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

WRIT PETITION NO. 4790 OF 2013

KAILAS SHIVAJIRAO SHETE
VERSUS
THE PRESIDENT, NAVIN OSMANABAD ZILLA BAL VIKAS SAMITI AND
OTHERS

...

Advocate for Petitioner : Shri Jadhavar Santosh S.

AGP for Respondent No.3 : Shri S.G.Sangle.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th October, 2015

Per Court:

1 This Court had issued notice to the Respondents on 19.06.2013. Though the Respondents were served, none has caused an appearance for Respondent Nos.1 and 2/ Management. This Court, therefore, once again issued notice on 24.09.2013 observing as under:-

- “1. *Heard.*
2. *Though the Respondent Nos.1 and 2 are served, none appears for the said Respondents. However, in the interest of justice, re-issue notice to Respondent Nos.1 and 2, with intimation that if it is otherwise possible and convenient for the Court, the Court would dispose of the petition finally at the stage of admission.”*

2 Despite service under the second notice, as none appeared for Respondent Nos.1 and 2/ Management, this Court by order dated

19.11.2013 listed the matter for final disposal by observing as under:-

“List the petition for final disposal on 4th December, 2013.

2. *Registry shall ensure that, Record and Proceedings in respect of Appeal No.45 of 2011 decided by Presiding Officer, School Tribunal, Pune Region, Solapur are procured on or before 2nd December, 2013.”*

3 The record and proceedings from the School Tribunal, Solapur in Appeal No.45/2011 was received on 29.11.2013.

4 By way of a last chance, this Court put Respondent Nos.1 and 2 to notice by order dated 04.09.2015 that if they fail to cause an appearance, the matter would be heard without their assistance. Yet, none appears for Respondent Nos.1 and 2/ Management.

5 It is in the above backdrop that I have heard Shri Jadhavar, learned Advocate for the Petitioner and the learned AGP on behalf of Respondent No.3.

6 The submissions of Shri Jadhavar can be summarized as follows:-

- (a) The Petitioner possesses the qualification of M.A., B.P.Ed. and B.Ed..
- (b) On 10.06.2002, by following the due selection process, the

Petitioner was appointed as an Assistant Teacher for one academic year.

- (c) Having followed the proper procedure for selection, the Respondent/ Management could not have appointed the Petitioner for one year and instead, the said appointment is to be treated as on probation.
- (d) For teachers, the probation period is of two years under the MEPS Act, 1977.
- (e) Insofar as the Assistant Teachers and non-teaching staff are concerned, the probation period is of three years.
- (f) The Respondent/ Management receives 100% salary grants from the Government.
- (g) After being appointed on 10.06.2002, the Management issued further appointment orders dated 16.06.2003, 12.06.2004 and 13.06.2005, by which the Petitioner has worked continuously from 10.06.2002 till the end of the academic year 2006. All the appointment orders were placed on record.
- (h) By communication dated 06.03.2006, the Petitioner was appointed as an Invigilator for SSC examinations held in March, 2006.
- (i) By a similar letter dated 04.03.2009, he was appointed as an Invigilator for SCC examinations held in March, 2009.

- (j) Similar orders for academic year 2008-2009 are also placed on record.
- (k) By communication dated 25.09.2010, the Petitioner was deputed as an Invigilator for SSC examinations held in September-October, 2010.
- (l) By order dated 23.11.2010, the Petitioner was deputed for training in English literature which was conducted under the aegis of the Department of Education.
- (m) Any person who is in permanent employment as an Assistant Teacher or Teacher, can be appointed as an Invigilator or can be sent for training in a subject thereby, proving that the Petitioner was in continuous employment.
- (n) On 01.04.2011, before the end of the academic year, the Petitioner was orally terminated by the Respondent/ Management.
- (o) By application of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "the MEPS Act, 1977"), the Petitioner is deemed to be confirmed after having worked for three years.
- (p) The Petitioner has been orally terminated after having put in 09 years in service.
- (q) Appeal No.45/2011 was filed by the Petitioner under Section

9 of the MEPS Act, 1977 for challenging his oral termination dated 01.04.2011.

- (r) The Respondent/ Management has filed its Written Statement before the School Tribunal in response to the appeal.
- (s) In paragraph 2 of the Written Statement, a host of factors are invoked for opposing the appeal.
- (t) The Management contended that there was no advertisement published while selecting the Petitioner.
- (u) It was contended by the Management that the post was reserved for S.T. candidate and the Petitioner has acquired appointment by submitting incorrect information.
- (v) It is, however, not denied that the Petitioner was orally terminated on 01.04.2011.
- (w) The only ground taken is that the Petitioner was irregularly appointed and the post was reserved for a ST candidate.

7 Shri Jadhavar submits that the Respondent/ Management, which has orally terminated the services of the Petitioner, cannot be permitted to take a stand of justifying the termination. If the Management had a justifiable cause for terminating the services of the Petitioner, then it could have so done by passing a speaking order. After 09 years of

employment, the Management cannot take a stand that the appointment of the Petitioner was without following the due procedure, was an irregular appointment and was appointed on a post which was reserved for a ST candidate.

8 Shri Jadhavar further submits that an application for production of documents was filed on 29.09.2011 before the School Tribunal. By order dated 15.12.2011, the said application was allowed thereby, directing the Respondent/ Management to produce the documents set out in the said application, namely, (a) teacher muster roll, (b) annual inspection reports, (c) annual staffing pattern (Sanchmanyata), (d) office copy of individual approval proposal, (e) Rosters since 2002 to 2011 and (f) civil list from 2002 to 2011.

9 Shri Jadhavar submits that despite the order of the Tribunal, the Management has not produced the documents. Therefore, the Petitioner made one more attempt by filing another application dated 16.08.2012 once again calling for the said documents along with all pending approval proposals. By order dated 16.08.2012, the School Tribunal allowed the application after hearing all the litigating sides. Yet, the Respondent/ Management did not produce the documents. Shri Jadhavar, therefore, submits that the School Tribunal ought to have drawn

an adverse inference.

10 He further submits that despite the above, the School Tribunal has dismissed the appeal filed by the Petitioner on the ground that he was irregularly appointed, his appointment would not fall within the purview of Section 5 of the MEPS Act, 1977 and that the post was reserved for a ST candidate.

11 He, therefore, submits that the impugned judgment is perverse and erroneous for the simple reason that there was nothing before the School Tribunal to indicate that the post was reserved for a ST candidate. No statement was made in any of the appointment orders of the Petitioner that the roster indicated and prescribed such reservation.

12 He submits that the stand taken by the Management was an eyewash. The School Tribunal has accepted the contention of the Management as if it was a Gospel Truth and dismissed the appeal accepting the said contentions. He, therefore, prays for allowing this petition.

13 The learned AGP appearing for the Education Department submits that the oral termination of the Petitioner is a handiwork of the

Management. This dispute is between the two sides. Eventually, if this petition is allowed and if the back-wages are granted, it would be the Management which would have to bear the burden of the back-wages.

14 I have considered the submissions of the learned Advocates and have gone through the record available.

15 The School Tribunal while delivering the impugned order appears to have lost sight of the fact that the oral termination of the Petitioner on 01.04.2011 was not disputed by the Management. Had the Petitioner been terminated after the end of academic year 2006, the appeal preferred in 2011 would have been barred by limitation on account of delay of about six years. Despite this fact, the Tribunal has concluded that the Petitioner has not established his continuous employment after 2006.

16 From the impugned judgment, I find that the Tribunal has not referred to any document which would indicate that the post occupied by the Petitioner was reserved for the ST category. Without any material on record, the Tribunal has concluded that the Petitioner does not appear to have been appointed on a clear and vacant post. The Tribunal also appears to have lost sight of the fact of Section 5(2) of the MEPS Act, 1977. By

making a passing reference, it has concluded that the Petitioner's case is not covered by Section 5.

17 In the light of the above and in the light of the stand taken by the Respondent/ Management in its Written Statement which does not dispute the oral termination of the Petitioner as on 01.04.2011, it would indicate that the Petitioner was in continuous service of the Respondent/ Management till 31.03.2011. The Management having orally terminated the Petitioner, in fact is not justified in putting forth a host of factors for justifying his termination. Had the Management been convinced of the reasons for termination, it could have done so as early as in 2006 after completion of the academic year. In my view, the Management cannot be permitted to take a stand after the Petitioner had put in 09 years in employment that he was irregularly appointed.

18 In the light of the above, I find that the impugned judgment of the School Tribunal is perverse and erroneous.

19 In the recent judgments of the Apex court in *Gauri Shanker v/s State of Rajasthan*, **2015 (2) CLR 497** and in *Nicholas Piramal India Limited v/s Hari Singh*, **2015 (2) CLR 468**, it has held that in cases of a wrongful termination and where the Employee has suffered rigours of

litigation and effects of unemployment, back-wages deserve to be granted.

20 In the light of the above, this Writ Petition is partly allowed. The impugned judgment and order dated 04.03.2013 delivered by the School Tribunal in Appeal No.45/2011 is quashed and set aside. Appeal No.45/2011 stands partly allowed. The oral termination of the Petitioner dated 01.04.2011 is set aside.

21 The Respondent Nos.1 and 2/ Management is directed to reinstate the Petitioner as an Assistant Teacher with continuity in service and 50% back-wages.

22 Respondent No.3/ Deputy Director of Education shall consider this aspect while dealing with the proposal for approval concerning the Petitioner in accordance with the Rules applicable.

23 The record and proceedings be returned to the School Tribunal, Pune Region, Solapur, forthwith.

(RAVINDRA V. GHUGE, J.)