society
Karnji (Bk.) Tq.Nawapur,
Dist.Nandurbar,
Through its Secretary,
Shri Subhash Manuvel Vasave,
2. Vijay Janya Gavit,
President, Adivashi Education Society
R/o Karnji (Bk.), Tq.Nawapur,
Dist.Nandurbar,

3. The Head Master,
Secondary and Higher Secondary School
Karanji (Bk.) Tq.Nawapur,
Dist.Nandurbar -- Petitioners

Versus

1. Smt.Nirmala Dullabh Ahire,
Age-46 years, Occu-Business,
R/o D.B.Ahire, Deophali,
Dhanrat road, Tq.Nawapur,
Dist.Nandurbar,
2. The Education Officer (Secondary),
Zilla Parishad, Nandurbar,
Dist.Nandurbar -- Respondents

Ms.S.P.Mahajan, Advocate for the petitioners.
Mr.V.D.Hon, Sr.Counsel h/f Mr.A.V.Hon, Advocate for respondent
Nos.1 to 3.
Mr.S.M.Jadhav and Mrs.S.D.Shelke, AGP for respondent No.4.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/07/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The first petition is filed by the employee who is represented by Ms. Mahajan, learned Advocate, against the Management. Judgment of the School Tribunal dated 21/04/2014 in Appeal

No.31/2011 has been challenged.

3. The second petition is filed by the Management against the same employee challenging the same judgment dated 21/04/2014 in Appeal No.31/2011.

4. I have heard Ms.Mahajan and Mr.V.D.Hon, learned Sr.Advocate alongwith Mr.A.V.Hon on behalf of the Management.

5. The undisputed facts, which emerge from the record are as follows :-

- a. The employee was terminated on 12/06/2001 for which Appeal No.27/2001 was preferred by her.
- b. By judgment and order dated 02/04/2009, the Appeal was allowed and the employee was granted reinstatement with continuity and 50% back wages.
- c. The Management preferred Writ Petition No.3219/2009, which was decided by this Court on 18/07/2009.
- d. The said writ petition was allowed placing reliance upon the judgment of the Apex Court in the case of State of Punjab Vs.Dr.Harbhan Singh Greasy, 1996(9) SCC 322,
- e. The Management preferred a review application no.126/2009, by which the judgment dated 18/07/2009 was recalled and the review application was allowed thereby restoring W.P.No.3219/2009 for a fresh hearing.

- f. By judgment dated 29/10/2010, delivered by this Court, W.P.No. 3219/2009 was partly allowed. The judgment of the School Tribunal dated 02/04/2009 was set aside alongwith the termination order dated 12/06/2001. The Management was directed to constitute a fresh Enquiry Committee as per the M.E.P.S. Act and the Rules within 30 days and thereafter complete the enquiry within 120 days. Further directions were also set out.
- g. The employee preferred L.P.A.St.No.35444/2010, which is still pending.
- h. Since the judgment of this Court dated 29/10/2010 was not stayed by the Appeal Bench, the Management complied with directions Nos. 1, 2 and 3 below paragraph No.15.
- i. Pursuant to the *de-novo* enquiry, the employee was terminated by way of punishment vide order dated 20/04/2011, since the charges were proved against her.
- j. Appeal No.31/2011 has been preferred by the employee, which has been decided by the impugned order dated 21/04/2014.

6. It appears from the impugned judgment and order that the appeal has been partly allowed by setting aside the order of termination. However, consequential reliefs are not granted since the L.P.A. is pending.

7. Considering the factual matrix, I find that the conclusion of the Tribunal that no consequential relief can be granted since the L.P.A.

is pending, is unsustainable. From the judgment itself, it appears that the Appeal Court has given weightage to the orders passed by this Court and the pendency of the L.P. appeal. Instead, the School Tribunal could have decided Appeal No.31/2011 on its own merits.

8. The employee as well as the Management is aggrieved by the impugned judgment. The employee has prayed for the quashing and setting aside of the impugned judgment dated 21/04/2014 and so also the Management. In the light of the prayers set out by the employee and the Management, the impugned judgment dated 21/04/2014 is quashed and set aside. Appeal No.31/2011 is remitted to the School Tribunal, Nasik for fresh hearing and adjudication.

9. Both the litigating sides are agreeable to appear before the School Tribunal on 20/07/2015 and pray for an early hearing. As such, the litigating sides shall appear before the School Tribunal on 20/07/2015. The Tribunal shall decide Appeal No.31/2011 on its own merits, since it pertains to an independent cause of action of termination dated 25/04/2011, as expeditiously as possible, and preferably on or before 08/01/2016.

10. Both the petitions are, therefore, partly allowed. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)