

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10793 OF 2014

(The President, Hari Om Shikshan Prasarak Mandal, and others Vs.
Sukhdeo Namdeo Zirpe and others)

Mr.S.S.Thombre, Advocate for the petitioners.

Mr.Abhijit Choudhari h/f Mr.D.J.Choudhari, Advocate for respondent No.1.

Mr.P.N.Kutti, AGP for respondent Nos. 2 and 3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 05/10/2016

PER COURT :

1. After the hearing in the matter was complete on 19/07/2016, I
had passed the following order :-

“1 *Hearing in this matter is complete.*

2 *After the learned Advocates have closed their submissions, I expressed my view that since the resignation has not been accepted in accordance with the Rules provided under the Special School Code, 1997 applicable to the schools for special children, the acceptance of resignation is rendered unsustainable. So also, it is an admitted position that an amount of Rs.1,25,000/- was paid by the Petitioner/ Management to Respondent No.1/ employee, who submits that, Rs.90,000/- of the said amount was towards the hand-loan that he had extended to the President of the Institution. The records of the said school are said to have got burnt in a fire.*

3 I, therefore, made it clear to the litigating sides that
in the above peculiar circumstances, the Petitioner/
Management would be at liberty to initiate a disciplinary
enquiry against Respondent No.1/ employee for those acts
which have been considered in the order of this Court dated
13.10.2015 and during the pendency of the said proceedings,
Respondent No.1 would not be entitled for monetary benefits.

4 The learned Advocate for Respondent No.1/
employee submits that he would take instructions as to
whether, the employee is willing to waive all monetary benefits
from the date of termination till today on the condition that the
Petitioner would reinstate the employee at any place of the
choice of the Petitioner/ Management and far away from the
place where the employee was working at the time of his
alleged resignation.

5 Shri Thombre also seeks time to take instructions
whether, such offer of the employee is acceptable to the
Management.

6 It is made clear that the matter is being adjourned
only to enable the parties to take instructions for the reasons
stated above. In the event, the parties do not settle the matter,
this Court would proceed to deliver it's judgment. There shall be
no further submissions of the learned Advocates.

7 By the consent of the parties, stand over to

02.08.2016.”

2. On 10/08/2016, considering the submissions of the learned Advocates, the following order was passed :-

“1. Shri Thombre, learned Advocate for the petitioner, in response to the proposal of respondent No.1 recorded in the order of this Court dated 19.7.2016, submits that respondent No.1 can be accommodated at it's institution at village Massajog, Tal.Kaij, Dist.Beed.

2. Shri Chaudhary, learned Advocate prays for some time to take instructions and make a statement.

3. S.O. to 22.8.2016.”

3. On 22/08/2016, as the controversy about the Institution at village Massajog occurred, I had passed the following order :-

“1. Since the learned Advocate for respondent No.1 submits that the institution at village Massajog may not be a recognized institution, learned AGP shall take instructions and make a statement on the next date.

2. S.O. to 7.9.2016.”

4. It is stated today by the learned Advocate for respondent No.1 / employee that presently the petitioner/Institution operates only 1 school which is Aadarsh Matimand Niwasi Vidyalaya at Nandur Phata, Tal.and Dist.Beed.

5. There is no dispute that the resignation letter dated 08/02/2006 is on record and the same has been accepted pursuant to the suspension of the employee and issuance of a charge sheet. In my view, if it is established that Rs.1,25,000/- have been paid by the petitioner as a “full and final payment” of legal dues which the petitioner has voluntarily accepted, it would indicate that he had no grievance about the acceptance of his resignation. However, if the said amount is not towards the payment of legal dues and is purportedly towards repayment of Rs.90,000/- as a hand loan purportedly extended by the employee to the petitioner / institution, the issue then would be as to why did he accept Rs.1,25,000/- and that too at the time when he was relieved from employment. These disputed aspects cannot be gone into by this Court, is the strenuous contention of the petitioner.

6. In this backdrop, this matter deserves to be remitted to the competent authority / respondent No.3 so as to enable the litigating sides to place on record such material which would enable the competent authority to decide the issue of acceptance of compensation at the time of being relieved from employment, which would have an impact on the outcome of the dispute between the litigating sides.

7. In the light of the above, this petition is partly allowed and the impugned order dated 13/10/2014 is set aside and the matter is remitted to respondent No. 3 for deciding Appeal No.2/2006 with the following directions :-

- [a] All contentions of the litigating sides are kept open.
- [b] The competent authority, while considering the case under Rule 87 of the Special School Code, 1997, shall consider whether the employee had consented to the acceptance of the resignation forthwith, by conduct.
- [c] The competent authority shall also decide as to whether the amount of Rs.1,25,000/- was paid by the petitioner towards legal dues.
- [d] If yes, whether the acceptance of the legal dues would indicate that the employee had consented to being relieved immediately and had accepted the compensation towards relinquishing all rights to employment.
- [e] The litigating sides shall appear before respondent No.3 on 20/10/2016 at 3.00 p.m. and shall participate in the proceedings on such dates on which the matter would be posted for hearing.
- [f] The competent authority shall endeavour to decide the proceedings as expeditiously as possible and preferably on or before 28/02/2017.

(RAVINDRA V. GHUGE, J.)