

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

**WRIT PETITION NO.5840 OF 2005**

Shree Balasaheb Mane Shikshan

Prasarak Mandal & Anr.

... Petitioners

**vs.**

Shri Mahaling Pandurang Mali & Ors.

... Respondents

Mr. N.V. Bandiwadekar i/b Mr. Sagar Mane for the Petitioners.

Mr. V.K. Bodhare i/b Mr. A.M. Joshi for the Respondent No.1.

Ms. M.S. Bane, 'B' Panel Counsel for the Respondent No.2.

Coram : **A.A.Sayed, J.**

Date : 15 December 2016

**P.C. :**

1 The challenge in this Petition under Articles 226 and 227 of the Constitution, is to the order dated 22 February 2005 of the School Tribunal, Kolhapur, whereby the Appeal of the Respondent No.1/original Appellant filed under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ('MEPS Act' for short) was allowed and the Petitioner Management was directed to reinstate the Respondent No.1 as Lecturer in the junior College of Pharmacy run by the Petitioner Management with continuity of service. The School Tribunal further directed the Petitioner Management to pay Respondent No.1 back-wages from the date of termination till his reinstatement.

2 At the outset it is required to be stated that after the impugned order was passed by the School Tribunal, the Respondent No.1 had

joined duty in the College on 25 April 2005. The Respondent No.1 thereafter resigned on 24 June 2005. In these circumstances, the only issue which remains to be considered is in respect of entitlement of the Respondent No.1 for back-wages.

3      Learned Counsel for the Petitioner Management invited my attention to the Written Statement of the Petitioner Management filed before the School Tribunal and submitted that the Respondent No.1 had remained absent from his duty on his own accord as he was conducting coaching classes of 40 to 50 students and though this aspect has been referred to in the impugned order, the same has not been dealt with. The learned Counsel invited my attention to the correspondence viz. the letter dated 5 October 1998 of the Chairman of the Petitioner Management and Reply letter dated 13 October 1998 and the letter dated 10 November 1998 of the Principal of the College, referred to in the Written Statement. In the letter dated 5 October 1998 addressed by the Chairman of the Petitioner Management to the Respondent No.1 it is stated by him that he had personally met the Respondent No.1 at his house after the receipt of the notice from the School Tribunal on 5 October 1998 and requested him to join duty. It was pointed out in the said letter that the Respondent No.1 was conducting tuition classes at Warna Nagar since last three years and that the students and parents had created a scene with the Principal

and he had to intervene. It was further pointed out that the College is an unaided College and the salary of teaching and non-teaching employees is paid after receiving fees from the students. It was stated that due to the starting of tuition classes by the Respondent No.1, the results of the College were affected. The Respondent No.1 was called upon to stop his tuition classes and to join duty immediately. Learned Counsel submitted that the Respondent No.1 was not really interested in continuing the employment in the College as he was having a huge income from conducting the tuition classes. In the Reply letter dated 13 October 1998 of the Respondent No.1 to the aforesaid letter dated 5 October 1998, he has stated as follows:

*“The contents of your above referred letter are not admitted by me. Before the School Tribunal I have prayed for reinstatement with full back-wages from date of termination. I am not ready to accept fresh appointment.*

*In this circumstances, presently it is not possible to join the duty as stated in your letter.”*

4 It is submitted by the learned Counsel for the Petitioner Management that in the aforesaid Reply letter dated 13 October 1998 Respondent No.1 has sought to make out a case that he was being offered a fresh appointment when there was nothing in the letter dated 5 October 1998 stating that his joining duty after the alleged termination was to be a fresh appointment. It is pointed out by the learned Counsel that in the said Reply letter, the Respondent No.1 had

not specifically denied that he was conducting tuition classes. Learned Counsel further invited my attention to the Affidavit-in-Reply filed by the Respondent No.1 in the present Petition wherein he admitted that he had joined duty on 25 April 2005 pursuant to the letter dated 13 April 2005 by the Petitioner Management and thereafter he tendered his resignation on 24 June 2005. The learned Counsel contended that the Respondent No.1 was earning much more in conducting the tuition classes for Std. XII-Science and Maths subjects. The learned Counsel submitted that the Respondent No.1 was not interested in continuing his service and that despite the letter dated 5 October 1998, the Respondent No.1 refused to join duty and therefore, the Respondent No.1 is not entitled to back-wages and at the highest he would be entitled to back-wages only from the alleged date of termination on 22 June 1998 till 13 October 1998 (letter of the Respondent No.1 refusing to join duty). The learned Counsel for the Petitioner Management relied upon the judgment of the Supreme Court in the case of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.), (2013)10 SCC 324** and in particular paragraph 38 thereof, wherein the principles of grant of back-wages have been culled out.

5      Learned Counsel for the Respondent No.1 on the other hand contended that the Respondent No.1, though being a permanent employee, was illegally terminated without following the principles of natural justice and the procedure contemplated under Rules 36 and 37

of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ('MEPS Rules' for short). The learned Counsel has placed reliance on the judgment of the Full Bench of this Court in **Saindranath s/o Jagannath Jawanjal vs. Pratibha Shikshan Sanstha, 2007(3) Mh.L.J. 753** in support his contention that the Respondent No.1 could not have been terminated without holding any inquiry. It is contended that unless the procedure is followed as required under the MEPS Rules, the Respondent No.1 could not have been prevented from carrying out his duty and it was a case of otherwise termination. Learned Counsel also invited my attention to Rule 23(1)(b) of the MEPS Rules to contend that it is permissible for the Respondent No.1 to take tuition classes for not more than two hours a day or to teach upto five pupils in a day. The learned Counsel pointed out that the letter dated 5 October 1998 was addressed by the Chairman of the Petitioner Management only after filing of the Appeal by the Respondent No.1 on 25 September 1998. He pointed out that the Respondent No.1 had resumed duty on 25 April 2005 after the impugned order was passed by the School Tribunal and continued in service till he submitted his resignation on 24 June 2005. It is submitted that in these circumstances, particularly when the otherwise termination was entirely illegal and wrongful, the School Tribunal rightly granted full back-wages to the Respondent No.1.

6 I have considered rival contentions of the learned Counsel for the parties.

7 A plain reading of the impugned order shows that the School Tribunal has proceeded on the basis that since the otherwise termination dated 22 June 1998 is illegal, the Respondent No.1 as a matter of course would be entitled to full back-wages from the date of otherwise termination till his reinstatement. In my view, the School Tribunal has overlooked the factual position as brought out in the letters dated 5 October 1998, 13 October 1998 and 10 November 1998 which are admitted letters and had been relied upon in the Written Statement of the Petitioner Management filed before the School Tribunal. It was an admitted position that the Respondent No.1 was conducting tuition classes. Considering the entire material on record, I have no hesitation in observing that the Respondent No.1 was not really interested in service after his alleged termination. In the Reply letter dated 13 October 1998 he has categorically stated that he is not ready to accept fresh appointment when in the letter dated 5 October 1998 of the Petitioner Management it was never stated that the resumption to duty of the Respondent No.1 after the alleged termination would be a fresh appointment. In any event, at the relevant time, the Appeal was pending and if the Respondent No.1 was really interested in continuing service, he could have applied to the School Tribunal that he is ready to join duty leaving open the issue whether his

appointment was a fresh appointment. As stated earlier, it is an admitted position even in the Affidavit in Reply of the Respondent No.1 filed in the present Petition that the Respondent No.1 was conducting tuition classes. It is averred in the Affidavit in Reply of the Respondent No.1 that he was conducting tuition classes to support his family. The Respondent No.1 was obviously deriving income therefrom. The Respondent No.1 has not disclosed the income from the tuition classes or the difference in the income from salary and the tuition classes. The fact that after the impugned order dated 22 February 2005 of the School Tribunal, the Respondent No.1 joined duties on 25 April 2005 and thereafter resigned on 24 June 2005, which was essentially vacation period, shows the conduct of the Respondent No.1 and clearly brings out that the Respondent No.1 himself was not interested in continuing in the employment and was only interested in claiming back-wages. As indicated earlier, despite the letter dated 5 October 1998 of the Petitioner Management calling upon the Respondent No.1 to join duty, he had refused to join duty as stated in his Reply letter dated 13 October 1998. Considering the facts and circumstances of the case and since there was no inquiry conducted by the Petitioner Management, in my view, ends of justice would be met by modifying the impugned order and granting back-wages to the Respondent No.1 for a period of six months. Hence, I pass the following order:

ORDER

- i) The impugned order shall stand modified to the extent that the Respondent No.1 shall be paid backwages of six months by the Petitioner Management within two months from the date this judgment is uploaded.
- ii) The Petition is disposed of accordingly. No order as to costs.

**(A.A.Sayed, J.)**