

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7716 OF 2012

Lalasaheb s/o Ashroba Rathod,
Age : 41 years, Occu : Agril,
R/o : Nandur (Bk),
Tq. Ahmedpur Dist. Latur.

..Petitioner

VERSUS

- 1 The State of Maharashtra
Through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai - 400 032.
- 2 The Divisional Social Welfare Officer,
Latur Division, Latur.
- 3 The District Social Welfare Officer,
Zilla Parishad, Latur. &
Administrator of Marathwada
Apang Sanghatna, M.I.D.C. Latur.
- 4 Marathwada Apang Sanghatna,
MIDC, Plot No. 67, Latur.
Through its President/Secretary,
Shri. Tukaram S/o Nagorao Bansode,
Sarhak Niwas, Majge Nagar,
A/P : Latur, Tq & Dist : Latur.
- 5 Pratidnya Niwasi Apang Vidhyalaya
MIDC, Plot No. 67, Latur.
Through its Head Master.
Sayyad S/o Manjur Muzaffar
A/P : Bhatangli, Tq & Dist : Latur.
- 6 Mahar Asthivyang Mulinche
Niwasi Vidyalaya,
MIDC, Plot No. 67, Latur.
Through its Head Master.
Mrs. Suman Kasarkar.
- 7 Shri. R.D. Nangre,
Police Inspector,
Local Crime Branch, Latur.

..Respondents.

WITH
WRIT PETITION NO. 7723 OF 2012

Ram S/o Govindrao Wadikar
Age : 33 years, Occu : Agril,
R/o : Patil Niwas, Sonanagar,
MIDC. Latur, Tq. & Dist. Latur.

..Petitioner.

VERSUS

- 1 The State of Maharashtra
Through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai - 400 032.
- 2 The Divisional Social Welfare Officer,
Latur Division, Latur.
- 3 The District Social Welfare Officer,
Zilla Parishad, Latur. &
Administrator of Marathwada
Apang Sanghatna, M.I.D.C. Latur.
- 4 Marathwada Apang Sanghatna,
MIDC, Plot No. 67, Latur.
Through its President/Secretary,
Shri. Tukaram S/o Nagorao Bansode,
Sarbhak Niwas, Majge Nagar,
A/P : Latur, Tq & Dist : Latur.
- 5 Pratidnya Niwasi Apang Vidhyalaya
MIDC, Plot No. 67, Latur.
Through its Head Master.
Sayyad S/o Manjur Muzaffar
A/P : Bhatangli, Tq & Dist : Latur.
- 6 Mahar Asthivyang Mulinche
Niwasi Vidyalaya,
MIDC, Plot No. 67, Latur.
Through its Head Master.
Mrs. Suman Kasarkar.
- 7 Shri. R.D. Nangre,
Police Inspector,
Local Crime Branch, Latur.

..Respondents.

WITH
WRIT PETITION NO. 7727 OF 2012

Dayanand S/o Maruti Dudbhate
Age : 33 Years, Occu : Agril,
R/o : Dhanora, Post. Hasegaon,
Tq. Ausa, Dist. Latur.

..Petitioner.

VERSUS

- 1 The State of Maharashtra
Through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai - 400 032.
- 2 The Divisional Social Welfare Officer,
Latur Division, Latur.
- 3 The District Social Welfare Officer,
Zilla Parishad, Latur. &
Administrator of Marathwada
Apang Sanghatna, M.I.D.C. Latur.
- 4 Marathwada Apang Sanghatna,
MIDC, Plot No. 67, Latur.
Through its President/Secretary,
Shri. Tukaram S/o Nagorao Bansode,
Sarathak Niwas, Majge Nagar,
A/P : Latur, Tq & Dist : Latur.
- 5 Pratidnya Niwasi Apang Vidhyalaya
MIDC, Plot No. 67, Latur.
Through its Head Master.
Sayyad S/o Manjur Muzaffar
A/P : Bhatangli, Tq & Dist : Latur.
- 6 Mahar Asthivyang Mulinche
Niwasi Vidyalaya,
MIDC, Plot No. 67, Latur.
Through its Head Master.
Mrs. Suman Kasarkar.
- 7 Shri. R.D. Nangre,
Police Inspector,
Local Crime Branch, Latur.

..Respondents.

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Advocate for Petitioner : Shri Mohekar Ganesh V.
AGP for Respondents 1 & 2 : Shri Bhogle U.H.
Advocate for Respondent 3 : Shri Manale Satish S
Advocate for Respondent 4 : Shri Swami S.C. h/f Shri Gunale V.D.
Advocate for Respondent 5 : Shri Suryawanshi R.R.
Respondent 6 : Shri Patil Indrale Anand V.
Respondent No.7 : Deleted

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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. These petitioners are challenging the common judgment and order dated 29.1.2010 in Appeal No. 8 of 2008, by which, the Appeals preferred by these petitioners have been dismissed.
5. Since a common issue is involved in these petitions, a common Appeal was filed before the respondent No.2 authority and which has been dealt with by a common judgment, I have heard these three petitions together.

6. Having considered the strenuous submissions of the learned Advocates for the respective sides, it appears that the following issues arise for determination:-

- (a) Whether these petitioners were terminated by written orders dated 7.1.2000?
- (b) Whether the second termination order dated 11.2.2005 has been issued by the competent authority of the management?
- (c) Whether the purported second termination dated 11.2.2005 was followed by the order of cancellation of termination dated 18.2.2005 and which was followed by an order of reinstatement?
- (d) Whether the cancellation order dated 18.2.2005 was issued by a competent authority of the management?
- (e) Whether the petitioners can be said to have tendered their resignations from service?
- (f) Whether the delay caused in preferring Appeal No.8 of 2008, filed under Rule 86 of the Special School Code, 1987 (which are the draft rules), is to be computed from the date of the first termination dated 7.1.2000 or the second termination, in the light of the contention of the School Management that none of these petitioners were ever reinstated in employment after 7.1.2000 and they have not been in employment ever since?
- (g) Whether the claim of the petitioners for backwages /

unpaid wages from 1.7.1998 is tenable under Rule 86 in the light of the contention of the management that they had never been reinstated after 7.1.2000?

7. The learned Advocates have taken me through the impugned order dated 30.1.2010. On the one hand, the second respondent / competent authority has concluded that the Appeal is not maintainable in the light of the termination of these petitioners, dated 7.1.2000. On the other hand, the said appellate authority has gone into the rival contentions of the parties and has concluded that their appointments were not granted approval as they were temporary appointments and hence the claim for absorption on permanent posts and wages from 1.7.1998, deserves to be rejected.

8. Considering the submissions of the learned Advocates in these petitions, it is pertinent that the said appellate authority should have come to a conclusion as regards the cause of action, from which date the delay could be computed. No doubt, the management has entered its para-wise comments before the appellate authority stating therein that none of these petitioners have worked after 7.1.2000.

9. *Per contra*, it is the contention of the petitioners before this Court that they were never terminated, termination orders were never served upon them, they were sought to be terminated on 11.2.2005, which termination was cancelled within seven days on 18.2.2005 and

they have been specifically reinstated.

10. At the same time, the petitioners have contended that there are two factions in the management and being employees, they have no knowledge as to whether their termination dated 11.2.2005 and reinstatement dated 18.2.2005 has been at the behest of the office bearers of the management / institution.

11. The above issues are being raised before this Court without the said issues having been dealt with by respondent No.2 - appellate authority. The grievance of the petitioners in addition to the above is that the respondents herein have not filed their written statements / say before the respondent No.2 - appellate authority.

12. The learned Advocates for the respondents have canvassed that the appeal preferred by these petitioners under Rule 86 cannot be entertained for the reason that unpaid wages / salary cannot be claimed under the said provision. Similarly, it is contended that the learned Division Bench of this Court, vide its order dated 22.11.2006, delivered in group of Writ Petitions Nos.3543, 5308 and 5349 of 2006, preferred by these petitioners, had not granted the petitioners the liberty to approach the respondent No.2 - appellate authority for recovery of the salary. They, therefore, pray for the dismissal of these petitions.

13. Considering the issues, which I have recorded herein above, based on the submissions of the learned Advocates and the record before me, these contentious issues should have been dealt with by respondent No.2 appellate authority, subject to its powers to do so under Rule 86 of the said Code. It appears from the impugned judgment that respondent No.2 has dealt with the cause of action on the presumption that these petitioners were terminated on 7.1.2000. The respondents did not file their written statements supported by verification, though the contention of the petitioners is that they were never terminated prior to 11.2.2005 and were reinstated on 18.2.2005. These contentious issues were required to be gone into by an authority vested with jurisdiction in law.

14. In the light of the above, I am inclined to remit Appeal No. 8 of 2008 to the respondent No.2 - appellate authority for deciding the issue of delay as a preliminary issue and other issues formulated as above, if the delay is condoned.

15. These petitions are, therefore, partly allowed. Appeal No. 8 of 2008 is remitted back to the respondent No.2 - appellate authority for a decision on the following issues:-

(a) Whether the delay caused in preferring Appeal No.8 of 2008, filed under Rule 86 of the Special School Code, 1987 is to

be computed from the date of the first termination dated 7.1.2000 or the second termination, dated 11.2.2005, in the light of the contention of the School Management that none of these petitioners were ever reinstated in employment after 7.1.2000 and they have not been in employment ever since?

(b) Whether the purported second termination dated 11.2.2005 was followed by the order of cancellation of termination dated 18.2.2005 and which was followed by an order of reinstatement and whether these orders are passed by a competent authority ?

(c) Whether the petitioners can be said to have tendered their resignations from service as per the contention of the management ?

(d) Whether the prayers set out by the petitioners can be dealt with by the said authority?

(e) Whether the claim of the petitioners for backwages / unpaid wages from 1.7.1998 is tenable under Rule 86 in the light of the contention of the management that they had never been reinstated after 7.1.2000 ?

Issues (a) to (c) shall be decided pre-emptorily.

16. Needless to state, the respondents in Appeal No. 8 of 2008 shall enter their written statement supported by verification in accordance with law and are at liberty to raise all grounds as they deem it proper.

17. Considering the request of the learned Advocates for a date of appearance before the respondent No.2 appellate authority, the said litigating sides shall appear before the respondent No.2 appellate authority on 15.9.2015 and thereafter shall participate in the said proceedings as per procedure.

18. All contentions raised by the petitioners in their appeal and those which would be set out in the written statements of the respondents shall be dealt with by the appellate authority on their own merits and especially in light of the contentious issues formulated in paragraph No.15 hereinabove.

19. Rule is, therefore, made partly absolute in the aforesaid terms. Considering that the appeal is of the year 2008, the same shall be decided as expeditiously as possible.

(RAVINDRA V. GHUGE, J.)

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