

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2295 OF 1997

Jaypal Govardhan Rathod,
Age-30 years, Occu-Service,
R/o At Post : Dapaka (Raja),
Tq.Mukhed, Dist.Nanded

PETITIONER

VERSUS

1. The State of Maharashtra,
2. The Head Master,
Post Basic Ashram School,
Gandhinagar, Tq. Kandhar,
Dist. Nanded,
3. The Secretary,
Sevadas Shikshan Prasarak Mandal,
27, Shantisadan, HIG Colony,
Near ITI Nanded,
4. District Social Welfare Officer,
Anand Nagar Road, Rathod Building,
Nanded

RESPONDENTS

Mr.P.D.Bachate h/f Mr.R.B.Raghuwanshi, Advocate for the petitioner.
Mr.S.W.Munde, AGP for respondent Nos. 1 and 4.
Mr.V.G.Sakolkar, Advocate for respondent Nos. 2 and 3.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 11/08/2016

ORAL JUDGMENT :

1. The petitioner has challenged the judgment of the School Tribunal, Aurangabad dated 29/03/1997 by which his Appeal No.187/1994-M has been dismissed. This petition was admitted by this Court. Interim relief was not granted. Consequentially, the

petitioner is out of employment from 08/07/1992.

2. I have heard Mr.Bachate, learned Advocate on behalf of the petitioner, the learned AGP on behalf of respondent Nos. 1 and 4 and Mr.Sakolkar, learned Advocate on behalf of the respondent 2 and 3 Institution, at length.

3. The petitioner came to be appointed on 02/02/1989 as a Jr.Clerk by respondent No.3 School. The petitioner had paid Rs.40,000/- towards donation to respondent Nos. 2 and 3 Institution and a receipt was executed evidencing the payment of the donation. His services were approved by the Social Welfare Officer w.e.f. 05/02/1989 upto 30/04/1991. By a communication dated 27/08/1991, the District Social Welfare Officer confirmed the services of the petitioner. The respondent/Institution has taken a stand that the petitioner had voluntarily resigned from service on 01/05/1993 and hence his name was removed from the Muster Roll on 08/07/1993. Though the District Social Welfare Officer directed the reinstatement of the petitioner, respondent Nos. 2 and 3 did not consider the same and hence the appeal was filed.

4. There is no dispute that the Tribunal had framed issues while

delivering the impugned judgment. On the basis of the record and evidence available, the Tribunal has answered the issues. It is equally undisputed that the issue as to whether the petitioner was qualified and legally appointed by following the procedure, was answered in the affirmative. The conduct and work of the petitioner was held to be satisfactory. The Tribunal also held that the petitioner had not voluntarily resigned from service and hence the theory of resignation was rejected. The appeal was held to be within limitation.

5. Despite all these answers in favour of the petitioner having been arrived at, the Tribunal declined reinstatement to the petitioner on the ground that he could not be reinstated since a new person was appointed in his place. It is also undisputed that the respondent/ Management has not challenged the judgment of the Tribunal to the extent of the conclusions in favour of the petitioner.

6. In the light of the above, the only issue to be considered by this Court is as to whether the Tribunal rightly refused reinstatement to the petitioner or not. The petitioner is born on 20/02/1965 and is 51 years old today. His retirement age is 60 years.

7. It is trite law that when the employee has questioned the

legality of his termination, induction of a new person in his place after his termination, would not create any situation so as to refuse reinstatement to the said employee when the termination is held to be bad in law.

8. In the present case, it is very unfortunate that the School Tribunal concluded that just because one Mr.B.M.Gotamwad was appointed and his tenure from 01/05/1996 to 30/04/1997 was approved, the petitioner had no right to reinstatement. Such a conclusion does not deserve to be sustained and therefore I am setting aside the said conclusion of the School Tribunal for being totally perverse, erroneous and which has caused grave injustice to the petitioner. Mr.Sakolkar submits that Mr.Gotamwad resigned and one Mr.Pallewad was appointed in his place and he is now confirmed.

9. The issue, therefore, is that as the Management has not challenged the conclusions arrived at by the School Tribunal in favour of the petitioner while answering issue Nos.1 to 4 and since the answer of the Tribunal to issue No.5 and 6 is being set aside by this Court, the petitioner deserves to be reinstated in service and with continuity.

10. Mr.Sakolkar submits that the respondent/Institution is a small Institution and is not financially strong. The Institution bonafide acted on the resignation tendered by the petitioner and hence no fault can be found with such Management. The resignation is dated 01/05/1993 and he was relieved on 08/07/1993, which indicates that the Management did not act in undue haste. He, however, concedes that the resignation theory of the Management has been rejected and the said conclusion has not been challenged by the Management in this Court. He, therefore, prays that back wages may not be awarded.

11. I have considered the above submissions and the strenuous contention of the petitioner that back wages be granted. In the peculiar facts as stated above and in the light of the fact that this Court did not grant interim relief to the petitioner after the petition was filed on 17/04/1997, I am of the view that owing to these peculiar facts, the petitioner cannot be granted the back wages. Nevertheless, he deserves reinstatement in service.

12. As such, this petition is partly allowed. The impugned judgment of the School Tribunal dated 29/03/1997 to the extent of its answer to Issue Nos.5 and 6 stands modified by directing

respondent Nos. 2 and 3/Institution to reinstate the petitioner forthwith and not later than 2 weeks from today, with notional continuity of service right from the date of his termination till the date of reinstatement. It is made clear that after the petitioner retires from service upon attaining the age of superannuation, his service tenure shall be counted from 02/02/1989 till the date of his retirement.

13. After the respondent/Management reinstates the petitioner in service, if there is any vacancy to accommodate the petitioner, his services shall be approved by the Education Officer. In the event, there is no vacancy, the Management shall furnish the proposal of the petitioner to respondent No.4 within 4 (four) weeks of his reinstatement. His proposal for being declared surplus and further absorption shall be considered by respondent No.4, which shall take a decision on the said proposal within 4 (four) weeks from the date of receiving the proposal. Needless to state, the petitioner would be granted preference in absorption considering the peculiar facts as above.

14. In order to simplify things and considering the request of Mr.Bachate, the petitioner shall stand reinstate in service w.e.f.

16/08/2016 and his salary at par with equally computable employees shall be paid regularly by the respondent/Management till his proposal for being declared surplus is accepted.

15. In so far as the donation that the petitioner had paid to the respondent/Management in 1991 and which is evidenced by the receipt dated 01/06/1991 issued by the Head Master/respondent No.2, the respondent No.3 Management shall return the said amount of Rs.40,000/- to the petitioner within 4 (four) weeks from today, failing which it would carry interest @ 6% p.a. from the date of judgment of the Tribunal which is 29/03/1997. Mr.Sakolkar submits that this amount of Rs.40,000/- would be returned to the petitioner within 4 (four) weeks from today.

16. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)