

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4093 OF 1999

1. Dharangrasta Hanuman Shikshan
Sanstha Sawargaon, Kallamb
Tq. Kallamb, Dist. Osmanabad
Through its Secretary Shri S.V.Pawar

2. The Head Master,
Saraswati Prathamik Vidyamandir
Punarvasan, Sawargaon (Kale),
Tq. Kallamb, Dist. Osmanabad. ..Petitioners

Versus

1. Balaji Shamrao Pawar,
Age 39 years, Occ. Nil,
R/o Karanjkahlla, Tq. Kallamb,
District Osmanabad.

2. The Deputy Director of
Education, Aurangabad Division,
Aurangabad.

3. The Education Officer (P),
Zilla Parishad, Osmanabad.

4. The School Tribunal,
Aurangabad, Opp. Bansilal Nagar,
Aurangabad. ..Respondents

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Advocate for Petitioner : Shri V.D.Salunke
Advocate for Respondent 1 : Shri Vivek Dhage

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CORAM : RAVINDRA V. GHUGE, J.

Dated: November 17, 2016

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ORAL JUDGMENT :-

1. The petitioner management is aggrieved by the judgment of

the School Tribunal dated 12.7.1999, by which, Appeal No.45 of 1993 filed by respondent 1 / employee has been allowed and the petitioner is directed to reinstate the employee with continuity and full backwages.

2. This Court, by order dated 15.12.1999 admitted the petition and directed the petitioner to pay the monthly salary to the employee till the decision in the Writ Petition. By order dated 31.8.2000, the Appeal Bench of this Court allowed Letters Patent Appeal No.65 of 2000 filed by the petitioner and set aside the directions of the learned Single Judge of this Court. The Appeal Bench has observed in paragraph Nos.6 to 8 of it's judgment as follows:-

“6. Alongwith the written statement the appellant management had also submitted a copy of the enquiry report dated 7.8.91 submitted by the Education Officer (Primary), Z.P., Osmanabad and the said report was submitted to the Collector. It specifically states that the respondent employee was not issued any appointment order and from the record it was obvious that there were no such documents to show that he was any time issued an appointment order. In addition, the report stated that the appointment of the respondent employee was not made a per the provisions of bye laws o the society. Prima facie there was nothing either before the School Tribunal or before this Court to show that the alleged appointment of the respondent employee to the post of Head

Master was made by following the procedure laid down U/s 5 of the M.E.P.S.Act, 1977 as well as the M.E.P.S.Rules 1981. It is also clear from the record that at no point of time the said purported appointment was approved by the Education Officer concerned. The Tribunal has failed to apply its mind to the report submitted to the Collector by the Education Officer and in fact, the judgment of the Tribunal is totally silent on the said report.

7. When the petition is admitted and the direction of reinstatement has been stayed by this Court, the order directing the payment of monthly salary to the respondent employee does not fit in the canons of law inasmuch as the appellant No.1 is running a fully aided school and the salary is required to be paid from the Government funds. The appellant No.2 is already working as Head Master of the said School and therefore, there cannot be salary payment for two persons at a time for the post of Head Master. We are therefore, satisfied that the order directing payment of monthly salary to the respondent employee cannot be sustained.

8. In the premises, the appeal succeeds and the order directing the payment of monthly salary to the respondent employee is hereby set aside. We make it clear that the pending petition shall be decided on its own merits and without being influenced by the observations made by us in the foregoing paragraphs.”

3. It is informed by Shri Salunke, learned Advocate for the petitioner that the directions of this Court dated 15.12.1999 were not

implemented since the LPA was filed before the Appeal Court.

4. I have heard the submissions of Shri Salunke and Shri Dhage, learned Advocate who has strenuously defended the impugned judgment. I have considered the record available with their assistance.

5. The record reveals that the respondent / employee was issued with an appointment order signed by the President of the Society. It is apparent that there was no advertisement published and there was no selection process resorted to by the Society while recruiting him. The petitioner has categorically come up with the case that an incompetent authority who was not empowered under the Act of 1977 and the Rules of 1981, has claimed to have appointed the employee. It is specifically contended that the Secretary has to issue the appointment order and the President, who claims to have appointed respondent No.1 employee, was not empowered to do so.

6. Though the learned Appeal Bench has observed in paragraph No.8 reproduced above, that this petition needs to be decided on its own merits, it cannot be overlooked that the Appeal Bench has made certain observations in paragraph Nos.6 and 7, which are based on the record before the Tribunal.

7. The first appointment order dated 1.6.1987 indicates that it was issued in favour of the newly appointed employee Shri Shaikh Bashir Bahauddin on the basis of a resolution passed. His appointment is based on his application dated 25.5.1987 and on the basis of the Resolution passed by the management on 24.5.1987. The said person Shri Shaikh Bashir is an office bearer of the management and was himself party to the resolution proposing his appointment as Head Master vide the resolution dated 24.5.1987, which was one day prior to his making an application on 25.5.1987 seeking appointment as a Head Master. Notwithstanding this aspect, the fact remains that the said Shaikh Bashir has been working from 1.6.1987 and has subsequently superannuated.

8. Nevertheless, it appears that the appellant / employee had worked for about four years with the petitioner and has been out of employment from 17.6.1991 for more than 25 years. In this backdrop, keeping in view that the appointment of the appellant employee cannot be said to have been made by a competent authority, it would dis-entitle him from reinstatement with continuity of service and backwages as has been granted by the School Tribunal.

9. Nevertheless, since the appellant / employee cannot be reinstated in service and considering the fact that this Court has

directed the petitioner to pay wages to him, which order has been subsequently set aside, I deem it proper to invoke Section 11(2)(e) and grant compensation in terms of four months wages with pay allowances as provided, along with 3% p.a. interest from the date of judgment of the School Tribunal. This amount shall be paid by the petitioner to the respondent No.1 / employee within a period of 12 weeks from today. Needless to state, the impugned judgment of the School Tribunal stands modified in terms of the directions to pay compensation.

10. In the light of the above, this petition is partly allowed and Rule is made partly absolute in terms of the above directions.

(RAVINDRA V. GHUGE, J.)

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