

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8057 OF 2009

Parshuram Laxman Dudhe,
Age 42 years, Occ. Service
R/o Kharwad, Tq. Kalamnuri,
District Hingoli.

..Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Ministry of Education,
Mantralaya, Bombay.

2. The President,
Trisharan Shikshan
Prasarak Mandal,
Tq. Kalamnuri,
District Hingoli.

3. The Head Master,
Hiraman Khandre Vidyalaya,
Kharwad, Tq. Kalamnuri,
District Hingoli.

..Respondents

...
Shri K.H.Dhuldhwaj, Advocate for the petitioner
Shri S.D.Kaldate, AGP for the respondent 1

...

CORAM : RAVINDRA V. GHUGE, J.)
Dated: August 25, 2016

...

ORAL JUDGMENT:-

1. The petitioner is aggrieved by the judgment and order dated 07/09/2007 delivered by the School Tribunal, Latur, by which his Appeal No.81/2006 has been dismissed.

2. By order dated 06/07/2010, this petition was admitted.
3. Shri Dhuldhwaj, learned Advocate for the petitioner addressed this Court on 28/04/2016 when the matter was heard finally. He completed his submissions on the same day. Since Shri Adkine, learned Advocate for the Management did not appear in the matter even at the second call, it was adjourned to 04/05/2016 as part heard.
4. On 04/05/2016 Shri Adkine commenced his submissions and prayed for time till 09/05/2016 and agreed to address the Court on 09/05/2016 since this Court was available to take up regular matters in a special drive.
5. On 09/05/2016, Shri Adkine did not appear even at the second call. The matter was therefore adjourned to 12/05/2016. Even on 12/05/2016, Shri Adkine did not appear before the Court. Even today, he has not appeared.
6. In the light of the above, I am deciding this petition based on the submissions of the petitioner and the affidavit in reply filed by the In-charge Education Officer (Secondary) Z.P. Hingoli dated 19/01/2010.

7. The petitioner has contended in the petition as under :-

- [a] He was appointed on 14/06/1994 as an “Untrained Teacher” by the respondent/Management.
- [b] On 19/06/1996, he was issued with a certificate thereby recommending him for in service postal D.Ed.
- [c] In 1998, he completed his B.Ed.
- [d] By appointment order dated 01/09/1998, he was again inducted in service as an “Assistant Teacher” for the academic year 1998-1999.
- [e] The President of the Institution issued an Experience Certificate on 29/04/1999 stating therein that the petitioner is working since 15/06/1994.
- [f] He was orally refused employment on 29/04/1999.
- [g] The Management published an advertisement in “Marathwada Sathi” on 10/06/1999 calling for applications and the petitioner realized that he has been orally terminated from service.
- [h] The Management has not filed a written statement before the Tribunal, but has taken a stand stating that the petitioner had abandoned employment from 29/04/1999.
- [i] Stand of the Management is unsustainable since the Experience certificate is itself dated 29/04/1999 thereby indicating that the petitioner was available in the school.
- [j] Though no approval has been granted to the service of the petitioner, lack of approval cannot be a ground for terminating the services of an employee.
- [k] Reliance has been placed upon Rule 6 and Rule 8(2) of the M.E.P.S.Rules.

- [l] The Education Officer has filed a written statement contending that there is no vacancy and the petitioner cannot be accommodated.

8. Shri Dhuldhwaj, learned Advocate for the petitioner has relied upon the following cases:-

- (1) Progressive Education Society Vs. Rajendra and another - (2008) 3 SCC 310,
- (2) Ashok Pandurang Janjal Vs. Secretary, Tulasabai Kawal Vidyalaya - 2006 (4) Mh.L.J. 759,
- (3) Matoshri Ramabai Ambedkar Vidyarthi Vs. Bharat D. Hambir - 2009 (2) Mh.L.J. 121,
- (4) Progressive Education Society Vs. Nitin Krishnarao Nimbalkar - 2006 (4) Mh.L.J. 747,
- (5) Perwez Khajuddin Kalal Vs. State of Maharashtra - 2008 (5) Mh. L. J.523,
- (6) Madhukar Namdeo Ranbhour Vs. The State of Maharashtra - Writ Petition No.1758 of 2004 (Bombay), dated 22.3.2004 and
- (7) Buckingham and Carnatic Co. Ltd. Vs. Venkatiah & another - AIR 1964 SC 1272.

9. The Management has not filed an affidavit in reply in these proceedings though the matter pertains to the year 2009. Even before the Tribunal, no written statement was filed. An oral stand has been taken that the petitioner has abandoned employment.

10. The learned AGP has placed reliance on the affidavit in reply filed and submits that the Management never submitted any proposal

for seeking approval from his Office. Therefore, there is no occasion for the Education Officer to grant any approval to the appointment of the petitioner. As on date, there is no vacancy on grant-in-aid division of the said school.

11. Considering the effect of Rule 6 of the MEPS Rules, the petitioner has acquired the B.Ed. qualification in 1998 and as such there could not have been any termination on the ground of lack of requisite qualification. It is apparent that he was appointed on 14/06/1994 as an Untrained Teacher and there has been no termination before he completed his B.Ed. since his case was recommended for acquiring D.Ed. qualifications while being in service and pursuant to the same, he has acquired the said qualifications.

12. Rule 8(2) mandates that after the appointments of the teaching and non teaching posts have been made, the names and particulars of qualifications and experience of the persons so appointed shall be forwarded within a fortnight from the date of each of such appointment to the Education Officer and in the case of Jr.College of Education to the Deputy Director. The Management has therefore neither complied with Rule 8(2), nor has the Management forwarded the proposal of the petitioner to the Education Officer or the competent authority for seeking approval. It is stated by the petitioner that he was not paid any salary from 14/06/1994 till

29/04/1999. There is no dispute that the petitioner is 50 years old today and is out of employment for more than 17 years.

13. Considering the above and that an experience certificate was issued by the management on 24.9.1999, there cannot be an abandonment of service from the said date, as per the stand taken.

14. Considering the above recorded peculiar facts, I find it apparent that the management, after appointing the petitioner, did not comply with the provisions of the MEPS Act and the Rules thereunder, so as to seek an approval and thereby regularize the petitioner. The management, therefore, needs to be penalised for this conduct. As stated by the learned AGP, on the basis of the affidavit, since there is no vacancy available and as the petitioner had worked for about 5 years and is out of employment for 17 years, there cannot be reinstatement in service.

15. I am, therefore, directing the management / respondent No.2 i.e. Trisharan Shikshan Prasarak Mandal, Kalamnuri, District Hingoli to pay compensation to the petitioner in the form of six months salary, payable to an Assistant Teacher today, along with allowances under Section 11(2)(e) of the MEPS Act, which reads as under:-

“Section 11 - Powers of Tribunal give appropriate reliefs and directions.

(1)

(2) *Where the Tribunal after, giving reasonable opportunity to both parties of being heard, decides in any appeal that the order of dismissal, removal, otherwise termination of service or reduction in rank was in contravention of any law (including any rules made under this Act), contract or conditions of service for the time being in force or was otherwise illegal or improper, the Tribunal may set aside the order of the management, partially or wholly, and direct the Management,-*

(a)

(b)

(c)

(d)

(e) *where it is decided not to reinstate the employee or in any other appropriate case, [1] [to give to the employee twelve months' salary (pay and allowances, if any) if he has been in the service of the school for ten years or more and six months salary (pay and allowances, if any) if he has been in service of the school for less than ten years], by way of compensation, regard being had to loss of employment and possibility of getting or not getting suitable employment thereafter, as it may specify; or*

(f) ”

16. Said compensation shall be paid in lieu of reinstatement and other benefits within a period of twelve weeks from today, failing

which the said amount shall carry interest at the rate of 6 per cent from the date of the impugned judgment - 7.9.2007.

17. So also, the petitioner is at liberty to approach the competent Education Officer, for staking a claim for unpaid wages, if any.

18. This petition is, therefore, partly allowed and Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

...

akl/d