

Sequeira

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 4984 OF 2011
Along with
WRIT PETITION NO. 5841 OF 2015.**

- 1 The President,
Malludevi Shikshan
Prasarak Mandal,
Chorocho, Tal: Kawathe Mahankal,
District Sangli.
 - 2 The Head Master,
New English School, Dudhebhavi,
Taluka : Kawathe Mahankal,
District : Sangli.
- .. Petitioners

Versus.

1. Mr.Biru Ganpati Lokhande,
Age Adult, Occ: Nil,
R/o Chorocho, Taluka Kawathe Mahankal,
District Sangli.
 2. The Education Officer (Secondary),
Zillah Parishad, Sangli.
- .. Respondents

Mr.Meelan Topkar, for Petitioners in both petitions.

Mr.N.V.Bandiwadekar a/w Mr.B.A.Lawate, for Respondent No.1 in both the petitions.

Mr.A.D.Kango -Assistant Government Pleader, for Respondent No.2 in both the petitions.

**CORAM: N.M.Jamdar, J.
Saturday 17 October, 2015**

Oral Judgment :

The Respondent No.1 in both these petitions is same, who was working as an Assistant teacher with the Petitioner management. When Writ petition No.5841 of 2015 was heard for admission, the learned counsel for the parties agreed that the controversy involved in the said Writ petition was connected with Writ Petition No.4984 of 2011 between the same parties, which was admitted and is pending for hearing. Accordingly, by consent the Writ Petition No.5841 of 2015 was taken up for final disposal along with Writ Petition No.4984 of 2011. Rule is issued in Writ Petition No.5841 of 2015, which is returnable forthwith by consent.

2. The Writ Petition No.4984 of 2011 is prior in point of time and the relief granted by the School Tribunal which is subject matter of Writ petition No.5841 of 2015 is a sequator to the relief granted in Writ Petition No.4984 of 2011 and the learned counsel state that it will depend upon the outcome of Writ Petition No.4984 of 2011.

3. The Respondent (No.1) filed Appeal No.11 of 2008 before the School Tribunal Kolhapur, alleging the action of the otherwise termination on the part of the Petitioners. The Respondent contended that from 8 July 2008, he was prevented from signing school muster and despite of his protest, a show cause notice was issued to him alleging misconduct on his part including absenteeism. It was contended by Respondent that inspite of him

approaching various authorities, he was not allowed to join duties and therefore, the action of the Petitioners amounted to otherwise termination of his services. The appeal was filed on 29 August 2008. Delay was condoned. The Petitioners filed their reply. In the reply it was contended that the Respondent is deliberately remaining absent and his work had to be shared by the other teachers. It was contended that in the past also the Respondent had acted in similar fashion and had filed an appeal complaining otherwise termination from 1 July 1997 and by way of compromise fresh appointment was given to him on 14 June 1999. It was also contended that when the Education authorities visited the school they had made a specific endorsement regarding the absence of the Respondent. On these averments grant of relief in the appeal was resisted. The School Tribunal by order dated 7 March 2011, after considering the rival contentions and evidence on record accepted the version of the Respondent that he was prevented from signing the muster roll and held that since the Respondent was a regular employee his services could not have been dispensed with without following the procedure established. Consequently, the School Tribunal allowed the appeal by order dated 7 March 2011 and directed the Petitioners to reinstate the Respondent in service with full back wages with effect from 8 July 2008. This order was challenged by the Petitioners in Writ petition No.4984 of 2011. Rule was issued on 15 July 2011 and by way of interim relief Petitioners were directed to deposit 1/3rd of full back wages. The Petitioners were directed to reinstate the Respondent as per the

order dated 7 March 2011.

4. On 26 September 2011 the Respondent filed another Appeal No.84 of 2011 in the School Tribunal, Kolhapur. The Respondent made a grievance that as per the interim order passed in the earlier Writ petition the Respondent had resumed duties on 19 March 2011. However on 27 August 2011, an order of termination was given to the Respondent, which was illegal and contrary to the orders of this Court. The Respondent disputed the allegations levelled against him by the Petitioners in an inquiry stated to have been held and sought a declaration that the order dated 25 August 2011 is illegal and improper.

5. On 11 December 2012, the School Tribunal stayed the proceedings in the appeal, under Section 10 of the Code of Civil Procedure, as according to the School Tribunal the issue was sub-judice before this Court in Writ petition No.4984 of 2011. Writ Petition No.8432 of 2013 filed by the Respondent challenging this order was disposed of by consent on 7 October 2013, as the parties agreed that the School Tribunal should decide the Appeal No.84 of 2011 on its own merits, without being influenced by the observations made in the earlier round of appeal.

6. Thereafter the School Tribunal by Judgment and Order dated 3 May 2014 disposed of the appeal. The School Tribunal held that the inquiry was continued and the findings were reached when the Respondent was not in service and the inquiry therefore, was

vitiated. The School Tribunal set aside the order of termination dated 25 August 2011, and directed the Petitioners to reinstate the Respondent within 30 days and gave liberty to the Petitioners to hold an inquiry afresh. Question of back wages was deferred as the merits of the case was not considered. This order dated 3 May 2014 is subject matter of Writ Petition No.5841 of 2015.

7. As regards the order impugned in Writ Petition No. 4984 of 2011, Mr.Topkar, the learned counsel for the Petitioners submitted that the Respondent had voluntarily abandoned the services and was not attending the services. The Petitioners had not terminated his services and the notice dated 28 July 2008 was only a show-cause notice. On the other hand it is a contention of Mr.Bandiwadekar, the learned counsel for the Respondent that the Respondent was prevented from signing the muster roll and the Petitioners have nowhere taken a stand that the Respondent is not terminated by them.

8. I have considered the submissions. The fact that the name of the Respondent does not appear on muster roll from 8 July 2008 is not disputed. The only question is whether it was a voluntary act on the part of the Respondent or he was prevented from signing the muster roll. This is a matter of drawing inference from the record and also appreciation of evidence. It is not possible for this Court to re-appreciate the evidence and the only inquiry that can be conducted is whether the conclusion reached by the Tribunal on the basis of evidence before it can be termed as perverse.

9. The Respondent has annexed a letter dated 18 July 2008 addressed to the headmaster of the Petitioner, in which he had made a grievance that he is not been allowed to sign the muster inspite of his repeated request. Mr.Topkar sought to contend that there is no acknowledgment on this letter. However, the assertion of the Respondent in the appeal memo regarding this letter addressed to the headmaster, has gone uncontroverted. It is after this letter received by the headmaster, a notice dated 28 July 2008 is issued to the Respondent. In this notice absenteeism, misbehaviour is attributed to the Respondent and also that he was not keeping peaceful atmosphere in the school premises. In the notice, after these misconducts were attributed, a conclusion was drawn that the Respondent has breached the service conditions and his explanation was called for why he should not be suspended. If it was the stand of Petitioners as it is canvassed before me, that Respondent himself stopped attending the school, immediate response would have to call upon him to resume duty and inform him that an action would be taken against him for the failure. No such communication is placed on record. Even in the written statement a stand is taken that the Respondent had relinquished his right to sign the muster roll. There is no positive statement that the Petitioner is calling upon the Respondent to resume the duties nor it is specifically stated that his services are not terminated. The Petitioners clearly and consciously have avoided to take a specific stand on record. Only oral arguments are advanced. This fact has been rightly noted by the Tribunal while considering the

genuineness of the stand of the Petitioners.

10. As regards the inspection reports in which the visiting education authorities have made an endorsement regarding absenteeism of the Respondent, all these endorsements are after the appeal was filed by the Respondent and after the Petitioner had filed reply to the application for condonation of delay. The appeal was filed on 29 August 2008. The reply was filed on 4 October 2008 and reports are dated 16 October 2008, 22 December 2008 and 23 January 2009. Further, the education authorities who had visited the school were equally under obligation to examine as to whether the school was being conducted as per the time table, whether records were kept properly, whether the school's infrastructure was proper. All these columns are left blank and in general column, remarks are made regarding absence of the Respondent. One wonders whether the school authorities visited the school only to find out as to whether Respondent is absent in the school. Education authorities have not bothered to check the general infrastructure of the school, for which the visit is made to the school. Apart from this position there is merit in the contention of Mr.Bandiwadekar that the Petitioner did not inform the school authorities that the absence of signatures of the Respondent on the muster roll was subject matter of an appeal pending before the School Tribunal. Therefore no reliance can be placed on these reports. On the other hand, the conduct of the Petitioners of not informing the school authorities of correct position reflects on the bonafides of their stand.

11. Mr.Topkar then submitted that the Respondent is in habit of remaining absent and then filing appeal of this nature. Again as rightly contended by Mr.Bandiwadekar, that the Respondent was given fresh appointment in the year 1999 and both the parties had chosen to put a quietus to the earlier controversy. No capital can therefore, be made about the incidents which occurred in the year 1997. Mr.Topkar submitted that no one prevented the Respondent from seeking interim relief before the School Tribunal and having not sought such interim relief it is clear that he continued in service. However, as stated earlier, fact that the Respondent continued in services is not specifically taken on record by the Petitioner and the stand is kept ambiguous to make oral submissions.

12. If the above-mentioned factors are considered it cannot be said that the inference drawn by the School Tribunal that the services of the Respondent were terminated, is perverse or an impossible view came to be taken. The direction to reinstate the Respondent in services therefore cannot be faulted with, as there was no inquiry preceding the termination of the Respondent.

13. As regards the back wages, it is pointed out that 1/3rd back wages which were deposited by the Petitioners have been withdrawn by the Respondent.

14. Now turning to the Writ petition No.5841 of 2015. In view of

the conclusion reached in Writ petition No.4984 of 2011, both the learned counsel submit that there is nothing much left to debate as to what the outcome of this petition will be. Since the finding that the Respondent was terminated from services is affirmed and the order passed by the School Tribunal in Appeal No.84 of 2011 is based on that conclusion, it cannot be faulted with.

15. The School Tribunal by order dated 3 May 2014 has in any case permitted the Petitioners to hold an inquiry. The inquiry will proceed upon reinstatement of the Respondent. The question of back wages which is subject matter of Writ petition No.4984 of 2011 relating to the period for which Petitioners have been granted liberty to hold inquiry, is deferred till the conclusion of the inquiry. The Respondent has already withdrawn 1/3 rd back wages and this withdrawal will be subject to the outcome of the inquiry.

16. As regards the back wages as per order dated 3 May 2014, the Petitioners were directed to reinstate the Respondent within 30 days from 3 May 2014. By the impugned order the School Tribunal has not granted back wages to the Respondent and that order is not challenged by the Respondent. But since the Petitioners have not reinstated the Respondent till date, I am of the opinion that the Respondent is entitled to back wages in this Writ petition after 30 days of the impugned order till reinstatement. Mr.Bandiwadekar makes a grievance that though the Respondent was allowed to resume duties on 19 March 2011 he was not paid

any salary till he was terminated in August 2011. Mr.Topkar states that this grievance is being made for the first time and he is not aware of the position. It is not possible to grant this relief to the Respondent at this stage. Contentions of the parties in that regard are kept open and the issue will be decided after the conclusion of the inquiry.

17. Accordingly both the petitions are disposed of by following directions -

i) The Petitioners will reinstate the Respondent within a period of 30 days from today.

ii) The Petitioners will pay the amount of back wages to the Respondent from 3 June 2014 till the date of reinstatement, simultaneously at the time of reinstatement.

iii) Upon the above two actions being completed by the Petitioners within time limits stipulated above the Petitioner Management and School Administration will be at liberty to conduct the inquiry afresh from the stage of issuance of statement of allegations as per the other provisions of the Maharashtra Employees of Private Schools Act 1977 and the Rules.

iv) As regards the question of back wages from 8 July 2008 till 19 March 2011 with the rider as above for the further period, the same shall be subject to the outcome of the inquiry, if held as per

the directions given, and also the amount already withdrawn by the Respondent.

18. Petitions are disposed in above terms. No order as to costs.

(N.M.Jamdar, J.)