

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2683 OF 2014

Bharat S/o Dnyanoba Aghav,
Age-43 years, Occu-Service,
R/o Navratan Nagar, Sai Road,
Latur.

PETITIONER

VERSUS

1. The Secretary,
Maharashtra Shikshan Mandal,
Shivnagar, Latur,
C/o Rajmata Jijamata Higher Secondary School,
Shivnagar, Latur,
2. The Principal,
Rajmata Jijamata Higher Secondary School,
Shivnagar, Latur,
3. The Deputy Director of Education,
Latur Region, Latur,
Gandhi Chowk, Latur

RESPONDENTS

Mr.A.N.Nagargoje, Advocate for the petitioner.
Mr.V.G.Sakolkar, Advocate for respondent Nos. 1 and 2.
Mr.D.R.Korde, AGP for respondent No.3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 15/01/2016

ORAL JUDGMENT :

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

2. The petitioner is aggrieved by the impugned judgment of the

School Tribunal Latur dated 20/02/2014 delivered in Appeal No.36/2011 only to the extent of clause nos.3, 4 and 5 of the operative part.

3. The petitioner had alleged oral termination on 24/03/2009. The Management came up with a defence that the petitioner had resigned from service and hence there was no necessity to conduct an enquiry under Rule 36 and 37 of the M.E.P.S. Rules, 1981. The petitioner points out that the School Tribunal partly allowed the appeal by concluding that the acceptance of Resolution dated 01/01/2009 and the oral termination of the petitioner dated 24/02/2009 are unsustainable in law and hence have been set aside. The respondent/Management is directed to conduct an enquiry and for the purpose of an enquiry, the petitioner shall be reinstated in service.

4. Mr.Nagargoje, learned Advocate has strenuously criticized the impugned judgment to the extent to which a challenge has been posed in this petition. Grievance is that once his termination is set aside, reinstatement with continuity and full back wages is a relief which is consequentially available to the petitioner. Denial of back wages and permitting the respondent/Management to cure the

deficiency of not conducting an enquiry is an unsustainable conclusion.

5. He draws my attention to the observations of the School Tribunal in paragraph nos.18 and 19 by which the case of the respondent/Management that the petitioner was conducting coaching classes privately, has not been accepted.

6. It, therefore, has to be presumed that the petitioner is not gainfully employed.

7. With regard to the photographs of his coaching classes, signboard of his coaching classes, his name and cellular phone no. appearing on the signboards is concerned, Mr.Nagargoj submits on instructions that the said signboards have not been put up by the petitioner and he is not conducting coaching classes.

8. Mr.Sakolkar, learned Advocate appearing for the respondent/Management has strenuously submitted that the petitioner is making a false statement regarding the signboards and his coaching classes. He earns about Rs.1,00,000/- per month. He charges about Rs.15,000/- per student. Since his coaching classes were

flourishing, he had tendered his resignation and which was accepted. Now that the School Tribunal has set aside the acceptance of resignation, the Management has seriously attempted to reinstate the petitioner, has conducted an enquiry in accordance with law and the petitioner has now been terminated from service by way of punishment.

9. I have considered the submissions of the learned Advocates as have been recorded hereinabove. With their assistance, I have gone through the record available and the impugned judgment threadbare.

10. In my view, the School Tribunal has not granted back wages to the petitioner keeping in view that the respondent/Management is given the liberty to conduct an enquiry and to arrive at a conclusion as to whether the petitioner has been conducting coaching classes, as a consequence of which, he was not reporting for duties. In my view, if the Enquiry Officers conclude that the petitioner was not conducting coaching classes, then, his contention of not being gainfully employed, will have to be accepted. However, in the event it is concluded that he was conducting such coaching classes, it would have to be concluded that he was gainfully employed by way of self-employment. In these circumstances, grant of back wages would

amount to a travesty of justice.

11. Taking into account the factual matrix of this case, I deem it proper that the issue of back wages, as is left open by the School Tribunal, shall be subject to the enquiry permitted by the School Tribunal. The petitioner is, therefore, granted liberty to raise the issue of back wages w.e.f. 01/01/2009 till his actual reinstatement while assailing the subsequent decision of the Management.

12. In so far as the challenge of the petitioner to the liberty granted by the School Tribunal to the Management for conducting an enquiry is concerned, I do not find that the said challenge is sustainable. It is trite law that in a case where the enquiry is set aside or has not been conducted, the employer is permitted to conduct an enquiry in accordance with the rules. On this count, the conclusion of the School Tribunal cannot be faulted.

13. In the light of the above, this petition is disposed of with the above observations. Rule is discharged.

(RAVINDRA V. GHUGE, J.)