

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1708 OF 2016

Rajkumar S/o Achutrao Bangar,
Age-28 years, Occu-Service (Presently NIL)
r/o Bangarwadi, Taluka Kallam,
District Osmanabad

PETITIONER

VERSUS

1. The Secretary,
Shri Virshaivya Mandal Sansthan,
Yermala, Taluka Kallam,
District Osmanabad,

2. The Head Master,
Shri Saraswati Secondary Vidyalaya,
Yermala, Taluka Kallam,
District Osmanabad,

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

RESPONDENTS

Mr.S.S.Jadhavar, Advocate for the petitioner.
Mr.S.R.Shirsat, Advocate for respondent No.1.
Mr.D.R.Korde, AGP for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/03/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner seeks to challenge the judgment and order dated

18/11/2015 delivered by the School Tribunal, Solapur, by which Appeal No.9/2015 filed by the petitioner for challenging his termination dated 12/01/2015, has been dismissed.

3. The petitioner submits that he was appointed as a “Shikshan Sevak” w.e.f. 15/06/2012. It is stated that his appointment was for the period 15/06/2012 till 14/06/2015. The appointment order further indicates that if the petitioner completes 3 years of satisfactory service, he would be held eligible for the pay scale as is provided for by the rules applicable. He was being paid Rs.6,000/- p.m. as a consolidated pay.

4. The petitioner submits that since he was terminated on 12/01/2015 solely on the ground that the Education Officer had declined to consider an individual proposal for approval, he preferred Appeal No.9/2015 before the School Tribunal. By the impugned judgment, the School Tribunal concluded that the appointment of the petitioner is illegal and he was not accorded approval. Contention of the petitioner is that the Management has terminated his services only because he was not granted approval.

5. Mr.Jadhavar, learned Advocate for the petitioner relies upon the

judgment of the Full Bench of this Court in the matter of St.Ulai High School and another Vs. Devendraprasad Jagannath Singh and another, 2007(1) Mh.L.J.597 to support his contention that lack of approval is not an impediment to continue the petitioner in employment. He, therefore, submits that the termination, which is based purely on account of lack of approval, needs to be interfered with.

6. Mr.Shirsat, learned Advocate for the respondent/Management submits on instructions that the Management had no grievance against the petitioner. He was terminated only because an approval was not granted. If the petitioner is willing to waive his entire back wages from the date of termination till his reinstatement, the Management would reinstate him and forward his proposal to the Education Officer. Mr.Jadhavar submits on instructions from the petitioner present in the Court that he is willing to waive the back wages and his continuity in service be protected.

7. The learned AGP appearing on behalf of the Education Officer submits that the appointment of the petitioner is not legal. He relies upon the affidavit in reply dated 10/03/2016 filed by Mr.Audumbar Sampatrao Ukirde, Education Officer (Secondary) Z.P. Osmanabad.

He points out from paragraph No.5 that if any proposal is forwarded by the Management for seeking approval to the appointment of the petitioner, same would be considered as per the provisions of the M.E.P.S Act and the M.E.P.S.Rules.

8. I have considered the submissions of the learned Advocates.

9. It is now settled by the judgment of the Full Bench of this Court in the matter of St.Ulai (supra) that merely because an employee has not received an approval by the competent authority, it would not be a ground for dispensing with his services. He could be continued subject to the Management paying his salary as the salary grants would not be available for such an employee whose services are not approved.

10. Considering the statement of the Management that they are willing to reinstate the petitioner in service, this petition is partly allowed. The impugned judgment of the School Tribunal dated 18/11/2015 is quashed and set aside. The petitioner is, therefore, reinstated in service and the Management shall forward his proposal to the Education Officer for approval. Needless to state, considering the statements of the Management and the petitioner, the petitioner

will not be entitled for back wages. There shall, however, be deemed continuity in service.

11. If the Management forwards the proposal of the petitioner to the Education Officer (Secondary), the said authority shall consider the proposal purely on its merits and strictly in accordance with the M.E.P.S. Act and the M.E.P.S.Rules.

12. It is made clear that since this order is passed considering the statements made by the Management and the petitioner, the Education Officer shall not be influenced by any observations made in this order and shall decide the proposal as stated above on its own merits. In the event, the petitioner or the Management is aggrieved by the decision of the Education Officer, they may seek redressal of their grievance by resorting to a legal remedy, if available.

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

(RAVINDRA V. GHUGE, J.)