

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1100 OF 1997
WITH
CIVIL APPLICATION NO. 6747 OF 2006

Ashok Barikrao Somwanshi,
Aged 46 years, occ. Service
R/o Takli pidi, Post Pragne Dehere,
Tq. Chalisgaon, Dist. Jalgaon. ..Petitioner

Versus

1. The Universal Education Academy
Bombay (Through its Secretary),
having its office at 40, Veer Nariman
Hashim Building, First Floor,
Bombay 23

2. The Universal Education Academy
Sub-Committee, Chalisgaon, (Through
its Chairman) Shri Y.P.Patil,
R/o Station Road, Chalisgaon.

3. Shri B.N.Pawar,
Head Master, Nalanda Vidyalaya,
Chalisgaon, Dist. Jalgaon.

4. The Education Officer (Secondary),
Zilla Parishad, Jalgaon. ..Respondents

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Advocate for Petitioner : Shri Ajinkya Kale h/f Shri S.B.Talekar
Advocate for Respondents 1 to 3 : Shri P.R.Patil
AGP for Respondent 4 : Shri S.P.Sonpawale
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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 17, 2016
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ORAL JUDGMENT :-

1. The petitioner is aggrieved by the judgment of the School

Tribunal dated 12.8.1996, by which, his Appeal No. 9 of 1992 challenging his reduction in rank was dismissed.

2. While admitting this petition on 22.4.1997, the learned Division Bench of this Court refused interim relief to the petitioner.

3. Shri Kale, learned Advocate on behalf of the petitioner has strenuously criticized the impugned judgment and has formulated his grounds as under:-

(a) After the charge sheet dated 7.8.1992 was served upon him, he has requested for extension of time on 25.8.1992 for submitting a reply and the same was not granted.

(b) The purported letter dated 5.9.1992 written by the petitioner praying for transfer to the School at Takali and expressing his inability to continue as Head Master at the school at Chalisgaon, was obtained under force, duress and coercion.

(c) His transfer on 20.9.1992 is against Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("MEPS Rules" for short).

(d) His transfer at Takali should have been as a Head Master and not as a Teacher under another person, namely, D.S.Nikam being the Head Master.

(e) He had promptly filed the complaint to the Education Officer on 23.9.1992 alleging a forced transfer.

4. The petitioner, therefore, submits that under Rule 41(3), the transfer of the petitioner could not have affected his pay scale and should not have resulted into a loss of pecuniary benefits admissible to him as the Head Master since he was working as a Head Master at Chalisgaon from 14.6.1976 till 19.11.1992. Even if it is presumed that he was transferred on his own request, he would have been entitled to the pay scale as is available to a Head Master even after his transfer at Takali. He, therefore, prays that the impugned judgment be quashed and set aside and as the petitioner has attained the age of superannuation, the difference in the pay scale be made available to him.

5. Shri Patil, learned Advocate appearing on behalf of the respondent / Educational institution submits that there were serious charges levelled against the petitioner vide charge sheet dated 7.8.1992. Despite having given an opportunity, the petitioner did not prefer to submit his reply. He was addicted to liquor and

therefore, his conduct led to various misdeeds which were listed out in the charge sheet. The management was about to commence the departmental enquiry against him. To avoid an uncereemonious departmental proceedings, he himself preferred to tender his request letter dated 5.9.1992, praying for a transfer with immediate effect. He also declared that he would be responsible for any pecuniary loss caused to him. Since he had a proper accommodation at Takali, he preferred to be transferred to Takali. Accordingly, the management obliged him by doing so.

6. He further submits that the petitioner did not mention in his appeal that he was the senior most teacher at Takali and desired to work as Head Master at Takali. He could not have made such a request since he was addicted to liquor and would not have functioned properly as Head Master even at Takali. It is in this peculiar backdrop that he was transferred and later on he has created a picture of being forced to write a request letter. The School Tribunal has correctly analyzed the facts and circumstances of the case and has rightly dismissed the appeal.

7. With the assistance of the learned Advocates, I have gone through the record and proceedings received from the School Tribunal.

8. There can be no dispute that one of the charges levelled upon the petitioner was with regard to his addiction and his failure in performing his duties as the Head Master. The said charge sheet could have logically led to departmental proceedings against the petitioner.

9. On perusal of the request letter dated 5.9.1992, it is evident that the petitioner has stated in the said letter that he prefers to be transferred at Takali owing to a proper accommodation at the said place and he was not able to keep good health which was affecting his performance at Chalisgaon. This letter was acted upon by the management on 20.9.1992. Thereafter, he has lodged a complaint to the Education Officer.

10. However, it is not the case of the petitioner, as is evident from his appeal memo, that the request letter dated 5.9.1992 was neither written by him nor signed by him. It is merely stated that he was compelled to write the said letter. So also, the petitioner has not stated in his appeal that he was the senior-most teacher at Takali and hence should have been appointed as the Head Master in place of Shri B.S.Nikam, who was not arrayed as a party respondent before the Tribunal. In the absence of these pleadings, it cannot be presumed that the petitioner was the senior most person to be appointed as a Head Master at Takali.

11. Looking at this case from a different angle, it is evident that the management had taken a stand the petitioner was addicted to intoxication and was not performing well as a Head Master and therefore, leading to the inference that he could not have been appointed as a Head Master even at Takali, since he was likely to commit the same misdemeanor at Takali as is alleged to have occurred at Chalisgaon.

12. Considering the peculiar facts as recorded herein above, and the fact that the petitioner had accepted the order dated 20.9.1992, transferring him as an Assistant Teacher at Takali, I do not find that the School Tribunal has committed any error so as to brand the impugned judgment as being perverse and erroneous.

13. This Court has refused interim relief to the petitioner on 22.4.1997 and the petitioner has now superannuated. I, therefore, do not find it appropriate to accept the request of the petitioner that he should be paid difference in salary so as to make good his loss of pay as a Head Master.

14. This petition is, therefore, dismissed. Rule is discharged.

15. Pending Civil Application stands disposed off.

16. The record and proceedings be returned to the School Tribunal, Nasik.

(RAVINDRA V. GHUGE, J.)

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