

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4376 OF 2014

1] Loksewa Mandal Bhadrawati,
through its Secretary,
Manoharrao Parde, Killa Ward,
Bhadrawati, Distt : Chandrapur.

2] Head Master,
Lokmanya Vidyalaya and Junior College,
Bhadrawati, Distt. Chandrapur.

.. Petitioners

.. Versus ..

1] Namdeo Jairam Milmlile,
Since deceased through L.Rs.

1-a] Alka wd/o Namdeo Milmlile,
Aged about 61 years,
Occupation-Household.

1-b] Nitin Namdeo Milmlile,
Aged about 38 years,
Occupation-Cultivation.

1-c] Nilesch Namdeo Milmlile,
Aged about 36 years,
Occupation-Cultivation.

1-d] Yogesh Namdeo Milmlile,
Aged about 31 years,
Occupation-Cultivation.

1-e] Ganesh Namdeo Milmlile,
Aged about 26 years,
Occupation :

All R/o. Bothala, Post-Jeha,
Tah. Bhadrawati, Distt. Chandrapur.

2] The Education Officer (Secondary),
Zilla Parishad, Chandrapur.

.. Respondents

Shri A.D. Mohgaonkar, Advocate for the petitioners,
Ms. Kirti Satpute, Advocate for the respondent nos.1-a to 1-e,
Shri N.R. Rode, A.G.P. for the respondent no.2.

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CORAM : Z.A. HAQ, J.

DATED : JANUARY 20, 2016.

ORAL JUDGMENT

Heard Shri A.D. Mohgaonkar, Advocate for the petitioners,
Ms. Kirti Satpute, Advocate for the respondent nos.1-a to 1-e and Shri N.R.
Rode, Assistant Government Pleader for the respondent no.2.

2] **RULE.** Rule made returnable forthwith.

3] Shri Namdeo Jairam Milmlile, husband of the respondent no.1-a
and father of the respondent no.1-b to 1-e, was working as a Clerk under the
school administered by the petitioner no.1-society, as a permanent employee.
It is undisputed that his appointment was approved by the Education Officer.

4] The management issued show cause notice to the employee on
26.12.2000 levelling four charges against him. The nature of charges show
that the management alleged misconduct relating to misappropriation and
cheating. It is undisputed that the management terminated the services of the
employee without conducting any enquiry, as required by Rules 36 and 37 of
the Maharashtra Employees of Private Schools (Conditions of Service) Rules,
1981. The employee had filed appeal before the School Tribunal, Chandrapur
challenging the termination order, which is allowed by the Tribunal. The
Tribunal has concluded that the termination order is unsustainable, as it was

issued without conducting any enquiry against the employee. The Tribunal directed the petitioners and the respondent no.2-Education Officer to pay arrears of salary of the employee to his legal representatives as the employee died during the pendency of the proceedings on 24.2.2012. The petitioners, being aggrieved by the order passed by the Tribunal, have filed this petition.

5] Mr. Mohgaonkar, the learned Advocate for the petitioners, has submitted that the charges levelled against the employee are of serious nature and the misconduct on the part of the employee will be covered within the meaning of moral turpitude and, therefore, even though his services were terminated without enquiry, it cannot be said that the management committed any irregularity or illegality.

6] After going through the charges, I find that the submission made on behalf of the petitioners cannot be accepted. The charges are not of such nature that if enquiry would have been conducted against the employee, it would have caused embarrassment to any third person/party. Hence, in my view, the services of the employee could not have been terminated by the management without conducting the enquiry.

7] Learned Advocate for the petitioners has further relied on the factum of prosecution of employee in criminal proceedings. It is stated by the learned Advocate representing the concerned parties that the prosecution ended because of death of the employee. It is undisputed that if it is treated that the employee was in service from the date of his appointment till 24.2.2012 when he died, then the period of qualifying service is completed and the legal heirs of employee would be entitled for family pension.

However, considering the fact that the respondent nos.1-b, 1-c and 1-d were major in 2012 when the employee died, in my view, the order passed by the Tribunal directing the petitioners and the respondent no.3 to pay arrears of salary is required to be modified. Considering the facts on record, it would be appropriate that the petitioners pay 50% of the amount of arrears of salary for the period from 1.9.2001 till 24.2.2012. The petitioners shall pay the amount to the respondent no.1-a Alka wd/o Namdeo Milmlile till 15.4.2016 by the demand draft. If the petitioners are not able to hand over the demand draft to the respondent no. 1-a Alka till 15.4.2016, the petitioners shall deposit the amount before School Tribunal, Chandrapur till 15.4.2016. On default on the part of the petitioners to pay the amount till 15.4.2016, the petitioners shall be liable to pay interest on the amount payable to the respondent no.1-a Alka at the rate of 9% per annum, the interest being chargeable from 1.9.2001 till the amount is received by the respondent no.1-a Alka. It is further clarified that the entitlement of the petitioners to receive reimbursement from the respondent no.2-Education Officer will have to be sorted out by the petitioners independently and the payment of amount should not be withheld on the excuse that the amount is not disbursed by the respondent no.2-Education Officer. The petitioners are directed to send the papers for fixation of family pension to the office of the respondent no.2-Education Officer till 15.4.2016.

8] The petition is partly allowed in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE