

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10938 OF 2014

Kishan Nemaji Kurware,
Age 34 years, Occ. Service
(at present Nil),
R/o A/p Karegaon,
Tq. and Dist. Parbhani.

..Petitioner

Versus

1. The President,
Sambodhi Academy,
Bhimrao Nagorao Hattiambire,
Age 47 years, Occ. Agriculture,
r/o Udyog Sadhana,
Kalyan Nagar, Parbhani.

2. The Secretary,
Sambodhi Academy,
Sheshrao Sakharam Jallare,
Age 50 years, Occ. Agriculture,
R/o Shankar Nagar, Parbhani.

3. The Head Master,
Sambodhi Vidyalaya,
Sarnath Colony, Dhar Road,
Parbhani.

4. The Education Officer (S),
Zilla Parishad, Parbhani.

..Respondents

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Advocate for Petitioner : Shri Ghatge Mahesh V.
Advocate for Respondents 1 to 3 : Shri Sangit L.V.
AGP for Respondent 4 : Smt. Kshirsagar Y.M.
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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 03, 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. The petitioner is aggrieved by the order dated 13.11.2014, delivered by the School Tribunal, Latur below Exhibit 74 in Appeal No.29 of 2011.

5. The petitioner / employee had claimed that he was orally terminated on 7.7.2010. He preferred Appeal No.29 of 2011, before the School Tribunal, challenging his oral termination. The respondent / management appeared in the matter and by filing their Written Statement, brought it to the notice of the Tribunal that the theory of oral termination is false and that the petitioner was actually terminated on 24.5.2010. It was also pointed out that there was an enquiry conducted against the petitioner. He did not nominate his representative on the ground that he is in appeal before the Tribunal.

6. The said appeal was decided by judgment and order dated 4.10.2012 on the basis of the rival pleadings and the documents produced by both the sides. The petitioner was granted reinstatement in service. The management challenged the judgment before this Court by filing Writ Petition No.1278 of 2013. By judgment and order dated 24.7.2013, the Writ Petition was disposed off by concluding in paragraph Nos.9 and 10 as follows:-

“9] It is not in dispute that the second respondent filed appeal on 7th June, 2011 challenging the otherwise termination with effect from 24th May, 2010 as also oral order of termination with effect from 7th July, 2010. After conducting inquiry against the second respondent, the petitioners have issued order of termination dated 7th June, 2011. Though the appeal was preferred subsequently, still the second respondent did not challenge the order of termination dated 7th June, 2011. In my opinion, by permitting the second respondent to amend the appeal memo challenging the order of termination dated 7th June, 2011 as also the inquiry proceeding, it will not cause any prejudice to the petitioners. The said amendment is necessary for deciding the real controversy between the parties. In view thereof, I do not find any merit in the submissions made by Mr.Dixit.

10] Hence, the petition is disposed of in the following terms :

A] The impugned judgment and order dated 4th October, 2012 passed by the Presiding Officer, School Tribunal in Appeal No.29 of 2011 is quashed and set aside. Appeal No.29 of 2011 is restored to the file of the School Tribunal, Latur.

B] The second respondent is permitted to amend the appeal so as to challenge the termination order dated 7th June, 2011 as also the inquiry proceedings. Amendment shall be carried out within two weeks from production of writ of this Court before the Tribunal.

C] The petitioners are at liberty to file reply to the amended appeal within four weeks from the service of amended appeal memo.

D] All contentions of the parties are expressly kept open.

E] The Tribunal is requested to decide the appeal as expeditiously as possible and in any case, within six months from filing reply by the petitioners to the amended appeal memo.

F] Rule is made absolute accordingly with no order as to costs.”

7. The petitioner submits that he moved application Exhibit 74 before the Tribunal and in paragraph Nos.3 to 5, he contended that all the documents referred to in the said paragraphs are forged and fabricated. The signatures appearing on the said documents are not affixed by the petitioner and the management has created a fabricated record to prove case against the petitioner.

8. After hearing both the sides, the tribunal has delivered the impugned order, dated 13.11.2014 and the application was rejected.

9. Shri Ghadge submits that the application has been rejected on the ground that he had not disputed the said documents when the appeal was decided on the first occasion and that the appellant / petitioner is attempting to prolong the hearing of the appeal, which is time bound. He submits that he gains no advantage by delaying the appeal. In fact, the delay in the appeal is at the cost of the petitioner. No doubt, the petitioner, who is a Class IV employee has raised a grievance about these documents belatedly. However, there would be a miscarriage of justice if false and fabricated documents are relied upon by the Tribunal, which is a Court of Record.

10. He further submits that in the event this Court is convinced that the petitioner has raised these objections and questioned his signatures on the documents belatedly, conditions may be imposed by this Court on the petitioner and application Exhibit 74 be allowed.

11. Shri Sangit, learned Advocate for respondent Nos.1 to 3 has strenuously supported the impugned order. He submits that these documents pertain to the years 2006 to 2011. They were produced before the Tribunal, by list Exhibit 23, long ago. Though the employee has come up with the case of oral termination dated 7.7.2010, the factum of termination was brought before the Tribunal by indicating that the employee was terminated on 24.5.2010 by following the due procedure of law.

12. He further submits that after having received the said documents, the petitioner proceeded with the appeal without a murmur about the said documents till the appeal was allowed on 4.10.2012 by the School Tribunal. A Writ Petition was preferred by the management before this Court and the same was allowed. The judgment dated 4.10.2012 was set aside through that petition and the matter was remanded back to the Tribunal.

13. He further submits that even after remand, till the matter reached the stage of advancing final oral arguments, the petitioner had not raised any grievance about the documents. It is at the fag end of the trial that an

objection is raised, which is likely to further delay the appeal. Though liberty was granted by this Court by order dated 24.7.2013, he has still not carried out the amendment. He, therefore, prays for the dismissal of the petition.

14. I have considered the submissions of the learned Advocates.

15. The petitioner cannot turn away from the fact that he had approached the Tribunal with the case of oral termination and the employer had produced documents before the Tribunal on the basis of which, it was contended that he has been terminated by following the due procedure of law.

16. It is equally evident that this Court had concluded in paragraph No.9 of the order dated 24.7.2013, which is reproduced herein above, that the petitioner was at liberty to amend the appeal memo and so also make out a case against termination dated 24.5.2010. Despite these facts, the petitioner has not made any efforts to question his signatures appearing on the documents set out in paragraph Nos.3 to 5 of Exhibit 74.

17. It requires no further debate that the petitioner has been complacent and probably even negligent. When the documents mentioned in paragraphs 3 to 5 of application Exhibit 74, came in his custody, he should have objected to the signatures which are alleged to be affixed by him and are forged and fabricated.

18. Nevertheless, the fact remains that the signatures of the petitioner appearing on the documents at issue would go to the root of the matter. If the signatures are proved to be affixed by him, it would assist the Tribunal in coming to the conclusion that the documents are truthful. In turn, it would establish that the management has followed the due procedure in conducting the disciplinary proceedings. In the event the petitioner is deprived of this opportunity and if the documents are forged or fabricated, reliance on the said documents would lead to a miscarriage of justice.

19. In the light of the above, I am inclined to allow this petition and allow application Exhibit 74 by imposing certain conditions on the petitioner.

20. This petition is, therefore, partly allowed. The impugned order dated 13.11.2014 below Exhibit 74 is quashed and set aside. Application Exhibit 74 stands allowed on the following conditions:-

(A) The tribunal shall direct the petitioner / employee to deposit the requisite fees / charges for referring the documents set out in paragraph Nos.3 to 5 below Exhibit 74, to an authorized Government Handwriting Expert.

(B) The petitioner shall be deprived of backwages in the event his appeal is allowed, for the period from 9.10.2014 till the receipt of the Handwriting Expert's report, for having caused a delay in the trial of the Appeal, though this Court had granted six months' time

to the Tribunal to decide the Appeal by its order dated 24.7.2013.

(C) In the event, the documents referred to the Handwriting Expert are held to be true and genuine, the petitioner shall proceed with prosecuting Appeal No.29 of 2011 and after the final judgment is delivered, may take out a comprehensive challenge in the event his Appeal is rejected.

21. Needless to state, after the report of the Handwriting Expert is submitted to the Tribunal, the Appeal shall be decided expeditiously and preferably within a period of ten weeks from the date of receipt of the Handwriting Expert's Report or within such a period as may be granted to the Tribunal by this Court pursuant to the directions of this Court, dated 24.7.2013, in Writ Petition No.1278 of 2013.

22. Rule is accordingly, made partly absolute, in the above terms.

(RAVINDRA V. GHUGE, J.)

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akl/d