

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10216 OF 2016

1 Mahatma Phule Shikshan Sanstha,
Panewadi, Through it's Secretary,
Atmaramji s/o Satyabhanji Tidke,
Age : 62 years, Occupation : Agri,
R/o At Post Panewadi, Tq.Ghansawangi,
Dist.Jalna.

2 Mahatma Phule High School,
Panewadi, Through it's Head Master,
Tq.Chansawangi, Dist.Jalna.

...PETITIONERS

-VERSUS-

1 Dattatraya s/o Madhavrao Pokale,
Age : 40 years, Occupation : Nil,
R/o Shinde Wadgaon, Post.Panewadi,
Dist.Jalna.

2 The Education Officer (Secondary),
Zilla Parishad, Jalna.

...RESPONDENTS

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Advocate for Petitioners : Shri D.J.Chaudhari.
Advocate for Respondent No.1 : Shri N.E.Deshmukh.
AGP for Respondent 2 : Shri S.B.Joshi.

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**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 14th October, 2016**

Oral Judgment :

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

2 The Petitioner / Management is aggrieved by the order dated 05.01.2016 delivered by the School Tribunal, Aurangabad by which Miscellaneous Application No.20/2014 filed by the Petitioner has been rejected.

3 The Petitioner had suffered an ex-parte judgment of the School Tribunal dated 31.10.2014 by which Appeal No.15/2014 filed by Respondent No.1/ Appellant was allowed. His termination dated 16.06.2014 was quashed and set aside and he was granted reinstatement with continuity and back wages.

4 Shri Chaudhari, learned Advocate for the Petitioner/ Management, submits that Respondent No.1/ Employee had manipulated the Postal Authorities after the School Tribunal issued notices on his appeal. He manipulated the postal remark as “party refused/ refused to accept” and projected a picture before the School Tribunal that the Petitioners are refusing service of the court notice. It is in this backdrop that an ex-parte judgment was delivered on 31.10.2014.

5 He further submits that in less than 30 days, the Petitioners filed the Miscellaneous Application seeking recalling of the ex-parte judgment under Section 10 of the MEPS Act, 1977. By the impugned

order, the said application has been rejected on the ground that the refusal of the court notice is apparent. He, therefore, prays that the impugned order be set aside and by allowing the miscellaneous application, the impugned judgment dated 31.10.2014 be quashed. He further prays that the School Tribunal be directed to decide the appeal of Respondent No.1/ Appellant on its own merits.

6 Shri Deshmukh, learned Advocate for Respondent No.1/ Appellant, submits that Petitioner No.1/ Secretary resides on a different address and Petitioner No.2/ Headmaster resides on a different address. Respondent No.1/ Appellant is a terminated employee. It was beyond his means to manipulate the Postal Authorities and that too in the manner and fashion as is being suggested by the Petitioners. The contention of the Petitioners has been rejected by the School Tribunal after it was convinced that Respondent No.1/ Appellant had not manipulated the Postal Authorities. It was also noted that the Education Officer was duly served by the court notice. It is only these Petitioners, who pretended that the notice was never served on them, therefore, have put forth a concocted version.

7 Shri Deshmukh further submits that after the execution proceedings were initiated and the Petitioners realized that the back

wages would amount to about Rs.11 lac, that they have got activated. Even in the execution proceedings, they did not appear on the first date despite service and it is only from the second date of hearing that they had participated in the execution proceedings fearing that the order of execution would be passed against them.

8 He strenuously submits that in the event the ex-parte judgment is set aside, Respondent No.1 would suffer rigours of the litigation on account of the callous attitude of the Petitioners. He prays for the dismissal of this petition with heavy costs.

9 I have considered the submissions of the learned Advocates as have been recorded herein above.

10 It is a disputed issue as to whether, Respondent No.1/Appellant manipulated the Postal Authorities or not. The fact remains that the envelopes which carried the notice for service on the Petitioners, have been returned to the School Tribunal with the remark that the Petitioners have refused to accept the notice.

11 Notwithstanding the above, the fact remains that an ex-parte judgment has been delivered by the School Tribunal in an appeal which

was presented on 14.07.2014 and was decided in three months on 31.10.2014. It would be in the interest of justice that the appeal is decided on its own merits. At the same time, it cannot be ignored that the back wages awarded to Respondent No.1/ Appellant are about Rs.11 lac and by remanding the appeal for a rehearing, the clock will have to be turned back by two years. Consequentially, Respondent No.1, who is out of employment, will have to further suffer rigours of the litigation which could only be compensated by imposing costs on the Petitioner/ Management.

12 In the light of the above, the impugned order dated 05.01.2016 delivered by the School Tribunal in Miscellaneous Application No.20/2014 is quashed and set aside keeping in view the judgment delivered by this Court in the matter of *Vyankatesh Sikshan Prasarak Mandal vs. State of Maharashtra*, **2002(2) ALL M.R. 826 : 2002(2) Bom.CR 284**, vide which it is concluded that the School Tribunal can exercise its powers under Section 10 keeping in view Order 41 Rule 21 of the Code of Civil Procedure. As such, Miscellaneous Application No.20/2014 is allowed and the ex-parte judgment dated 31.10.2014 is set aside by directing the Petitioner/ Management to pay costs of Rs.50,000/- (Rupees Fifty Thousand) to Respondent No.1/ Appellant by depositing the same on the date of appearance before the School Tribunal. Respondent

No.1/ Appellant shall withdraw the said amount of Rs.50,000/- without any conditions.

13 Appeal No.15/2014 is, therefore, remitted to the School Tribunal at Aurangabad. All the litigating sides shall appear before the School Tribunal on 18.11.2016. Formal notices need not be issued. The Petitioners shall deposit costs of Rs.50,000/- (Rupees Fifty Thousand) on 18.11.2016 along with their Written Statement, before the School Tribunal. The application for extension of time shall not be entertained on this count. Respondent No.2/ Education Officer is also expected to file the Written Statement so as to assist the School Tribunal. Appeal No.15/2014 shall then be decided by the School Tribunal on its own merits.

14 It be noted that in the event the amount of costs is not deposited as directed above, this order shall stand recalled, this petition shall then stand dismissed and the judgment of the School Tribunal dated 31.10.2014 shall then stand restored.

15 Rule is made partly absolute in the above terms.