

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

WRIT PETITION NO. 6230 OF 2002

**The Head Master/Principal
Mahatma Gandhi Vidyalaya & Ors.**

.. Petitioners

Versus

Shri. Bhagwan Haribhau Dixit & Ors.

.. Respondents

WITH

CIVIL APPLICATION NO. 2916 OF 2014

IN

WRIT PETITION NO. 6230 OF 2002

Shri. Bhagwan Haribhau Dixit

.. Applicant

Versus

**Head Master/Principal
Mahatma Gandhi Vidyalaya**

.. Respondent

.....

Mr. M.V. Thorat i/b Mr. V.M. Thorat, for Petitioners.

Mr. Jitendra Pathade, for Respondent No. 1 and for Applicant in Civil Application.

Shri. A.R. Metkari - AGP, for Respondent No. 2.

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CORAM : M.S. SONAK, J.

DATE : 29 JANUARY 2015

P.C.

1. This Petition challenges Order dated 5 July 2002 made by the School Tribunal, Pune Region allowing the Appeal instituted by Respondent No. 1, in the matter of his reversion from the post of

superintendent to that of the head clerk with effect from 1 July 2001 and the consequent promotion of Respondent No. 3 to the post of superintendent.

2. The Respondent No. 1 was appointed as a clerk in the school in the year 1978. Thereafter, he was promoted to the position of head clerk on 1 August 1981 and finally the superintendent on 1 January 2000. It is the case of the Petitioners that the Respondent No. 1 by writing dated 25 June 2001 requested that he be reversed from the post of superintendent to the post of head clerk on the ground that he was not well versed with the accounts. Accordingly, by resolution dated 29 June 2001, the management of the Petitioners accepted such request, reverted the Respondent No. 1 to the position of head clerk and promoted the Respondent No. 3 in his place, all, with effect from, 1 July 2001. The Respondent No. 1 received salary as head clerk for almost four months without any protest or demur. However, on 30 October 2001, the Petitioners addressed representation to the Education Officer stating that the writing dated 25 June 2001 was not voluntary, but taken by the Petitioners realizing that the Respondent No. 1 was suffering from severe mental and emotional trauma due to the demise of his 22 year old son on 18 May 2001. The Respondent No. 1, accordingly demanded restoration of his position as a superintendent. As there was no redressal, the Respondent No.1 instituted appeal before the School Tribunal after some delay on 18 January 2001. The delay was condoned and the School Tribunal by judgment and order dated 5 July

2002 ("impugned order") has allowed the appeal, directed reinstatement of the Respondent No. 1 to the post of superintendent with effect from 1 July 2001, with difference in emoluments from the date of filing of the appeal.

3. Mr. M. V. Thorat, the learned counsel for the Petitioners has submitted that the impugned order is vitiated by perversity and non application of mind. In the first place the writing dated 25 June 2001, which was the basis of reversion records a clear reason that the Respondent No. 1 was unable to manage accounts. Secondly, post reversion, for a period of almost four months, the Respondent no. 1 accepted salary as head clerk without any protest or demur. Finally, the burden was very heavy upon the Respondent No. 1 to establish that the writing dated 25 June 2001 was not voluntary, which burden the Respondent No. 1 has completely failed to discharge. For all these reasons, the learned counsel submitted that the impugned order deserves to be set aside.

4. Mr. Jitendra Pathade, the learned counsel for the Respondent No. 1, on the other hand pointed out that the School Tribunal had recorded a finding of fact that the writing dated 25 June 2001 was not voluntary. Such finding is based upon material in the form of representations and the fact that hardly a few days prior to the writing in question, the Respondent No. 1 had lost his 22 years old son and was consequently facing mental and emotional trauma. In these circumstances, Mr. Pathade submitted that this Court ought not to re-appreciate the evidence on record with a view to

determining sufficiency. As long as findings of fact were based upon evidence, which was neither irrelevant nor extraneous, interference with the impugned order was not warranted.

5. The learned counsels for the parties raised further dispute, in the matter of implementation of the impugned order, as there was no stay pending the present petition. Mr. Pathade submitted that the Petitioners declined to implement the impugned order, thereby forcing the Respondent No.1 to prefer no less than two contempt petitions. By way of difference in emoluments, the Respondent No. 1 was finally paid an amount of hardly Rs.19,000/- and the reinstatement to the post of superintendent was effected only on 9 May 2008, from which position, the Respondent No. 1 retired upon attaining the age of superannuation on 31 May 2008. *Per contra*, Mr. Thorat submitted that it is the case of the Respondent No. 1 who failed to avail reinstatement. The Respondent No. 1, throughout remained absent, as a result of which there could be no effective implementation at an earlier date. Finally, in pursuance of orders made in the contempt petition, difference in emoluments which comes to Rs.19,000/- has been paid. Besides for the period between 9 May 2008 and 31 May 2008, the Respondent No. 1 has been paid salary and other emoluments due to the post of superintendent. For the period between 2 February 2003 and 9 May 2008 no salary or other emoluments either to the post of head clerk or superintendent were paid, because the Respondent No. 1 remained unauthorizedly absent during the said period.

6. The rival contentions now fall for my determination.

7. The reason for reversion as officially disclosed in the records is the writing dated 25 June 2001, by which the Respondent No. 1 is himself purported to have requested for such reversion. However from the pleadings and the submissions by and on behalf of the Petitioners, it does appear that the Petitioners were not satisfied with the functioning of the Respondent No. 1 as superintendent. There is no dispute that the Respondent No. 1 was duly promoted by the Petitioners itself to the post of superintendent and the Respondent No. 1 has discharged duties in the said position from 1 February 2000 upto 1 July 2001. There is no dispute with regard to the Respondent No. 1 possessing the eligibility qualifications for the purpose of promotion to the post of superintendent. There is also no dispute that just prior to the writing dated 25 June 2001 in question, the Respondent No. 1 lost his 22 year old son on 18 May 2001. In these circumstances, the School Tribunal has believed the case of the Respondent No. 1 that he was suffering from several mental and emotional trauma. Taking advantage of the situation, the writing dated 25 June 2001 was obtained from him. The writing in question, is by no means voluntary and in case the Petitioners had some grievance as to the manner of functioning by the Respondent No. 1, then it was necessary for the Petitioners to place some material on record or at least to conduct some enquiry before easing out the Respondent No. 1 in such a manner. Ultimately, records reveal that the Respondent No. 1 was promoted to the

post of superintendent after almost 19 years of service as head clerk. In such a situation, it is unlikely that the Respondent No.1 gives up the position of superintendent, in the manner suggested by the Petitioners. The acceptance of salary in the position of head clerk is also explicable by the circumstance that the trauma continued and the Respondent No. 1 was unable to fathom the implication of reduced salary. Ultimately, there is material in the form of representations made by the Respondent No. 1, complaining about the reversion and the manner in which the same was effected. For all these reasons, the School Tribunal has interfered with the reversion order and directed reinstatement in the post of superintendent.

8. If the impugned order is perused along with the material on record, then it is difficult to hold that the finding of fact recorded by the School Tribunal is vitiated by any perversity or non application of mind. The circumstance that just prior to the writing in question, the Respondent No. 1 had lost his 22 year old son, is really not in dispute. The inference that the Respondent No. 1 was suffering from mental and emotional trauma, in such circumstances, cannot be said to be either unreasonable or perverse. From the tenor of the Petitioners defence before the School Tribunal, it does appear that the Petitioners were bent upon easing out the Respondent No. 1 from the position of superintendent, on the ground that the Respondent No. 1 was either unable or negligent in the discharge of duties as office superintendent. However, for this purpose, the Petitioners neither served any show cause notice nor held any enquiry against the

Respondent No. 1. Rather, in a situation when the Respondent No.1 was suffering from mental and emotional trauma, on the basis of writing dated 25 June 2001, the Respondent No. 1 was reverted from the post of superintendent to the post of head clerk. The wordings of the impugned order, may not be very happy, nevertheless the findings of fact therein cannot be described as totally perverse. It is not for this Court to ordinarily re-appreciate the material on record and to revisit findings of fact, unless it is established that the same are totally perverse or contrary to the weight of evidence on record. Applying such test, there is no reason to interfere with the finding of fact with regard to the volitional nature of the writing dated 25 June 2001. Accordingly, there is no reason to interfere with the impugned order, particularly at this stage when the Respondent No. 1, after availing the benefit of the impugned order for only the period between 9 May 2008 and 31 May 2008, has since retired as superintendent.

9. The controversy as to what really transpired after the impugned order was made, cannot really be agitated at this stage with any sense of finality. The case of the Petitioners is that it is the Respondent No. 1 who did not report for duty and avail the benefits of the impugned order. On the other hand, the learned counsel for the Respondent No.1 submitted that though the Respondent No. 1 did make attempts to report for duty, the same were thwarted by the Petitioners. For this reason, the Respondent No. 1 was constrained to institute no less than two contempt petitions, in the course of which some limited relief was obtained by the Respondent

No.1.

10. Although, as noted earlier, it may not be possible for this Court to resolve such controversy with any sense of finality, it would be harsh to relegate the parties for some fresh round of litigation only upon this issue. In the present case, there is at least some material on record that the Respondent No. 1 was making efforts to obtain reliefs in terms of the impugned order by way of institution of contempt petitions. The Petitioners have made reference to the notices issued by them to the Respondent No. 1, requiring him to report for duties. However such notices are not on record either in the present petition or in the record of contempt petitions. There is no serious dispute however that Respondent No. 1 has not actually worked between the period 1 March 2003 and 9 May 2008. During this period, no disciplinary proceedings were also initiated by the Petitioners against the Respondent No. 1. Therefore, if all such circumstances are cumulatively considered, then it would be appropriate if the Petitioners are required to pay 50% of the back wages corresponding to the period 1 March 2003 and 9 May 2008 to the Respondent No. 1 corresponding to the post of superintendent. Further, as the impugned order is not being interfered with, the Respondent No. 1 would be entitled to for pension and other retirement benefits on the basis that the Respondent No. 1 has retired from the post of superintendent on 31 May 2008. Further during the entire period from 1 July 2001 to 31 May 2008, it should be considered that the Respondent No. 1 had in fact worked in the

position of superintendent on notional basis for the purpose of determination of pension and other retiral benefits. In so far as the back wages are concerned, the same shall be restricted to 50% for the period between 1 March 2003 and 9 May 2008, as there is material on record which indicates that the Respondent No. 1 was paid upto 28 February 2003.

11. The Petitioners and the respondent no. 2 i.e. Education Officer (Secondary Section) Zilla Parishad, Pune, are directed to pay back wages as also arrears of pension and retiral benefits within a period of three months from today to the Respondent No. 1. If the regular pension has not yet commenced, then the same should also commence within a period of three months from today.

12. Subject to the aforesaid directions and observations, Rule is discharged. There shall be no order as to costs.

13. In view of the disposal of the writ petition, civil application does not survive and is disposed of accordingly.

(M. S. SONAK, J.)