

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8646 OF 2012

1. Vidyavikas Shikshan Prasarak Mandal,
Shirur (Kasar),
Tal.Shirur (Kasar), Dist. Beed,
Through its Secretary,
Vitthal S/o Namdeorao Tambe,
Age-40 years, R/o Shirur (Kasar),
Tal.Shirur (Kasar), Dist. Beed.

2. Vidyavikas Shikshan Prasarak
Mandal's Mukbadhir Niwasi
Shala, Tamba Rajuri,
Tal.Patoda, Dist.Beed,
Through its Headmaster

PETITIONERS

VERSUS

1. The Divisional Deputy Commissioner
of Social Welfare, Aurangabad
Division, Aurangabad,
2. The District Social Welfare Officer,
Zilla Parishad, Beed,
3. Lakhul S/o Ankushrao Veer,
Age-29 years, Occu-Nil,
R/o Patoda, Tal. Patoda,
Dist. Beed

RESPONDENTS

Mr.S.S.Thombre, Advocate for the petitioners.

Mr.S.M.Jadhav, AGP for respondent No.1.

Mr.V.C.Patil h/f Mr.U.B.Bondar, Advocate for respondent No.2.

Mr.V.S.Panpatte h/f Mr.M.S.Bhosale, Advocate for respondent No.3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 18/06/2015

ORAL JUDGMENT :

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

2. The petitioners have assailed the judgment and order dated 09/07/2012 delivered by respondent No.1/Authority in Appeal No.1/2007 preferred by respondent No.3, calling in question his oral termination w.e.f. 20/06/2007. The contention of the petitioners is as under :-

- (a) Respondent No.3 was an open category candidate.
- (b) He worked for only 33 days in the academic year 2005-06, which was approved.
- (c) He worked for the whole academic year 2006-07, which was approved.
- (d) He was appointed against the category.
- (e) The approval order dated 12/12/2006 indicates that respondent No.3 worked as an *"Approved Teacher"* for the periods 29/03/2006 upto 30/04/2006 and 10/06/2006 till 31/03/2007.
- (f) Appeal No.1/2007, preferred by respondent No.3, has been allowed without drawing conclusions, much less, assigning reasons to the operative part of the impugned order dated 09/07/2012 delivered by respondent No.1 / competent authority.
- (g) The contentions of the petitioners were recorded from clause 1 to 9 on page 2 and 3 of the impugned order.
- (h) Despite the contentions, respondent No.1 has concluded in

clause no.1, 2, 3 and 5 on page No.4 of the impugned order holding that the petitioners have admitted some of the contentions of respondent No.3.

- (i) When no admissions have been given by the petitioners, such conclusions could not have been drawn by respondent No.1.
- (j) Appeal No.1/2007 deserves to be remanded for a proper hearing and with a direction to respondent No.1 to adduce proper reasons in support of whatever conclusions that it may draw.

3. Mr.Panpatte, learned Advocate on behalf of respondent No.3 original appellant vehemently contends as under :-

- (a) The impugned order is supported with reasons.
- (b) The directions in the operative part of the order on page No.5 are a result of a proper appreciation of the contentions put forth by both the sides.
- (c) Clause no. 7 of the submissions of the petitioners recorded on page 3 of the impugned order clearly indicates that the oral termination is based on alleged mis-conducts said to have been committed by the employer.
- (d) Clause no.7, which is a summary of the submissions of the petitioners, indicates that he has been orally terminated for having allegedly committed grave offences amounting to mis-conducts.
- (e) Termination of respondent No.3 is founded on allegations without conducting any departmental inquiry and without affording an opportunity to explain away the allegations.
- (f) Since it is revealed that respondent No.3 is terminated by

attaching a stigma, same amounts to a punishment and stigmatic removal, which is unsustainable in the light of the fact that no departmental enquiry has been conducted.

(g) The petition deserves to be dismissed.

4. Learned Advocates appearing on behalf of respondent Nos. 1 and 2 adopt the submissions of Mr.Panpatte.

5. I have considered the submissions of the learned Advocates, as recorded hereinabove and have gone through the petition paper book as well as the affidavit filed by respondent No.1 and the detailed affidavit of respondent No.3.

6. It cannot be disputed that the contentions of the petitioners have been recorded from clause nos.1 to 9 on page No.2 and 3 of the impugned order. I also find that the petitioners have specifically stated that respondent No.3 has committed several acts amounting to mis-conducts of minor and major character. Mr.Panpatte's contention has not been refuted by the petitioners that no departmental enquiry was conducted in order to establish the charges levelled upon respondent No.3.

7. The grievance of the petitioners revolves around the

observations made by respondent No.1, indicating certain admissions given by the petitioners. It is stated that such admissions have not been given. This can therefore be one of the ground indicating perversity in the impugned judgment of respondent No.1. So also, the paragraph below clause 10 on page no.4 of the impugned order indicates that respondent No.1 has considered the record and the admissions of the petitioners alongwith the contentions of the respective sides.

8. However, I do not find any discussion in the impugned order weighing the contentions of the rival sides and considering the documentary evidence before it while passing the operative part of the impugned order. There are no reasons assigned and conclusions drawn as regards the rival contentions except that they are reproduced in a summary fashion. The contention of respondent No.3 that he has been orally terminated, which amounts to a stigmatic termination in the light of the contentions of the petitioners, has also not been discussed and considered by respondent No.1. There are no conclusions drawn.

9. Considering the above, I am left with no option but to remand Appeal No.1/2007 filed by respondent No.3 to respondent

No.1/Authority for a fresh consideration. The impugned order dated 09/07/2012 is, therefore, quashed and set aside.

10. In the light of the above, this petition is partly allowed with the following directions :-

- (a) The rival contentions of the litigating sides shall be considered by respondent No.1.
- (b) Respondent No.1 shall deliver a fresh judgment by considering the record available in the light of the submissions of the parties and shall assign proper reasons while drawing its conclusions.
- (c) The contention of the appellant/employee that the impugned oral termination is of stigmatic nature, will also be dealt with by respondent No.1.
- (d) The contention of the petitioners that the appellant / employee was appointed against category and was not appointed as a regularly selected candidate, will also be looked into by respondent No.1.
- (e) Since the matter is being remanded, respondent No.1 shall not be influenced by any observations made by this Court while delivering this judgment.
- (f) The litigating sides in Appeal No.1/2007 shall appear before respondent No.1 alongwith a copy of this judgment on 06/07/2015. As the respective sides are only to address the mind of respondent No.1 on the material available before it, the litigating sides shall put forth their oral and if required their written submissions between 09/07/2015 and

14/07/2015.

- (g) Respondent No.1 shall comply with the above directions and deliver its judgment on or before 07/08/2015.

- 11. Rule is accordingly made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)