

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3924 OF 2016

Shri. Dilip Dattatray Prabhavale Petitioner

Vs.

The Secretary Respondents
Antarbharati Shikshan Sanstha & Ors.

Mr. Saurabh Pakale I/by Mr. S.M. Katkar, Advocate for the
Petitioner.

Mr. Aniket Nikam alongwith Mr. Ashish Satpute, Advocate for
Respondents no. 1 and 2

Mr. N.V. Bandiwadekar I/by Mr. Mandar G. Bagkar, Advocate for
Respondent no.5.

Ms. K.R. Kulkarni, AGP for the State.

Coram : Smt. R.P. SondurBaldota, J.

Date : 25th November, 2016

P.C.

1 This petition filed under Article 226 of the Constitution of India challenges the judgment and order dtd. 12th December, 2015 passed by School Tribunal, Kolhapur in Appeal No. 87 of 2014. The petitioner had filed that appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service)

Regulation Act (“MEPS Act” for short) against his alleged oral otherwise termination, which according to him, was per-se illegal.

2 Respondent no.1 is the Secretary of Aantarbharati Shikshan Mandal, Kolhapur, Respondent no.2 is the working President of the Mandal. It runs three schools in Kolhapur, one of which is Koregaonkar High School. Respondent no.3 is the Headmaster of Koregaonkar High School. Respondent no.4 was the acting Headmaster during the period 16th September, 2014 to 26th September, 2014. Respondent no.5 has since been appointed as the Headmaster of the School.

3 In the year 1984, the petitioner was appointed as a Teacher in Primary Section of the School run by respondents no.1 and 2 because at the relevant time, his educational qualification was only D.Ed. In the year 1987, he acquired degree of Bachelor of Arts and was promoted as a Secondary Teacher on 1st February, 1988. Thereafter he completed his Master of Arts in 1989, Bachelor of Education in 1992 and Master of Education in 1994. He was then working as Assistant Teacher in Koregaonkar High School, Kolhapur, teaching Hindi subject.

4 The petitioner had a complaint as regards fixation of his seniority and promotion in service. He had, therefore filed Appeal No. 94 of 2012 in the School Tribunal, Kolhapur, which was dismissed on 3rd January, 2014. He has challenged the order

by filing Writ Petition No. 5529 of 2014. The petitioner alleges that his services were suddenly terminated on 15th September, 2014 by respondents no. 1 and 2. Therefore, he approached the Education Officer with a complaint of illegal termination. The Education Officer, by his order dtd. 17th September, 2014 directed respondent no.2 to allow the petitioner to resume duty. The petitioner claims that on production of that order, the Headmaster allowed him to resume duty. Accordingly, the petitioner signed the muster on 18th September, 2014 and performed his duty. On the next day, i.e. on 19th September, 2014, when he went to School as usual, respondent no.4 did not allow him to sign the muster and thereby caused his otherwise termination. He took the signature of the petitioner on a separate paper, which the petitioner went on signing till 26th September, 2014. On 26th September, 2014, respondent no.5 was promoted as a Headmaster and joined the duty. He allowed all the Teachers except the petitioner to put their signatures on the muster from 19th September, 2014 and destroyed the paper, on which the signatures of the petitioner were taken. Thereafter the petitioner challenged his otherwise termination by filing the Appeal No. 87 of 2014.

5 Respondents no. 1 and 2 contested the appeal by stating that the services of the petitioner were terminated on 15th September, 2014 and therefore, there was no otherwise termination on 19th September, 2014. They alleged that the petitioner had by the appeal as filed given a go-bye to his

termination order dtd. 15th September, 2014. The School Tribunal was therefore required to decide whether the petitioner established that there was an order of “oral otherwise termination” of the petitioner on 19th September, 2014. For the reasons stated in the impugned order, it has held that the termination of the services of the petitioner was on 15th September, 2014 and as such there could not have been his second termination from the services on 19th September, 2014.

6 Mr. Pakale, the learned advocate for the petitioner submits that the School Tribunal could not have taken into consideration the order dtd. 15th September, 2014 because the same had come to an end after the order of the Education Officer. According to him, respondents no.1 to 4 had also acted upon the order of the Education Officer. Mr. Pakale, however, has not been able to point out the authority of the Education Officer to pass an order reinstating the petitioner in service. The Education Officer would have an overall control, supervision of various sections and activities of Education Department. However, he can have no power either to appoint or terminate or reinstate any employee or direct the management to do any of the above acts. Therefore, the alleged reinstatement of the petitioner by the order of the Education Officer cannot be held to be legal and acceptable. In the circumstances, the only order of otherwise termination of service of the petitioner would be of 15th September, 2014, which remains unchallenged till date. In the circumstances, the decision of the

School Tribunal that the petitioner has failed to establish that his services were terminated on 19th September, 2014 is the correct decision. The petition is therefore dismissed. It is open for the petitioner to challenge the order of his termination dtd. 15th September, 2014, if provided by law.

(Smt. R.P. SondurBaldota, J)