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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.2322/1997

- 1 Kisan Vidya Prasarak Mandal,
Kisan Daji Patil High School,
At Savkheda, Tq. Amalner,
Dist. Jalgaon.
Through : Its Chairman.
- 2 Shri B.K. Patil,
Headmaster, Kisan Daji Patil
High School, at Savkheda,
Tq. Amalner, Dist. Jalgaon.
...Petitioners...

Versus

- 1 Shriram S/o Kisan More,
Age : Major, R/o Savkheda,
Tq. Amalner, Dist. Jalgaon.
- 2 The Education Officer,
Zilla Parishad, Jalgaon.
- 3 The State of Maharashtra,
Through Deppt. Of Education.
...Respondents...

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Shri Sanket S. Kulkarni, Advocate h/f Shri S.D. Kulkarni,
Advocate for petitioners.

Shri Vinod P. Patil, Advocate for respondent no.1.

Respondent no.2 served.

Shri A.P. Basarkar, AGP for respondent no.3.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 10.03.2016

ORAL JUDGMENT :

1] The petitioners are aggrieved by the judgment and order dated 11.3.1997 delivered by the School Tribunal, Nashik, by which Jalgaon Appeal No.9/1993 filed by respondent no.1 herein was allowed after condonation of delay and the petitioner – management was directed to reinstate him on the post of Peon with back wages from the date of termination till he is reinstated.

2] Shri Kulkarni, learned Advocate for the petitioner – management submits that by order dated 15.12.1997, *ad-interim* protection was granted by this Court to the petitioners against the impugned judgment. After hearing the learned Advocates for the respective sides, this petition was admitted and interim relief in terms of prayer clause [C] was granted by order dated 23.11.1998.

3] Prayer clause [C] of the petition reads as under:-

“[C] Pending the hearing and final disposal of this writ petition, the execution and operation

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of the judgment and order dated 11th.3.1997 passed by the learned Presiding Officer, School Tribunal, Nasik Region, Nasik, in Jalgaon Appeal No.9/93 be stayed."

4] Shri Kulkarni further submits that respondent no.1 had withdrawn Rs.1,81,663/-, which were deposited by the petitioners with the Education Officer towards his back wages. As this Court was of the *prima-facie* opinion that the amount has been surreptitiously withdrawn by the employee, he was directed to furnish a security for the said amount to the satisfaction of the Registrar of this Court or to deposit the said amount within four weeks.

5] Shri Kulkarni further submits that simultaneously the contempt petition was heard by this Court with reference to the withdrawal of the amount by respondent no.1. By order dated 23.11.1998, this Court concluded that there was no contempt and the Contempt Petition No.184/1998 was rejected.

6] Shri Kulkarni submits that peculiar facts have led to the filing of this petition. Respondent no.1 Shriram Kisan More was first appointed as a Peon on 20.7.1980. His second appointment is dated 15.6.1981 and

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his third appointment is dated 12.6.1982. He was accorded temporary approval by the Education Officer, Zilla Parishad, for the years 1981 and 1982. There were two factions in the trust. The Secretary of the trust issued order of termination dated 24.3.1983 and respondent no.1 was terminated.

7] He further submits that since respondent no.1 accepted his termination and walked away, the petitioners appointed Mr.Madhav Budha Bhoi in place of respondent no.1 (Mr.More) as a Peon. In the meanwhile, respondent no.1 Mr.More secured employment as a Peon in Grampanchayat, Zurkheda. He was appointed on 18.10.1984 and continued to work till 31.3.1986.

8] The management thereafter then terminated Mr.Bhoi and appointed Mr.Devidas Namdeo Ahire in his place as a Peon. Shri Kulkarni submits that since there were two groups in the trust, one group headed by Shri Bhaskar Ramdas Patil indulged in appointing people and the other group led by Shri Pandit Vedu Patil started terminating the employees.

9] He, however, submits that even if the said controversy is kept aside for a moment, the fact remains

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that Mr.Bhoi challenged his termination in Appeal No.22/1987 before the School Tribunal at Bombay. By judgment dated 4.1.1989, his appeal was allowed and his termination order dated 16.6.1987 was quashed and set aside. The petitioner – management was directed to reinstate him to his original post of Peon with all monetary benefits from 16.6.1983.

10] After Mr.Bhoi succeeded, respondent no.1 Mr.More woke up and preferred Jalgaon Appeal No.9/1993. The same suffered delay, which was condoned and by the impugned judgment dated 11.3.1997, the appeal was allowed and the petitioners were directed to reinstate respondent no.1 Mr.More on the post of Peon with effect from 23.1.1989 till he is reinstated.

11] Shri Kulkarni, therefore, submits that there was one solitary post of Peon and there were two judgments of the School Tribunal, Bombay and Nashik granting reinstatement to Mr.Bhoi and Mr.More. The management reinstated Mr.Bhoi since his judgment was delivered on 4.1.1989 and challenged the judgment in favour of respondent no.1 in this petition.

12] Shri Patil, learned Advocate appearing on behalf

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of respondent no.1 Mr.More submits that he has already attained the age of superannuation in 2015. He was not reinstated since this Court had stayed the judgment of the School Tribunal. Consequentially, he has not worked in this entire past period of 24 years.

13] I have considered the submissions of the learned Advocates as well as the subsequent events.

14] It is a peculiar situation wherein one post of Peon was available and two are to be reinstated. After the termination of Mr.More, Mr.Bhoi was appointed. After he was terminated, he succeeded in his appeal and by virtue of the judgment dated 4.1.1989, he was reinstated. Record reveals that after the termination of Mr.Bhoi, Mr.More was once again temporarily appointed in the year 1988 and was finally again terminated on 23.1.1989 since the judgment in favour of Mr.Bhoi was delivered on 4.1.1989.

15] When Mr.More approached the School Tribunal by his appeal in 1993, the petitioners brought the fact of Mr.Bhoi's reinstatement on record. In my view, the Tribunal should have considered the said fact and in order to avoid conflicting judgments, should have

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considered the belated claim of Mr.More in the backdrop of the judgment in favour of Mr.Bhoi.

16] It is not in dispute that respondent no.1 Mr.More is out of employment from 23.1.1989. He has attained the age of superannuation at 58 years in 2015. It, therefore, appears that he has initially worked for three years and thereafter has worked for about two years in 1987 and 1988.

17] In these peculiar facts as above, I find that the ratio laid down by the Hon'ble Supreme Court in the following four cases would become applicable to this case :-

[1] *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota v. Mohanlal* (2013 LLR 1009)

[2] *Assistant Engineer, Rajasthan Development Corporation & another v. Gitam Singh* [(2013) 5 SCC 136]

[3] *BSNL v. Man Singh* [(2012) 1 SCC 558] and

[4] *Jagbir Singh v. Haryana State Agriculture Marketing Board* [(2009) 15 SCC 327]

18] In the above mentioned four cases, the Hon'ble Supreme Court concluded that where an employee has worked for a short spell and has been out of employment for a

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long spell, reinstating such an employee would sound unreasonable and quantifying compensation would be more practicable. The Apex Court concluded that Rs.30,000/- for one year of service could be an appropriate compensation.

19] With regard to compensation, Shri Patil submits that the amount withdrawn from the Education Officer was towards unpaid wages. Shri Kulkarni disputes the said contention and submits that in both the proceedings i.e. before the Tribunal and this Court, no contention has been put forth by the employee that the amount withdrawn by him was towards unpaid wages. Respondent no.1 has initially worked for three years from 1980 to 1983 and then from 1987 to 1988. Considering the withdrawal of Rs.1,81,663/- and the fact that I am inclined to grant compensation, taking into account the length of service and litigation and the ratio laid down by the Hon'ble Supreme Court, the petitioners shall, therefore, pay an amount of Rs.75,000/- as further compensation in lieu of reinstatement with continuity and back wages as granted by the School Tribunal.

20] This petition is, therefore, partly allowed.

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The impugned judgment of the School Tribunal dated 11.3.1997 is modified with the direction to the petitioners to pay an amount of Rs.75,000/- to respondent no.1 within a period of twelve weeks from today, failing which the same shall carry simple interest at the rate of 3% p.a. from the date of judgment of the School Tribunal, which is 11.3.1997. Needless to state, respondent no.1 shall now be precluded from raising any dispute with regard to his employment and non-employment with the petitioners in the light of the quantified compensation granted as above.

21] Rule is made partly absolute in the above terms. Pending civil applications do not survive and are disposed of.

(RAVINDRA V. GHUGE, J.)