

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 269 OF 2000

Yaduba @ Arun Dhondiba Ghode,
Age major, Occupation Service,
R/o 5, Parvati Nivas, Mastgad,
Jalna.

..Petitioner

Versus

1. The State of Maharashtra

2. President / Secretary
Matsyodari Shikshan Sanstha,
Ambad Office, situated in
Survey No.488/29, Siraswadi Naka,
Near Flyover Bridge, Ring Road,
Jalna. 431 203.

3. The Head Master,
Matsyodari Vidyalaya,
Gunj (Bk.), Tq. Ghansavangi,
Pin Code 431 209.

4. Presiding Officer,
School Tribunal,
5-8-53, Bansilal Nagar,
Railway Station Road,
Aurangabad.

..Respondents

...
Advocate for Petitioner : Shri A.V.Patil Indrale h/f Shri D.K.Thote
AGP for Respondent 1 : Shri A.P.Basarkar
Advocate for Respondents 2 & 3 : Shri V.D.Sapkal h/f Shri S.S.Tope
Advocate for Respondent 4 : Served.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: May 04, 2016

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ORAL JUDGMENT:-

1. On 21.4.2016, after hearing the learned Advocates for the respective sides, I had passed the following order:-

“1. This petition has been Admitted on 12/12/2001. Neither party made a request to the Court in these last 15 years to call for record and proceedings. In the last about 5 months, when this matter was consistently on the final hearing board, it has been adjourned on almost 10 occasions. The petition was lodged on 16/12/1999. Same was circulated by the learned Advocate. It is in this backdrop that I am not acceding to the request of the petitioner to adjourn this matter.

2. Learned advocate for the petitioner submits that he had joined the respondent/Educational Institution at the respondent No.2 School namely Matsyodari Vidyalaya on 01/07/1981. He was terminated on 01/07/1987. He preferred Appeal No.33/1987 before the School Tribunal. By judgment of the Tribunal, the petitioner succeeded in his appeal and was reinstated.

3. The petitioner filed an Appeal No.71/1995 on 26/06/1995 before the School Tribunal contending that he has been orally terminated on 12/06/1995. There is no dispute that he was a permanent employee. On the basis of such oral termination, which according to the petitioner has occurred on account of the refusal of the respondent to permit him to sign the muster roll and perform duties, amounts to “otherwise termination’. He, therefore, prayed in his appeal filed u/s 9 of the MEPS Act, 1977 that his oral termination be set aside w.e.f. 12/06/1995.

4. He further submits that from July 1994, he was not paid his monthly salary. Despite the same, he had continued in service. The Tribunal, therefore, can direct the Management to pay his outstanding salary and set aside the oral termination dated 12/06/1995.

5. *Mr.Thote, learned Advocate for the petitioner strenuously criticizes the impugned judgment by which his appeal has been dismissed. He submits that the Tribunal has erroneously concluded that he was unauthorizedly absent from 18/07/1994 till 12/06/1995. The Tribunal has erroneously held that because the Management has informed the Education Officer with regard to his unauthorized absenteeism, it would mean that he was absent and not reporting for duties. He, therefore, submits that the impugned judgment deserves to be quashed and set aside.*

6. *Learned Advocate appearing on behalf of respondent Nos. 2 and 3 Management submits that the petitioner has put forth a false cause of action that he was orally terminated on 12/06/1995. In fact, he was abstaining from duties w.e.f. 14/07/1994 and never returned to the school thereafter. This categorical statement was made in paragraph No.4 of the written statement which was filed in February 1996. Even thereafter the petitioner did not report for duties. The judgment of the School Tribunal is dated 29/11/1999. It is, therefore, apparent that for a period from 14/07/1994 till 29/11/1999, which is a period of about 5 years and 4 months, the petitioner did not report for duties.*

7. *He draws my attention to the document Exhibit R-2 which has been referred to by the Tribunal. Same are the documents, which form a part of the correspondence of the Management with the Education Officer, wherein the Head Master informed the Education Officer that the salary of the petitioner is not drawn because he has been remaining absent. Such documents find place in paragraph No.6 of the impugned judgment.*

8. *It is, therefore, submitted on behalf of the Management that despite the written statement disclosing that the petitioner is remaining absent voluntarily, the petitioner did not move an*

application before the Tribunal seeking an order of joining duties without prejudice to his rights. It is, therefore, prayed that this petition be dismissed.

9. *I have considered the submissions of the learned Advocates and have gone through the petition paper book with their assistance.*

10. *The petitioner has come forward with a case of oral termination dated 12/06/1995. Record produced before the Tribunal reveals that he had not marked his attendance on the muster roll from 14/07/1994. Notwithstanding this position, the petitioner was made fully aware of the stand taken by the Management from paragraph No.4 of its written statement filed in February 1996, which was about 18 months from the date of his purported unauthorized absence.*

11. *In my view, if the petitioner was in fact interested in reporting for duties and had a grievance that he is not offered work, the petitioner would have filed an application before the Tribunal praying for an urgent order that he be allowed to report for duties in the backdrop of the stand taken by the Management.*

12. *I find it quite conspicuous that despite the written statement disclosing the stand of the Management claiming that the petitioner has voluntarily abandoned employment, the petitioner did not take any step to prove the contention of the Management wrong by seeking an order to report for duties. The judgment of the Tribunal was delivered on 29/11/1999 and the petitioner was silent for this entire period of about 4 years and 5 months from the date of filing of the appeal.*

13. *Rule 16(3) of the MEPS Rules, 1981 deal with abandonment*

of employment by a permanent employee and reads as under :-

“16(3) In the case of a permanent employee who, without sufficient cause, fails to apply for leave within 7 days from the date of absence, it shall be treated as breach of discipline and he shall be liable for suitable disciplinary action after due inquiry. A permanent employee who is absent from duty +[without leave continuously for a period exceeding three years], shall be deemed to have voluntarily abandoned his services.

+ The words “with or without leave continuously for a period of three years or more” are substituted by Not.No.PST/1083/194/SE-3-Cell, dated 20-12-1984.”

14. *It is, therefore, obvious from Rule 16(3) that the employer initially has to take steps with regard to the unauthorized absenteeism of an employee by issuing a notice. The record referred to by the Tribunal indicates that the Management informed the Education Officer that the petitioner is absent and did not forward his salary bills thereby depriving him of the salary from 14/07/1994 onwards. The petitioner has not prayed in the appeal that his absence from 14/07/1994 till 11/06/1995 be condoned, be regularized and he be paid his wages for the said period.*

15. *All above factors go to indicate that the petitioner did not have the urge to report for duties. As noted above, it is quite unusual that he did not seek an interim order to permit him to join duties, though he filed an application for interim relief praying that the Management be directed to keep the post of the applicant vacant. If the effect of the above factors is considered in the light of Rule 16(3), it would indicate that there has been no effort made by the petitioner to join duties for more than 3 years. It is, in this*

backdrop, that the School Tribunal has dismissed the appeal concluding that the petitioner was absent and there was no termination at the behest of the respondent/ Management.

16. At this juncture, Mr.Thote for the petitioner once again prays for an adjournment to call for and go through the R & P. I find this request to be quite unusual and unprecedented when no steps were taken for 16 years by the petitioner to call for R & P despite this Court having admitted the matter on 12/12/2001 and had not granted interim relief. Record also reveals that the petitioner, who had appeared in person, was absent on 13/03/2000, 12/07/2000 and finally notice had to be issued to the petitioner to remain present on 09/08/2001. After this Court started dictating this judgment, that it is again prayed that the matter be adjourned.

17. In the light of the above, call for R & P in Appeal No.71/1995 decided by the School Tribunal, Aurangabad on 29/11/1999, urgently and in any case on or before 02/05/2016.

18. Stand over to 04/05/2016 for considering the further submissions of the petitioner. Matter is treated as Part Heard and shall appear in the supplementary board.”

2. Learned Advocate for the petitioner today points out from the record and proceedings that an application dated 3.12.1994 was submitted by the petitioner to the Education Officer, stating therein, that he is being restrained by the management from signing the muster roll. It is, therefore, submitted that on the one hand, the management prevented the petitioner from reporting for duties and on the other hand, has taken a stand that the petitioner is unauthorizedly absent and has, therefore,

abandoned the employment. It is further stated that the date of retirement of the petitioner is 1.7.2013 and he has, therefore, crossed his retirement age.

3. Shri Sapkal and Shri Tope, learned Advocates for respondents 2 and 3 have controverted the submissions of Shri Patil. Their contention is that the petitioner has been adopting shifting stands. Before the Tribunal, he has alleged oral termination on 12.6.1995 and in the purported representation dated 3.12.1994 he has alleged that he was prevented from reporting for duties. This, therefore, indicates that the issue is with regard to absenteeism as put forth by the respondents, as against the claim made by the petitioner that he was prevented from joining duties.

4. The Honourable Supreme Court in the matter of Vidya Vikas Mandal and another Vs. Education Officer and others [2007 (3) Mah.L.J. 801 = 2007 (11) SCC 352], has held in paragraphs 9 and 10 as under:-

“9. As rightly pointed out by the learned Counsel for the appellants, Rule 37(6), which is mandatory in nature, has not been strictly complied with. The Inquiry Committee comprising of three members, as already noticed, only one member nominated by the Management has submitted his Inquiry report within the time stipulated as per Rule 37(6) and admittedly, the other two members nominated by the employee and an independent member have not submitted their report within the time prescribed under Rule 37(6). However, the learned Judges of the Division Bench, though noticed that the two members out of three found the

employee not guilty, failed to appreciate that the said findings by the two members of the committee were submitted after the expiry of the period prescribed under Rule 37(6). In our opinion, the report submitted by individual members is also not in accordance with the Rules. When the Committee of three members are appointed to inquire into a particular matter, all the three should submit their combined report whether consenting or otherwise. Since the report is not in accordance with the mandatory provisions, the Tribunal and the learned Single Judge and also the Division Bench of the High Court have committed a serious error in accepting the said report and acted on it and thereby ordering the reinstatement with back wages. Since the reinstatement and back wages now ordered are quite contrary to the mandatory provisions of Rule 37(6), we have no hesitation in setting aside the order passed by the Tribunal, and learned Single Judge and also of the Division Bench of the High Court. In addition, we also set aside the order passed by the Management based on the report submitted by the single member of the Committee, which is also quite contrary to the Rules.

10. *In view of the order now passed by this Court, the Rule 36(2) (a) is now to be invoked and as per the said Rule, one member from amongst the members of the Management is to be nominated by the Management or by the President of the Management if so authorised by the Management, and one member is to be nominated from amongst the employees of any private school and the third member to be chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred. We direct the Management of the School to constitute the Committee in accordance with Sub-Rules (i) (ii) & (iii) of Rule 36(2)(a) to go into the matter afresh. The respondent No. 2, the employee, will be now treated under suspension and he will be entitled to the subsistence allowance as per rules with effect from*

the date of termination of his services. The inquiry shall be completed by the Committee within a period of six months from the date of their nomination/constitution."

5. The petitioner submits that even today he is willing to face the allegation of abandonment of service if the management follows a proper procedure and proves unauthorized absenteeism against him.

6. As such, notwithstanding the conclusions drawn by the Tribunal that the petitioner had made no effort to join duties for more than three years, I am inclined to afford one more opportunity to the petitioner in the light of the letter dated 3.12.1994 addressed to the Education Officer.

7. The issue, therefore, is as to whether the petitioner was absent or as to whether he was restrained from performing his duties. Such a disputed issue needs to be investigated into. A departmental enquiry under Rules 36 and 37 of the the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 would, therefore, enable both the parties an opportunity to substantiate their respective stands.

8. Considering the view taken by the Honourable Supreme Court in the case of Vidya Vikas (supra), there can not be reinstatement or payment of suspension allowance to the petitioner since he has already passed his age of retirement. Despite the same, since the petitioner is willing to prove his case through a departmental enquiry that I am directing the

management to proceed to conduct a departmental enquiry.

9. In the light of the above, this petition is partly allowed with the following directions:-

(A) The finding of the Tribunal, that there is no oral termination at the hands of the respondent / management, is sustained.

(B) The finding of the Tribunal, that the petitioner has been remaining unauthorisedly absent, is set aside.

(C) The management shall follow the procedure as is laid down in Rules 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and conduct a departmental enquiry with regard to the charge of unauthorized absenteeism.

(D) The decision of the enquiry committee and the management shall relate back to 26.6.1995, which is the date on which the petitioner had preferred his appeal before the School Tribunal claiming termination. The order of punishment shall, therefore, be effective from 26.6.1995, by applying the Doctrine of Relation Back.

(E) If the petitioner is aggrieved by any decision of the management and the enquiry committee, he shall be at liberty to take recourse to the available legal remedy.

10. Rule is made partly absolute as above.

11. Learned Advocate for the petitioner has, therefore, tendered the

present complete address and cell number of the petitioner, so as to enable the management to enter into a correspondence with the petitioner, as under:-

*“House No.4-6-421,
'Mamata' Niwas,
Surya and Vishnu Saw Mill,
Ajabnagar,
Jalna Road,
Kranti Chowk,
Aurangabad
Cell No. 9673479300”*

(RAVINDRA V. GHUGE, J.)

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