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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.11714/2015

Babu s/o Nagappa Phulari,
age 55 yrs., occu.service,
r/o Mamta Colony, Karegaon Road,
Parbhani Tq. & Dist.Parbhani.
...Petitioner..
(Org.appellant)

Versus

- 1] President,
Mahatma Phule Education Society,
Parbhani, Jintor Road, Parbhani.
- 2] Secretary (Died),
Mahatma Phule Education Society,
Parbhani, Jintor Road, Parbhani.
- 3] Joint Secretary (Incharge Secretary),
Mahatma Phule Education Society,
Parbhani, Jintor Road, Parbhani.
Through Raosaheb Ramrao Deshmukh,
age 65 yrs., occu.agril.,
r/o Laxminagar, Near Pardeshwar Mandir,
Parbhani. Tq. & Dist.Parbhani.
- 4] Education Officer (Secondary),
Zilla Parishad, Parbhani.
- 5] Deputy Director (Education),
Aurangabad.

...Respondents...

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Shri M.V. Ghatge , Advocate for petitioner.
Shri V.D. Gunale, Advocate for respondent no.1.
Shri H.I. Pathan, Advocate for respondent no.3.
Shri D.R. Korde, AGP for respondent nos.4 & 5.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 03.02.2016

ORAL JUDGMENT :

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

2] The petitioner is aggrieved by an interlocutory order passed by the School Tribunal, Latur, dated 9.10.2015 by which the application for interim relief (Exh.5) has been rejected by the Tribunal.

3] Shri Ghatge for the petitioner has narrated a host of factors. He has advanced lengthy submissions taking me through the various aspects of the case. The issue is that the petitioner contends of being precluded from signing the Muster Roll, marking his attendance and discharging his duties from 2013 at the behest of the management. Several representations running into about 30 to 40 pages placed on record are also cited. These representations range between 4.4.2013 to 20.4.2015.

4] Shri Ghatge further submits that though the management has taken a stand that it has dismissed the petitioner from service on 30.4.2014 after conducting a

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full-fledged departmental enquiry, neither was the statement of allegations served upon the petitioner nor was an Enquiry Committee constituted. The petitioner was not given any opportunity of replying to the statement of allegations and the charge-sheet. Rules 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, have been blatantly violated. The enquiry is shrouded in mystery and there is an immense secrecy maintained by the respondent – management with regard to the enquiry. No opportunity of appointing his nominee was made available to the petitioner.

5] He, therefore, submits that the termination deserves to be stayed. Alternatively, he submits that the wages payable to the petitioner till his purported date of termination 30.4.2014 should be deposited before the School Tribunal.

6] Shri Ghatge relies upon the Division Bench judgment of this Court in the matter of *Maharashtra Shikshan Sanstha, Nagpur v. Education Officer, Zilla Parishad, Nagpur* (1995 (1) Mh.L.J. 875) to contend that paragraph no.8 of the judgment creates a scope to consider grant of interim relief, which may not be of the

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nature of final relief. Paragraph no.8 of the said judgment reads as under:-

"8. Section 11 of the Act then confers substantive powers upon the Tribunal for passing appropriate orders and for giving appropriate reliefs in the appeal before it. Sub-section (1) thereof provides for the dismissal of the appeal if it is not in respect of any of the matters specified in section 9 or is not maintainable or there is no sufficient ground to set aside the order of the Management under appeal. However, sub-section (2) of section 11 is relevant for our purpose in regard to the substantive powers of the School Tribunal in appeal. It is reproduced below for ready reference :

"(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 -

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(a) to reinstate the employee on the same post or on a lower post as it may specify;

(b) to restore the employee to the rank which he held before reduction or to any lower rank as it may specify;

(c) to give arrears of emoluments to the employee for such period as it may specify;

(d) to award such lesser punishment as it may specify in lieu of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be;

(e) where it is decided not to reinstate not to reinstate the employee or in any other appropriate case, to give to the employee twelve months' salary (pay and allowances, if any) if he has been in service of the School for less than 10 years or more and six months' salary (pay and allowances, if any) if he has been in service of the School for less than 10 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) to give such other relief to the employee and to observe such other conditions as it may specify, having regard to the circumstances of the case."

7] Shri Gunale has strenuously supported the impugned order. He submits that the petitioner is guilty of unauthorized absenteeism. A domestic enquiry was conducted as per Rules 36 and 37 of the MEPS Rules. He neither replied to the imputations nor did he reply to the charge-sheet. He neither appointed his nominee nor did he participate in the enquiry. The correspondence between the management and the petitioner with regard to his enquiry is by registered post acknowledgement due. The registered envelopes and the postal record will speak louder than words.

8] Shri Gunale further submits that the entire enquiry record in its original form inclusive of the envelopes in original form shall be placed before the School Tribunal for its perusal.

9] He further submits that there is no reason for the respondent to be directed to deposit the wages before the School Tribunal till 30.4.2014 since the charge

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leveled upon the petitioner is of unauthorized absenteeism from April, 2013 till 30.4.2014 when he was dismissed from service. Eventually, if his appeal is decided in his favour, he would be entitled for reinstatement, continuity and back wages, as may be awarded by the School Tribunal.

10] I have considered the submissions of the learned Advocates.

11] It is trite law that final relief in the nature of interim relief or at an interim stage cannot be granted. In the instant case, the stands taken by the petitioner and the respondent no.1 are on collision course. The petitioner contends that he was disallowed from marking his attendance and discharging his duties. The respondent no.1 contends that he was unauthorizedly absent and was terminated. The petitioner contends that no enquiry was conducted. Per contra, the respondent no.1 has come up with a case that a full-fledged enquiry was conducted.

12] In the light of the above, in my view, ends of justice would be met by directing the School Tribunal to decide the Appeal No.20/2015 as expeditiously as possible

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and preferably on or before 30th day of July, 2016.

13] Needless to state, the School Tribunal would consider the rival contentions of the parties and would meticulously scan the entire enquiry proceedings to arrive at a conclusion as to whether Rules 36 and 37 have been scrupulously followed by the respondent – management or not.

14] The litigating sides shall cooperate with the School Tribunal and shall refrain from seeking adjournments on unreasonable and trivial grounds. The respondent – management shall ensure that it shall produce the entire original departmental enquiry record before the School Tribunal within four weeks from today.

15] The writ petition is, therefore, disposed of in above terms. Rule is discharged with no order as to costs.

(RAVINDRA V. GHUGE, J.)