

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1590 OF 1999

Smt.Jaishri Shripati Hadole,
Aged years, occupation : Service,
R/o Chousala,
Taluka and District Beed.

...PETITIONER

-VERSUS-

- 1 Shri Balu Abasaheb Jadhav,
R/o Nandur (Ghat), Taluka Kaij,
District Beed.
- 2 Guru Maharaj Shikshan Prasarak
Mandal, Chousala,
Taluka and District Beed.
Through it's Secretary.
- 3 Guru Datta Kanya Prashala,
Chousala, Taluka and District Beed.
Through it's Headmaster.
- 4 Education Officer (Secondary),
Zilla Parishad, Beed.

...RESPONDENTS

...
Advocate for Petitioner : Shri V M Humbe.
Advocate for Respondent No.1 : Shri Vivek Dhage.
AGP for Respondent 4/State : Shri N.T.Bhagat.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th September, 2017

Oral Judgment :

1 The Petitioner is aggrieved by the judgment and order dated 30.11.1998 delivered by the School Tribunal in Appeal No.168/1996 to which the Petitioner was added as Respondent No.4.

2 I have considered the strenuous submissions of Shri Humbe, learned Advocate for the Petitioner. He has cited the following judgments:-

- (a) President, Late Shri Ramchandra Patil Shikshan Sanstha, Kunikonur and others vs. Haidarali Mahmadhanif Inamdar and another, 2008 (4) Mh.L.J. 159.
- (b) Krishna Dnyandeo Lad vs. Chairman, Rahimatapur Panchkrushi Shikshan Mandal and others, 2008(4) Mh.L.J. 309.
- (c) Ashok Balaji Biradar vs. Mahesh Shikshan Prasarak Mandal, Udgir and others, 2010 (1) Mh.L.J. 211.
- (d) Liberal Education Society, Nagpur and another vs. Vrushali w/o Suresh Aole and others, 2010 (1) Mh.L.J. 491.

3 Having considered the strenuous submissions of the learned Advocate for the Petitioner, I have perused the record available.

4 There is no dispute that the original Appellant/ Respondent No.1 herein (Balu Abasaheb Jadhav) had challenged his termination

before the School Tribunal, Aurangabad. By the impugned judgment dated 30.11.1998, his termination was set aside and he was granted reinstatement with continuity and backwages. There is no dispute that after the original Appellant was terminated from service, the Petitioner herein was introduced in his place as a Clerk.

5 By the judgment dated 01.09.2017, this Court has sustained the view taken by the School Tribunal, in its judgment dated 30.11.1998, by deciding a group of petitions, being Writ Petition Nos.1580/1999, 3174/1999, 1579/1999, 1581/1999, 1585/1999 and 1591/1999, filed by the Management. The direction to pay full back wages was modified.

6 The Petitioner contends that the Appellant / Respondent No.1 herein was not appointed by following the due procedure of law and that the Petitioner was appointed by following the due procedure.

7 As this Court has sustained the judgment of the School Tribunal keeping in view that after the School Tribunal delivered its order and this Court refused to grant stay to the said judgment (except the back wages), the Appellant (Balu Abasaheb Jadhav) was reinstated in service in 1998. Since then he has been working for almost 19 years as on date. His services have been regularized by the Education Officer and he has settled in employment over the past two decades.

8 Even in this petition, this Court has not granted any interim relief to the Petitioner in the nature of protecting her employment. The

Petitioner concedes that she was in employment for about two years in place of the original Appellant and she is out of employment for the past about two decades. It is also conceded that the Petitioner did not challenge her own termination/ discontinuation from employment in the past two decades. Her termination has, therefore, attained finality and especially, in the light of the fact that the Petitioner has not posed a challenge to her termination.

9 The law laid down in President, Late Shri Ramchandra Patil Shikshan Sanstha (supra) is with regard to the selection of a candidate as against a permanent vacant post. In Krishna Dnyandeo Lad (supra), same view is reiterated by this Court. In Ashok Balaji Biradar (supra), the issue was with regard to the forceful resignation amounting to termination and as the Petitioner therein did not seek a declaration that the resignation be declared as null and void, his appeal was dismissed and his writ petition was also dismissed. In Liberal Education Society (supra), the issue is as regards the applicability of Section 5 of the MEPS Act to a person who is placed on probation.

10 The facts and circumstances in the case in hand are quite peculiar. Firstly, the Petitioner was appointed in place of the original Appellant, who has succeeded before the School Tribunal and also before this Court. Secondly, the Petitioner was disengaged by the Management

after the original Appellant succeeded in his litigation and he was reinstated. The Petitioner did not choose to challenge her termination. Thirdly, the Petitioner has put in about two years in service and is out of employment for more than 19 years.

11 In the light of the law laid down by the Honourable Supreme Court in the following four cases, when an employee has worked for a short period and is out of employment for a long duration, it would be impracticable to reinstate such an employee and foist him on the employer and instead he could be compensated for the loss of employment by considering the number of years in service put in by him:-

- (a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal, [2013 LLR 1009];*
- (b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, [(2013) 5 SCC 136];*
- (c) *BSNL Vs. Man Singh, [(2012) 1 SCC 558]; and*
- (d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board, [(2009) 15 SCC 327].*

12 Even if the law as is laid down by the Honourable Supreme Court in the above mentioned four cases is to be considered, the fact remains that the Petitioner has never challenged her termination and

consequentially, her termination has not been set aside by any court. She could have preferred an appeal under Section 9 of the MEPS Act before the School Tribunal in 1999 itself. As on date, her termination is not under challenge and the original Appellant, in whose place she was appointed, has succeeded in litigation and upon reinstatement, has now settled in employment for more than 19 years.

13 Considering the above, this Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)