

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION 1998 OF 2016

1. Marathwada Ustod Kamgar Vikas Mandal,
Parali Vajjnath, Tq.Parali Vajjnath,
Dist.Beed
Through its Secretary,
Sonerao s/o Bhimrao Sathbhai,
Age-33 years, Occu-Legal Practitioner,
R/o Gandhi Market, Parali Vajjnath,
Tq.Parali Vajjnath, Dist.Beed

2. Nagnath Niwasi Madhyamik
Vidyalaya, Parali Vajjnath,
Tq.Parali Vajjnath, Dist.Beed,
Through its Headmaster

-- PETITIONERS

VERSUS

1. Balaji s/o Laxman Phad,
Age-32 years, Occu-Nil,
R/o C/o L.J.Gitte, Priya Nagar,
Parali Vajjnath, Tq. Parali Vajjnath,
Dist.Beed,

2. The Special District Social
Welfare Officer, Beed

-- RESPONDENTS

WITH
WRIT PETITION NO.2104 OF 2016

Balaji s/o Laxman Phad,
Age-33 years, Occu-Nil,
R/o C/o L.J.Gite, Priya Nagar,
Parali Vajjnath, Tq.Parali Vajjnath,
Dist.Beed

-- PETITIONER

VERSUS

1. The Secretary,
Marathwada Ustod Kamgar Vikas Mandal,

Parali Vaijnath, Tq. Parali Vaijnath,
Dist.Beed,

2. Headmaster,
Nagnath Niwasi Madhyamik Vidyalaya,
Parali Vaijnath, Tq. Parali Vaijnath,
Dist.Beed,

3. The Sub District Social Welfare Officer,
Beed, Tq. and Dist.Beed

-- RESPONDENTS

Mr.V.R.Dhorde, Advocate for the petitioners.
Mr.A.N.Sabnis h/f Mr.V.D.Gunale, Advocate for respondent No.1.
Mr.U.H.Bhogle, AGP for respondent No.3 (in WP No.2104/2016).

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/01/2017

ORAL JUDGMENT :

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

2. The first petition is filed by the Management upon being aggrieved by the judgment of the School Tribunal dated 30/10/2015 granting reinstatement with 30% back wages to respondent No.1 / original appellant.

3. The petitioner in the second petition is the original appellant before the School Tribunal in Appeal No.3/2015 filed u/s 9 of the MEPS Act, 1977. He is aggrieved by the same judgment to the extent

of denial of 100% back wages.

4. I have heard the learned Advocates for the respective sides at length. For the sake of clarity, the employee concerned would be referred to as the 'appellant' and the Establishment would be referred to as the 'Management' in this judgment. Considering that both the parties are aggrieved by the same judgment, these matters are heard together.

5. The appellant was appointed on temporary basis as an 'Assistant Teacher' by order dated 17/06/2011 after the Executive Committee of the Management passed a Resolution to so appoint him. His appointment was restricted to the academic year 2011-2012. By a similar order dated 09/06/2012, again based on a Resolution of the Committee dated 01/06/2012, the appellant was appointed for the academic year 2012-2013 on temporary basis.

6. By order dated 16/06/2013, the Management dispensed with the service of the appellant by listing out 10 acts said to have been committed by him as being the cause of termination. Though his work being unsatisfactory is one of the cause and which cannot be said to be a stigmatic order subject to the rules under the MEPS

Rules, 1981, few of the reasons cited apparently amount to attributing mis-demeanors to the appellant. The said order can therefore be termed as being a stigmatic removal from service.

7. Mr.Sabnis, learned Advocate for the appellant points out that the nomenclature mentioned in the termination order is 'probation' and hence the appellant is treated as being on probation for two years. I would not concur with the said submissions for the reason that an appointment on probation necessarily pre-supposes that the employer desires to test the suitability of an employee for absorption on a permanent post which is vacant. So also, the procedure laid down in law for selection and appointment of the probationer as against a permanent vacant post, has not been followed while inducting the appellant. Nevertheless, his appointment orders and the approval granted by the Education Department would indicate that he was never appointed as a 'Probationer'.

8. It cannot be ignored that since the termination of the appellant is stigmatic, the same cannot be countenanced keeping in view the law laid down by the Hon'ble Supreme Court in the matter of Radhey Shyam Gupta Vs.U.P.State Agro Industries Corporation Ltd., and another [(1999)2 SCC 21] and in the matter of Dipti Prakash Banerjee

Vs. Satyendra Nath Bose National Centre, [AIR 1999 SC 983]. The Hon'ble Apex Court has concluded that even if an employee is a probationer or a temporary, his termination cannot be stigmatic without conducting disciplinary proceedings since it would jeopardize his future prospects of employment, in as much as, services of an employee cannot be terminated on the presumption that he has committed a mis-conduct without the same being proved by conducting a departmental / domestic enquiry. On this count, I do not find any reason to interfere with the directions of the School Tribunal in setting aside the termination order and granting reinstatement.

9. There is no dispute that the Management did not make a specific prayer and did not file a specific application before the School Tribunal seeking leave to conduct an enquiry before the Tribunal or for recalling the termination order so as to conduct disciplinary proceedings against the appellant. It was in this backdrop that the Tribunal granted reinstatement to the appellant, which cannot be faulted.

10. In so far as the grievance about the direction to pay 30% back wages and denial of 70% back wages are concerned, it cannot be ignored that the appellant was appointed for one academic year by

two appointment orders. Even if the termination order is to be overlooked, he would have stood disengaged by efflux of time and would not have a right to seek continued employment in the above backdrop. Nevertheless, considering that the order of termination was stigmatic and the appellant was rendered unemployed owing to the illegal act of the Management, the Tribunal has granted 30% back wages. Keeping in view the peculiar facts of this case and the view taken by the Hon'ble Supreme Court in the matter of Gauri Shanker Vs. State of Rajasthan, [2015(2) CLR 497], I find that the grant of 30% back wages would be an appropriate relief in order to reduce the rigours of litigation suffered by the appellant. On this count, the prayer of the Management to set aside the direction of back wages stands negated. Consequentially, the prayer of the appellant of seeking full back wages stands rejected.

11. It, however, needs clarification that the right of an employer in conducting disciplinary proceedings against the appellant cannot be taken away. In the event, the Management desires to press the said charges or any of those set out in the order of termination, it would be within the right of the employer/Management in this case to conduct disciplinary proceedings by following the due procedure laid down under the MEPS Rules.

12. In the light of the above, since the impugned judgment of the Tribunal does not appear to be perverse or erroneous, both these petitions are dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)