

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

Writ Petition No. 2574 of 2014

[Sharad Gramin Vikas Bahuuddeshiya Shikshan Sanstha, Deoli, Tq. Deoli, Dist. Wardha through its Secretary and anr. Vs. Chandrakant Gajananrao Wani and anr.]

and

Writ Petition No. 2601 of 2014

[Sachin Shankarrao Rithe Vs. Chandrakant s/o Gajananrao Wani and ors.]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Shri Firdos Mirza, Advocate for the petitioner in WP
2574/2014 and for respondent no. 3 in WP 2601/2014
Dr. Anjan De, Advocate for the petitioner in WP
2601/2014

Shri Prashant Thakre, Advocate h/f Shri Anand Parchure,
Advocate for respondent no. 1 in both writ petitions
Shri A. D. Sonak, AGP for the respondent no. 2 WP
2574/2014 and for respondent no. 4 in WP 2601/2014

CORAM : Prasanna B. Varale, J.

DATE : 4-2-2016.

Heard learned counsel appearing for the parties.

2. As both these writ petitions challenge the order passed by the learned Presiding Officer, School Tribunal, Chandrapur in Appeal No. STC-50/2004 dated 20-2-2014, they are heard and decided together.

3. Brief facts giving rise to the petitions can be summarized as follows.

The respondent no. 1, Chandrakant Wani filed an appeal before the Presiding Officer, being aggrieved of an oral termination made by the respondent nos. 2 and 3 in Writ Petition No.

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2601/2014 and the petitioners in Writ Petition No. 2574/2014. It was the submission of the respondent no. 4 before the School Tribunal that the respondent no. 1 was possessing the required qualification and in response to an advertisement issued in a daily newspaper, submitted his application for the post of Junior Clerk. He was appointed by order dated 22-6-2004 initially for a period of two years and he continued to work on the said post. It was submitted that no appointment order was tendered to the respondent no. 1 and abruptly, he was prohibited from signing the muster roll. Thus it was the submission that without following the procedure, the oral termination of the respondent no. 1 was effected. The respondent nos. 2 and 3 (respondent nos. 1 and 2 before the learned School Tribunal) submitted their preliminary objections. It was submitted that one Sachin Rithe, the petitioner in the present petition, was working as a Junior Clerk in the school since 2004. It was submitted further that Shri Rithe completed probation period of two years satisfactorily and had attained the status of confirmed employee. It was submitted that as there was solitary post of Junior Clerk available in the management school and on the said post, Shri Rithe is already appointed, he ought to have been impleaded in the appeal as party respondent. It will be interesting to note that the appellant i.e. respondent no. 1 himself also submitted an application and prayed for permission to join the

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petitioner Shri Sachin Rithe as party respondent no. 4 in the appeal. The written submissions were also placed on record at the instance of the petitioner i.e. respondent no. 4 in the appeal before the School Tribunal. The learned Presiding Officer of the School Tribunal in appeal by referring to the written submissions filed by the petitioner observed that he failed to understand as to how the written submissions were filed when the respondent no. 4 was not party to the proceedings. The learned Presiding Officer further observed that it was not pointed out to him that any amendment was carried out so as to add respondent no. 4 party to the proceedings and as such, he is not considering the written submissions. The learned Presiding Officer thus only considering the submissions on behalf of the appellant and the respondent nos. 1 to 3 i.e. respondent nos. 1 and 2, the management and the respondent no. 3 Education Officer arrived at a conclusion that the appellant could not have been terminated as the appointment of the appellant was as per Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act and termination was without following Section 4(6) of the Act, allowed the appeal and directed the respondent no. 2 and 3 to reinstate the appellant on the post of Junior Clerk within the stipulated period with continuity in service and 100% back wages.

4. Learned counsel Shri De vehemently submitted that the judgment and order passed by the

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Presiding Officer causes a serious prejudice to the petitioner on more than one grounds. He submits that firstly, a preliminary objection was raised by the management and thereby the management sought impleadment of the petitioner as party respondent to the appeal. Secondly, the appellant himself also submitted an application seeking permission to add the petitioner as party respondent no. 4. Shri De, by inviting my attention to the copy of the roznama placed on record, submitted that on various dates, the matter was posted firstly to issue notice to the respondent no. 4 and then when the petitioner i.e. respondent no. 4 represented through counsel, posted the matter for filing written submissions. He submitted that on 21-12-2013, the petitioner i.e. respondent no. 4 was himself present before the Tribunal and he was permitted to file reply and list of documents. Accordingly, reply and list of documents were filed. Shri De then by inviting my attention to the copy of submissions filed by respondent no. 4 submitted that the petitioner had undergone a recruitment process initiated in response to an advertisement published in daily newspaper 'Janmadhyama' and was selected and appointed by order dated 22-6-2004 on the post of Clerk for a period of two years as a probationary and was appointed on permanent basis on completion of his probation. Shri De invited my attention to the copy of the order placed on record as well as the approval granted by the Education Officer also the resolution

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passed by the School Committee granting continuity in the meeting dated 15-6-2006 by resolution no. 4. It is the submission of Shri De, learned counsel for the petitioner that neither in the advertisement issued nor in the appointment order nor in the resolution granting continuity and the approval order issued by the Education Officer, it was stated that the appointment of the petitioner was subject to some litigation. It was the submission of Shri De that the petitioner had undergone the recruitment process and by due and proper procedure, he was appointed on the post of Junior Clerk and an approval was also granted by the Education Officer. Learned counsel Shri De further submitted that all these facts were submitted before the Presiding Officer of the School Tribunal by way of written submission and the annexures along with the written submission. Shri De then submitted that for some technical fault of the appellant for not carrying out the amendment, the rightful claim of the petitioner submitted before the Presiding Officer of the School Tribunal by filing written submissions and the necessary documents could not have been rejected by the Tribunal. Shri De, learned counsel for the petitioner submitted that the claim of the petitioner ought to have been considered by the School Tribunal while deciding the appeal filed by the respondent no. 1 as it was a solitary post of Junior Clerk and order passed by the Tribunal certainly caused prejudice to the petitioner who was occupying the post and whose entry in the

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service was by lawful process.

5. Shri Mirza, learned counsel for the petitioner in Writ Petition No. 2574/2014 supports the submissions of learned counsel Shri De.

6. Shri Prashant Thakre, learned counsel appearing on behalf of Shri Parchure, learned counsel for the respondent no. 1 vehemently submitted that as there was no order passed by the Tribunal for the amendment to the effect of adding the petitioner as respondent no. 4, no error is committed by the Presiding Officer. It was the submission of the learned counsel for the respondent no. 1 that the learned Presiding Officer, School Tribunal appreciated the submissions of the petitioner and respondents, management as well as the Education Officer and found that the termination of the respondent no. 1 was illegal and accordingly, the appeal was allowed. It was the submission of the learned counsel that if the management while issuing the advertisement and order of appointment in favour of the petitioner proceeded without referring to the appeal filed by the respondent no. 1 before the Tribunal, the respondent no. 1 is not responsible for the act of the management and the management has to face the consequences for their own error. Learned counsel then submitted that the respondent no. 1 was prosecuting the appeal for long period i.e., from the year 2004 till the order was passed in the year 2014. Thus, the learned counsel supports the judgment and order of the Presiding Officer, School

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Tribunal.

7. On hearing the learned counsel appearing for the respective parties and after going through the material placed on record, I find considerable merit in the submissions of learned counsel Shri De. Material placed on record clearly reveals that the respondent no. 1 himself submitted an application seeking permission to add petitioner as party respondent no. 4. Perusal of the roznama also shows that the Presiding Officer, School Tribunal on 21-12-2013, permitted the petitioner who was present in the Tribunal to file reply along with annexures/documents. Not only that, on 1-2-2014, the petitioner was again present before the Tribunal and initially his counsel was absent, but later on, he was present before the Tribunal. At the request of the appellant, the appeal was then posted for final arguments. Again on 5-2-2014, learned counsel appearing for the respective parties advanced their submissions and also submitted the judgments in support of their contentions and the matter was posted for judgment by the Presiding Officer, School Tribunal. Thus, the material clearly shows that the impleadment of the petitioner as party respondent no. 4 as sought by the appellant is not done and the petitioner, who was respondent no. 4 before the Tribunal, took every care to prosecute the appeal by engaging the counsel and whenever the counsel was absent, the petitioner himself was present before the Tribunal and was permitted by the Tribunal to file

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written submissions as well as documents/annexures. The documents placed on record shows that the petitioner in response to an advertisement undergone the recruitment process and was appointed by an order dated 22-6-2004 and appointment was approved by the order of the Education Officer. All these facts clearly show that the petitioner was diligently contesting his claim before the Tribunal but for an order allowing the appellant to carry out the amendment that too on the application of the appellant himself seeking impleadment of the petitioner as party respondent no. 4 along with preliminary objection of the management, the petitioner left no stone unturned to canvass his case before the learned Presiding Officer, School Tribunal. In such a situation, the order passed by the Presiding Officer, School Tribunal allowing the appeal only on hearing the submissions of the appellant as well as the management without there being an opportunity to the petitioner to contest his claim certainly caused serious prejudice to the petitioner.

8. The learned counsel for the respondent no. 1 though made an attempt to submit that it was the fault of the management as the management failed to refer to the litigation while issuing the advertisement or issuing the appointment order, the petitioner cannot be subjected to a serious prejudice for the act of the management. There was no fault of the petitioner while he was contesting his claim before the Presiding Officer of the School Tribunal. The

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learned counsel for the respondent no. 1 also placed reliance on the judgment of this Court reported in **2016(1) Mh.L.J. 401** in the case of **Anoop Ganpatrao Bobde Vs. Dnyansagar Bahuuddeshiya Shaikshanik Sanstha, Yeotmal**, but the facts in the present matter are completely different from the facts in the case of **Anoop Ganpatrao Bobde Vs. Dnyansagar Bahuuddeshiya Shaikshanik Sanstha, Yeotmal**. In that case, advertisement was issued with a rider of litigation but in present matter, there was no such advertisement issued by the management in response to which the petitioner was appointed. One more fact which also differs in the present matter is when the advertisement was issued by the management, there was no litigation pending and appeal was filed subsequent to the advertisement issued. Considering all these aspects, in my opinion, the learned counsel for the petitioner has made out the case.

9. The judgment and order passed by the Presiding Officer, School Tribunal, Chandrapur on 20-2-2014 in Appeal No. STC 50/2004 is unsustainable and it is, therefore, quashed and set aside. The matter is remitted back to the learned Presiding Officer, School Tribunal, Chandrapur for a decision afresh by giving opportunity to the petitioner to contest his claim.

10. Learned counsel for the respondent no. 1 was justified in submitting that as the respondent no. 1

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was prosecuting the appeal for a long period, the Tribunal be directed to decide the appeal as early as possible. It is not in dispute that the respondent no. 1 was prosecuting the appeal for a long period of 9 to 10 years, the learned Presiding Officer, School Tribunal, Chandrapur considering these facts to decide the appeal as early as possible and preferably within four months from today i.e. by 31-5-2016.

11. It is made clear that the dispute between the petitioner and respondent no. 1 may not cause any hindrance in the school administration or salary of the staff including teaching and non-teaching staff.

The writ petitions are disposed of with above directions.

JUDGE

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