

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2817 OF 1997

Sunil Balkrishna Chandsarkar,
Age-36 years, Occu-Unemployed,
Residing near Pandurang Building,
Datta Mandir, Satana Naka,
At Post : Malegaon,
Dist. Nasik

-- PETITIONER

VERSUS

1. The President,
Khandesh College Education Society,
Jalgaon - 425002,
M.J.College Parisar,
Jalgaon,
2. Dr.Director,
Technical and Vocational Training Centre,
Old Agra Road, Near Trambak Naka,
Nasik,
3. Dy.Director of Education,
Gole Colony, Nasik Region,
Nasik,
4. Presiding Officer,
School Tribunal
Behind Runanubandh Mangal
Karyalaya, Everest Colony,
Nasik

-- RESPONDENTS

WITH
WRIT PETITION NO.2818 OF 1997

Sunil Balkrishna Chandsarkar,
Age-36 years, Occu-Unemployed,
Residing near Pandurang Building,
Datta Mandir, Satana Naka,
At Post : Malegaon,
Dist. Nasik

-- PETITIONER

VERSUS

1. The President,
Khandesh College Education Society,
M.J.College Campus,
Jalgaon, Dist.Jalgaon,
 2. Principal,
Khandesh College Education Society,
Industrial Training Centre/Sanstha,
Maniyar Law College, Jalgaon,
 3. Presiding Officer,
School Tribunal,
Behind Runanubandh Mangal Karyalaya,
Everest Colony, Nasik
- RESPONDENTS

Mr.A.G.Talhar h/f Mr.S.S.Gangakhedkar, Advocate for the petitioner.
Mr.V.T.Choudhary, Advocate for respondent No.1.
Mr.P.N.Kutti, AGP for respondent Nos. 2 and 3.
Respondent No.4 is deleted in both the petitions being formal party.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 26/10/2016

ORAL JUDGMENT :

1. Respondent No.4 is the School Tribunal and hence it is deleted from the proceedings.
2. Both these petitions have been filed by the petitioner / original appellant since by the impugned judgment dated 08/08/1996, his Appeals Nos.21/1994 and 34/1994, challenging his terminations dated 05/09/1990 and 17/07/1994, have been dismissed.

2. This Court, by its order dated 30/03/1998, has concluded that it would be open to the petitioner/employee to prosecute only one amongst the two causes of action. Mr.Talhar, learned Advocate for the petitioner, therefore, submits that he would be prosecuting the second cause of action arising out of the termination order dated 17/07/1994.

3. I have considered the submissions of the learned Advocates for the respective sides at length and with their assistance, I have gone through the petition paper book.

4. There is no dispute as regards the following factors :-

- [a] The petitioner/employee was initially engaged by the appointment order dated 22/08/1986 as an "Instructor" in the Trade of Draught'sman (Civil) in the Industrial Training Institute of the respondent Education Society. His salary structure has been mentioned in the appointment order.
- [b] He has lastly worked upto 31/07/1990 which is a period of about 4 years.
- [c] He was issued with order of termination 05/09/1990 wherein the Management has taken a stand that since one of its units has been closed, he would not have any work to do.
- [d] A Senior Instructor by name Mr.G.J.Mahajan was appointed as

an Instructor in the surviving unit in August 1990.

[e] Eventually, the first unit was permanently closed down in August 1992 and the second unit was closed down from August 1993.

[f] Both the units are presently not operational.

5. It appears that the first termination order was issued by the Management de-hors Rule 26 of the MEPS Rules, 1981. Same was assailed after 4 years by the petitioner before the Tribunal. During the pendency of Appeal No.21/1994, the Management issued the second termination order dated 17/07/1994 “without prejudice to its rights in the pending appeal”.

6. It is, therefore, apparent that the first termination order was issued without the compliance of the provisions of the rules and consequentially the Tribunal has concluded that since the second termination order has been issued, the said order would be insignificant. It cannot be ignored that the second termination order dated 17/07/1994 is in due compliance of Rule 26 and the petitioner has been given 3 months termination notice and obviously salary for the said 3 months period. The factum of closure is not disputed and as such, the said ITI Institute conducted by the Management is no longer operational. In this backdrop, the prayer for reinstatement,

with continuity and full back wages put forth by the petitioner cannot be entertained.

7. In the backdrop of the first termination order dated 05/09/1990, being unsustainable, it leads to a legal presumption that the petitioner has continued in employment. The Management, by way of abundant precaution, has issued the second termination order so as to fall back upon the said order to justify the termination of the petitioner. Considering Rule 26 and the reason for termination, the order of termination dated 17/07/1994 deserves to be sustained and has rightly been sustained by the Tribunal.

8. In the above backdrop, it has to be legally assumed that the petitioner has continued in employment till the date on which his termination order dated 17/07/1994 was given effect to. It is undisputed that the second order effects the termination from 18/11/1994 and the petitioner has been paid his salary during the notice period.

9. In the light of the above, the petitioner would thus be entitled for his last drawn wages as paid to him by drawing an average of the 3 months notice period, for the period from 05/09/1990 till

16/07/1994, assuming that the Management has paid the salary to the petitioner during the notice period. Consequentially, the Second Petition No.2818/1997 challenging the impugned termination order dated 05/09/1990 is rendered infructuous and stands disposed of. Rule is discharged.

10. The First Petition No.2817/1997 stands partly allowed only to the extent of granting the petitioner his wages as observed in the foregoing paragraph for the period 05/05/1990 till 16/07/1994. In the event his wages have not been paid for the 3 months' notice period, the same shall also be payable. The respondent/Management shall accordingly pay the petitioner the said amount of wages within a period of 12 weeks from today, failing which the said amount shall carry simple interest @ 6% p.a. from the date of the impugned judgment of the Tribunal till actually it is paid and the entire amount shall have to be paid by the Management.

11. Rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)