

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7919 OF 2016

1. Shri Sainath Secondary and Higher
Secondary Vidyalay, Walunj,
Manishanagar Waluj,
Tq. Gangapur, Dist. Aurangabad,
Through - Its Headmaster,

2. Vijay Shikshan Prasarak Mandal,
14, Saidham-Jabinda Estate,
Near Shahnoormiya Dargah,
Shahnoorwadi, Aurangabad,
Tq. and Dist. Aurangabad,
Through - the Secretary

PETITIONERS

VERSUS

1. Vijay Kumar S/o Vishnupant Mule,
Age-38 years, Occu-Service,
R/o Plot No.7, Kamalpur Road,
Waluj, Tq. Gangapur,
Dist. Aurangabad,

2. The Deputy Director,
Vocation Training and Education,
Office - Bhadkal Gate,
Aurangabad,

3. The District Vocational and Training
Education Office, Aurangabad

RESPONDENTS

Ms.Vinaya Muley Dharurkar, Advocate for the petitioners.
Mr.P.G.Borade, AGP for respondent Nos. 2 and 3.
Mr.R.I.Wakade, Advocate for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/08/2016

ORAL JUDGMENT :

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

2. The petitioner is aggrieved by the judgment of the School Tribunal, Aurangabad dated 19/09/2015 by which Appeal No.1/2011 has been partly allowed and the respondent No.1 employee has been granted reinstatement with continuity and 30% back wages.

3. The petitioner has strenuously criticized the impugned judgment. Contention is that the appointment of the employee was without following the due procedure of law. Though he has worked for 10 years, he abandoned employment on 30/12/2010. Despite notices to remain present, he did not attend duties.

4. The respondent/employee has suppressed the fact that he had got an Educational Society registered in 2002 by the name Sanwardhan Bahuuddeshiya Sevabhavi Sanstha. He started operating a Jr. College for imparting education to 9th to 12 standard. Had the petitioners got the knowledge of these facts, they could have been canvassed before the Tribunal. Nevertheless, the employee is guilty of suppressing these facts.

5. The respondent/employee did not desire to report for duties since he must have concentrated on his proposed Jr. College. Despite the Management having taken a stand that he was not terminated, he did not report for duties. His income through the Jr. College deserves to be taken into account and while applying the principle of “no work no pay”, the respondent/employee deserves to be deprived of the back wages. The petitioners never terminated the respondent/employee and is willing to reinstate him even today.

6. Learned Advocate for the respondent No.1 / employee submits that the impugned judgment cannot be termed as being perverse or erroneous. Hence no interference is called for. Despite the contention of the petitioners that the employee abandoned employment, the theory put forth by the petitioners is disproved by the fact that the employee had preferred his appeal u/s 9 of the M.E.P.S.Act for challenging his termination dated 30/12/2010, on 18/01/2011. This indicates that he had preferred an appeal within 20 days. There is no dispute that he worked for 10 years and he has attained the deemed status of a permanent employee. It is admitted that he was running the Jr. College from 2014, which is non-functional today.

7. Learned AGP appearing for respondent Nos. 2 and 3 supports the impugned judgment.

8. I have considered the submissions of the learned Advocates.

9. It cannot be disputed that an advertisement was published by the petitioners which was placed before the Tribunal. Pursuant to the advertisement, respondent No.1 was selected and his appointment order was also placed before the Tribunal. He was appointed on probation for 2 years w.e.f. 12/06/2000. His proposal for approval alongwith other employees, falling under the teaching and non-teaching categories, was submitted by the Management to the competent authority. Respondent No.3 has still not taken a decision on the said proposals.

10. It is settled law in the light of the judgment of the learned Full Bench of this Court in the matter of St.Ulai High School and another Vs. Devendraprasad Jagannath Singh and another, 2007(1) Mh.L.J.597 that lack of approval cannot be a ground for termination of the services of an employee. Needless to state, since respondent No.1 had worked for 10 years pursuant to his appointment on

probation, he was a permanent employee of the petitioner.

11. The Management has come before the Tribunal with a specific stand that the employee was not terminated and that he had abandoned employment. I find this stand to be unsustainable in the light of Rule 16(3), which provides that the continued absence of a permanent employee without leave for a period exceeding 3 years, shall be deemed to be voluntary abandonment of service. In the instant case, the Management contends that respondent No.1 has abandoned employment from 30/12/2010, when he has approached the School Tribunal on 18/01/2011 within 20 days of his absence. The theory of abandonment therefore has to be negated.

12. Considering the above, the order of the Tribunal, directing reinstatement with continuity of service, does not call for any interference.

13. In so far as the back wages are concerned, it is evident that neither had the employee/appellant informed the Tribunal that he had got a society registered, nor had he started operating his Jr.College prior to 2014. As such, in between 30/12/2010, and the academic year 2014-2015, the employee was not operating / running

a Jr.College. It is stated that earlier he was the Secretary of the said Institution and presently is the President. The change report is pending.

14. The Hon'ble Supreme Court in the matter of Gauri Shanker Vs. State of Rajasthan, 2015(2) CLR 497 and in the matter of Nicholas Piramal India Ltd., Vs. Hari Singh 2015(2) CLR 468 has concluded that back wages in between 25% to 50% would be a fair compensation for reducing the hardships suffered by an employee.

15. In the instant case, the School Tribunal had stayed the oral termination by its order dated 19/01/2011. Interim order is not set aside. The petitioner/ Management should have therefore reinstated the employee. Considering the interim order of the Tribunal, the petitioners should have directed the employee to report for duties and had he failed or declined to report, should have brought this aspect to the notice of the School Tribunal. This has not been done in this case.

16. In this backdrop, the respondent/employee would therefore be entitled for the back wages as granted by the Tribunal, but only upto May 2014 for the reason that in the academic year 2014-2015, the

respondent/employee began operating his Jr. College for 9th to 12th standards. As such, for deriving revenue from operating a Jr.College, his claim for back wages cannot be sustained.

17. Learned Advocate for the petitioners submits on instructions that respondent No.1 can report for duties within a week, may be by 10/08/2016. Learned Advocate for respondent No.1 submits on instructions from the employee that he will report for duties on 10/08/2016 at 7.30 a.m. considering the timing of the school. Statements are therefore recorded.

18. In the light of the above, this petition is partly allowed to the extent of modifying the direction of the School Tribunal to pay 30% back wages from 01/01/2011 till May 2014. The employee shall not be entitled for back wages from June 2014 till 09/08/2016 considering that he shall report for duties on 10/08/2016.

19. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)