

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1377 OF 2005
WITH
CIVIL APPLICATION NO.11787 OF 2011
WITH
CIVIL APPLICATION NO.16167 OF 2010

1. Marathwada Apang Sanghatana,
A Public Trust and Society,
having its Office at P-67, MIDC,
Latur- 413 531.
Tal and Dist.Latur through its President
Tukaram S/o Nagorao Bansode,
Age-45 years, Occu-Social Work,
R/o Majge Nagar, Latur,
Taluka and Dist.Latur,
2. Marathwada Apanga Sanghatana,
A Public Trust and Society, having its
Office at P-67, MIDC, Latur – 413531,
Tal and Dist.Latur,
Through its Secretary,

PETITIONERS

VERSUS

1. Vandana d/o Nirgun Shinde,
Age-35 years, Occu-Nil,
R/o Shend, Tq.Nilanga, Dist.Latur,
2. The Divisional Social Welfare Officer,
Divisional Office at Aurangabad,
Dist.Aurangabad,
3. The State of Maharashtra,
Through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai

RESPONDENTS

Mr.V.D.Gunale, Advocate for the petitioner.
Mr.S.V.Gundre, Advocate for respondent No.1.

Mr.S.N.Kendre, AGP for respondent Nos. 2 and 3.
Mr.M.L.Dharashive, Advocate for the applicant in civil applications.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 11/12/2015

ORAL JUDGMENT :

1. This petition was Admitted by this Court on 13/10/2005.
2. The petitioner / Management is aggrieved by the impugned judgment and order dated 30/07/2004 delivered by the School Tribunal, Solapur by which Appeal No.273/2004 preferred by respondent No.1 has been allowed.
3. Mr.Gunale, learned Advocate for the petitioners submits that the typed copy of the appointment order dated 15/06/1997 is on record at page No.40 of the petition. Respondent No.1 was appointed w.e.f. 01/07/1997. Her appointment as a “Hostel Superintendent” with the Handicapped Girls Hostel was initially for a period upto 15/04/1998. He submits that she was continued till 07/07/2001.
4. Mr.Gunale further submits that respondent No.1 of her own volition, started remaining unauthorizedly absent from 01/07/2001.

She has abandoned her service. In fact, she was the President of a Union. She was not performing her duties properly on the hostel. She used to sign the muster roll and proceed to indulge in Union activities. These were the reasons expressed by the petitioners before the School Tribunal.

5. He further submits that the petitioner had specifically raised an objection before the School Tribunal that the petitioners' school was established for the physically challenged students (deaf and dumb). Said school was registered and recognized by the Social Welfare Department. Special School Code was applicable to the said school. It was not a private school as is defined under the M.E.P.S.Act, 1977 and the Rules of 1981 framed thereunder. Despite this fact, the School Tribunal has exercised its jurisdiction u/s 9 of The M.E.P.S.Act.

6. He placed reliance upon the following judgments of this Court :-

[a] *Taramati Bafna Vs. State of Maharashtra, WP No.2919/1999.*

[b] *Vasant Vs.Presiding Officer, School Tribunal, 2004(4) Mh.L.J. 417.*

[c] *Suryakant Vs. V.N.V.J.B.J.A.P. Mandal (Full Bench) 2002(3)*

Mh.L.J. 659.

[d] *Dr.Narendra Bhivapurkar Andha Vidyalaya, Amravati Vs. Shobha Laxman Pachkawade, 2004(1) Mh.L.J. 10.*

7. Learned Advocates appearing on behalf of respondent No.1 after going through the above referred judgments, agree that this School which was imparting education for the physically challenged students, was registered and recognized by the Social Welfare Department. Considering the law laid down in the above referred judgments, it is submitted that respondent No.1 be given an opportunity of preferring appropriate proceedings by filing an appeal before the Deputy Director for physically handicapped Social Welfare Department within a period of 6 (six) weeks from today and in the event such an appeal is preferred, the same be decided within a period of 4 (four) months from the date of its filing.

8. Considering the above, this petition is allowed. The impugned judgment and order dated 30/07/2004 delivered by the School Tribunal is quashed and set aside. Appeal No.273/2004 stands dismissed.

9. Respondent No.1 is granted the liberty to challenge her oral

termination w.e.f. 08/07/2001 before the competent authority within 6 (six) weeks from today. In the event, such proceedings are instituted, the competent authority shall endeavour to decide the same within a period of 4 (four) weeks from the date of issuance of notice to the respondents. The competent authority shall consider the following aspects while deciding the proceedings :-

- [a] The Management contends that the respondent No.1 Employee was not working properly.
- [b] She was unauthorizedly absent.
- [c] She had abandoned her service.
- [d] Ratio laid down by the Apex Court in the case of Novartis India Ltd., Vs. State of West Bengal and others, AIR 2008 SC (supp) 836 concluding that charge of abandonment without a departmental enquiry, is unsustainable.
- [e] Needless to state, all other contentions put forth by the litigating sides shall also be considered by the competent authority.

10. Rule is made absolute in the above terms.

11. All pending civil applications do not survive and hence are disposed of.

(RAVINDRA V. GHUGE, J.)