

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7579 OF 2005
WITH
CIVIL APPLICATION NO.14162/2016

Waman Gundappa Biradar
Age 46 years, Occ. Asstt. Teacher,
R/o Chilghali, Tq. Udgir,
District Latur at present
Residing at Selu, Tq. Ausa,
District Latur.

..Petitioner

Versus

1. Shri Ganesh Shikshan Prasarak
Mandal, at Selu, Tq. Ausa,
Through its President
Baburao Dhondiram Singapure,
R/o Selu, Tq. Ausa, Dist. Latur.

2. The Head Master
Shri Gangadhar Tulsiram Dande
of Shri Ganesh Vidyalaya (School),
At Selu, Tq. Ausa, Dist. Latur.

3. Angad Ganpatrao More
Age major, Occ. Secretary
of Shri Ganesh Shikshan Prasarak
Mandal, Selu, Tq. Ausa,
District Latur.

4. Suhas Keshavrao Kulkarni
age 47 years, Occ. Nil
R/o C/o The Head Master
Shri Gangadhar Tulsiram Dande
of Shri Ganesh Vidyalaya (School),
At Selu, Tq. Ausa, Dist. Latur.

5. The Education Officer (S),
Zilla Parishad, Latur.

..Respondents

WITH
WRIT PETITION NO. 4237 OF 2006

1. Baburao Dondiram Singapure,

Age 58 years, Occ. Agriculture
and President Shri Ganesh Shikshan
Prasarak Mandal, at Selu, Tq. Ausa,
District Latur.

2. Shri Gangadhar Tulsiram Dande
Age 59 years, Occ. Agriculture and
The Head Master
Shri Gangadhar Tulsiram Dande
of Shri Ganesh Vidyalaya (School),
At Selu, Tq. Ausa, Dist. Latur.

..Petitioners

Versus

1. The Education Officer (S),
Zilla Parishad, Latur.

2. Angad Ganpatrao More
Age major, Occ. Secretary
of Shri Ganesh Shikshan Prasarak
Mandal, Selu, Tq. Ausa,
District Latur.

3. Suhas Keshavrao Kulkarni
age 47 years, Occ. Nil
R/o C/o Shri Ganesh Vidyalaya (School),
At Selu, Tq. Ausa, Dist. Latur.

4. Waman Gundappa Biradar
Age 46 years, Occ. Asstt. Teacher,
R/o Chilghali, Tq. Udgir,
District Latur at present
Residing at Selu, Tq. Ausa,
District Latur.

..Respondents

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Advocate for Petitioners : Shri N.P.Patil Jamalpurkar

Advocate for Respondent 3 : Shri V.D.Salunke

Advocate for Respondent 4 : Shri R.B.Kale

AGP for Respondent 5 : Shri N.T.Bhagat,

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CORAM : RAVINDRA V. GHUGE, J.

Dated: December 20, 2016

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ORAL JUDGMENT :-

1. The petitioner in the first petition is the original appellant, who has challenged his termination dated 15.9.1992 on the ground that his approval has come to an end after the end of the academic year 1991-92. His appeal is dismissed by the impugned judgment dated 17.10.2005.

2. The petitioners in the second petition claimed to be the President and Head Master of the Education Society. Both have challenged the same judgment of the School Tribunal, dated 17.10.2005, by which, No.28 of 1992 (renumbered as Appeal No.44 of 2004 upon being transferred) has been dismissed.

3. For the sake of clarity, the petitioner in the first petition would be referred to as the original appellant. The petitioner in the second petition shall be referred to as the “President” . Shri Angad Ganpatrao Mane, respondent in both the petitions, who has claimed to be the Secretary of the institution, shall be referred to as the “Secretary”. The employee who sought intervention in the Appeal of 1992 in 2004 before the Tribunal, would be referred to as “Shri Kulkarni” by his name.

6. The appellant as well as the President have challenged the

judgment of the Tribunal dated 17.10.2005.

7. The contentions of the appellant can be summarized as under:-

(a) The appellant was earlier working with Rayate Vibhag High School prior to his appointment in the School at issue.

(b) Pursuant to an advertisement, the appellant applied and was appointed as an Assistant Teacher by the School Committee in Shri Ganesh Vidhyalaya, Selu by order dated 12.8.1991.

(c) The resolution passed by the School Committee on 11.8.1991 and which is signed by the Members of the School Committee indicates that that the School Committee resolved to appoint the appellant.

(d) The subject "Continuation Order" mentioned in the order of appointment dated 12.8.1991 was corrected by the President and the Head Master by communication dated 1.3.1994.

(e) There are two groups in the management of the

education institution and the two groups are litigating for supremacy.

(f) By order dated 14.1.1993, in Writ Petition No.2177 of 1992 to which the President and the Secretary are a party, this Court directed the Board of Trustees whose election was challenged in Appeal No.18 of 1992, that they would not make any fresh appointments and would not deal with the immovable properties of the trust or purchase properties till the final disposal of the appeal.

(g) Approval to the appointment of the appellant was granted by the Education Officer.

(h) By order dated 15.5.1992, the service of the appellant was brought to an end only for the reason that his approval was for one academic year and as the academic year has come to an end, he is being relieved from service.

(i) The termination order of the appellant has been signed by the Secretary, who is the respondent in these matters. The President has not signed it and there is no resolution to discontinue the appellant.

(j) By interim relief granted by the Tribunal, dated 1.7.1992, the appellant was continued in service.

(k) He continued to discharge his duties and was in service till the appeal was dismissed by the School Tribunal on 17.10.2005.

(l) After dismissal of the appeal, a formal order of termination was not issued by the management.

(m) The appellant filed Writ Petition No.7579 of 2005 and this Court, by order dated 18.11.2005, granted status quo as on date.

(n) Pursuant to the said interim relief the appellant continued in employment and this Court by order dated 1.2.2006 admitted the petition and continued the interim relief.

(o) On 30.6.2016 the appellant has attained the age of superannuation and has retired from service.

(p) There is no whisper in the order of termination that the appellant was not qualified or that the appellant was never

appointed or that the appellant was appointed during the temporary absence of Shri Kulkarni.

(q) The School Tribunal without considering the above facts came to a conclusion that the appellant had caused fabrication of documents along with the President and the Head Master and therefore, the appeal deserves to be dismissed.

8. Shri Salunke, learned Advocate appearing on behalf of the respondent / Secretary in both these matters has submitted as under:-

(a) It is disputed that because of the interim orders dated 1.7.1992 and further order of status quo granted by this Court on 28.11.2005, the appellant was continued in service and he has retired on 30.6.2016.

(b) The appellant was never appointed legally.

(c) The appointment order dated 12.8.1991 is not an appointment order but is an illegal continuation order.

(d) The President and the Head Master have supported the

appellant in Appeal No.98 of 1992.

(e) Only to support the appellant, the second Writ Petition No.4237 of 2006 has been filed by the President.

(f) Shri Kulkarni was appointed as Assistant Teacher in 1989 and was approved for the academic years 1989 till 1991.

(g) Shri Salunke denies that there was any interim relief after the dismissal of the appeal and this Court has granted the status quo which has been wrongly interpreted and the appellant was continued in service.

(h) Shri Kulkarni was sent for training under the sanction of the Education Officer.

(i) The name of the appellant appeared in the approval order for the academic year 1991-92 issued by the Education Officer.

(j) At best, the appellant can be said to be appointed in place of Shri Kulkarni.

(k) The President prepared the appointment order by

forgery.

(l) The Tribunal has rightly concluded that the appointment of the appellant was not on a permanent vacant post and since the appellant acted in collusion with the President and the Education Officer, his appeal was rightly dismissed.

(m) Though the appellant has retired, considering the forgery, he should not be granted retiral benefits.

9. Shri Kale, learned Advocate appearing on behalf of Shri Kulkarni / respondent who has been appointed in 1989 has adopted the arguments and submissions of Shri Salunke. He has further submitted that though he intervened in Appeal No.28 of 1992 in 2004 before the Tribunal, he is entitled for continuation in service from 1991 onwards with all incidental and consequential benefits.

10. I have considered the submissions of the learned Advocates and have reproduced the same herein above in order to avoid repetition. I have gone through the record as is available with the assistance of the learned Advocates.

11. This case is yet another classic example of a dispute between

two groups of purported office bearers of an educational institution which appears to have seriously affected atleast two persons i.e. the appellant and Shri Kulkarni. In the battle for gaining control of the educational institution and the trust, it appears that both these Teachers have suffered the brunt of such a dispute.

12. It appears that the appellant was earlier working in an another institution and upon considering the possibility of acquiring employment at his home town, he had applied. The order dated 12.8.1991, issued by the School Committee of Shri Ganesh Vidhyalaya, Selu indicates that he would be treated as being continued in employment taking into account his earlier service with Rayate Vibhag High School from 25.6.1985 till 19.6.1991. The said order has been subsequently corrected by order dated 1.3.1992.

13. Rule 9(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("MEPS Rules" for short) reads as under:-

"9. Appointment of staff.

(2) Appointments of teaching staff (other than the Head and Assistant Head) and those of non-teaching staff in a school shall be made by the School Committee;

Provided that, appointments in leave vacancies of a

short duration not exceeding three months, may be made by the Head, if so authorised by the School Committee.”

14. The above Rule, therefore, indicates that the teaching staff as well as the non teaching staff in a school can be appointed by the School Committee, barring the appointment of the Head and the Assistant Head. The signatures of the School Committee along with the President appear on the appointment order. Similarly, signatures of five persons also appear along with the signature of the President in the Resolution dated 11.12.1991 which was passed by the School Committee for appointing the appellant. No doubt there are two groups amongst the management and each group alleges and attributes illegalities and illegal actions to the other group. The fact remains that the Education Officer has approved the appointment of the appellant.

15. By scrutinizing these documents, I have gone through the observations of the School Tribunal in paragraph No.20 of the impugned order, which are as under:-

“20. On taking into consideration the rival submissions of both the parties and on perusal of the documents on the record, it is seen that the appellant with respondent no.1 and 2 in collusion have committed illegalities in making his

appointment absolutely illegal and that to in place of the respondent no.4 and further is collusion with the E.O. obtained approval and by virtue of the court order the respondent 1 and 2 having positive knowledge about their illegalities and by fabrication of documents have made wrongful gains by withdrawing salary bills in the name of the appellant and thereby caused wrongful loss to the state exchequer and wrongful gain to themselves. They are therefore, liable to make good the loss caused to the state Exchequer and the said amount be recovered personally from the president of the respondent no.1 viz. Shingnapure, the respondent no.2 Head Master and the Education officer, who at the relevant time granted approval to the illegal appointment of the appellant. It is further seen that the respondent no.1 and 2 unscrupulously deprived the respondent no.4 from the legitimate claim on the post of Asstt. Teacher, who was otherwise entitled to get all the benefits as per rules and regulations.”

16. If the said conclusions are scrutinized, I do not find that the Tribunal has discussed the effect of any document or the appearance of any document to be a forged document or an act of forgery. The reproduced paragraph above indicates that the Tribunal has got carried away by the submissions of the Secretary that illegalities

have been committed. The documents considered by me herein above, in the light of Rule 9(2) which empowers the School Committee to appoint teaching staff, have not been considered by the Tribunal in any manner. In my view, before coming to such a grave and serious conclusion that documents have been fabricated, mere observations without referring to the documents cannot be termed to be a correct approach since such conclusions can have devastating effect on the persons who are alleged to have committed illegalities. For these reasons, I find that the conclusion of the Tribunal in paragraph No.20 needs to be set aside.

17. In so far as the termination of the appellant is concerned, the Secretary / respondent No.3 in the first petition, who is respondent No.2. in the second petition, has signed and issued the order of termination dated 15.5.1992 in vacation. Notwithstanding that the order has been issued in vacation under his solitary signature, the fact remains that the only reason set out in the order of termination is that the approval for the academic year granted to the appellant has come to an end. No other reason is cited, much less, that the appellant was illegally appointed or that he was secretly inducted in service or that he was working in place of Shri Kulkarni. This termination order, therefore, is required to be tested on the ground on which it has been issued. Fresh grounds cannot be inserted in the order of termination.

18. The learned Full Bench of this Court in the matter of St. Ulai High School and another Vs. Devendraprasad Jagannath Singh and others [2007 (1) Mh.L.J. 597], has concluded that lack of approval cannot be a ground for termination. The law is thus settled that lack of approval may not necessarily call for the termination of an employee.

19. Considering the above, I find that this petition preferred by the appellant deserves to be allowed and consequentially the petition filed by the President and the Head Master would also stand allowed.

20. In so far as the retiral benefits of the appellant are concerned, it cannot be ignored that he has been reinstated in service by the interim order of the Tribunal and he has retired on 30.6.2016. It is submitted for the appellant that he is suffering from Cancer and is unfortunately in the terminal stage.

21. In the light of the above, both these petitions are allowed. The impugned judgment of the School Tribunal dated 17.10.2005 stands quashed and set aside and Appeal No.28 of 1992 (New Number 44 of 2004) stands allowed. The appellant would, therefore, be entitled for retiral and pensionary benefits in accordance with Rules.

22. Before parting with these matters, I find it appropriate to refer to the plight of Shri Suhas Keshavrao Kulkarni. He had proceeded for training in 1991 and it appears that owing to the internal dispute in between the management, he did not find himself in employment after he returned from training. Ordinarily he should have challenged his alleged termination or oral refusal of work. However, he has done neither and has contended before this Court that he should be reinstated in service or he should be deemed to be continued in service from 1991 till he has attained the age of superannuation. Since such a prayer has been made before this Court and there is no proceeding before this Court to deal with the said prayer, it can only be left to Shri Kulkarni to approach the management for the consideration of his claim.

23. Pending Civil Application does not survive and stands disposed off.

24. Rule is made absolute in above terms.

(RAVINDRA V. GHUGE, J.)

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