

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2427 OF 1998

The Chairman, Maharashtra Seva Mandal,
Ward No. 7, Belapur Road, Shrirampur,
District Ahmednagar.

...Petitioner.

Versus

1. Mrs. Swapnali Rajendra Londhe,
Age. Major,
C/o. Mrs. Sunanda Prabhakar Pise,
“Suyash”, Behind Kalaram Mandir,
Ward No. 7, Shrirampur, Dist. Ahmednagar.
2. Headmistress, Shankarrao Satoba Davkher
Kanya Vidyalaya, Ward No. 7,
At Post Shrirampur, Dist. Ahmednagar.
3. Education Officer (Secondary),
Zilla Parishad, Ahmednagar.
4. F.J. Syed,
Shankarrao Satoba Davkher,
Kanya Vidyalaya, Ward No. 7,
Shrirampur, Dist. Ahmednagar.
5. State of Maharashtra.

...Respondents.

Advocate for Petitioner : Shri S.V. Dixit.

Advocate for Respondent No. 1 : Shri S.T. Shelke.

AGP for Respondent No. 5 / State : Shri N.T. Bhagat.

CORAM : RAVINDRA V. GHUGE, J.

Dated : 30th June, 2017

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment of the School Tribunal dated 10/02/1998, by which, Appeal No. 100/1996, filed by respondent No. 1 / employee was allowed and she was granted reinstatement with continuity and full back wages with effect from 13/06/1996.

2. This Court by order dated 27/07/1998, has admitted this petition. No interim relief was granted to the petitioner and it was directed to deposit Rs. 35,000/- (Rupees Thirty Five Thousand only) in this Court, towards arrears of back wages. However, the said amount, admittedly, has not been deposited. Even though contempt petition was filed, the said amount is not deposited.

3. I have considered the strenuous submissions of the learned advocates for the respective sides. Shri Dixit, has taken me through each of the thirteen grounds that have been set out in the memo of the petition. He has pointed out the model

roaster for the year 1995 and 1996 and has submitted that there was backlog and consequently the appointment of the respondent / employee against the ST category can be sustained.

4. I find from the record that the petitioner had terminated the respondent No. 1 / employee by order dated 25/06/1995, with retrospective effect from 13/06/1996. The only ground raised was that the approval was granted for only one academic year and hence she cannot be continued in service.

5. The impugned order of termination dated 25/06/1996, cannot be sustained for two reasons. Firstly, that it is a termination with retrospective effect. The learned Division Bench of this Court in the matter of Asaram Raibhah Dhage Versus Executive Engineer & Ors. [1989 (2) CLR page 331], has observed in paragraph Nos. 1 to 4 as under :

“1. The services of an employee, be he permanent or temporary, cannot be terminated with retrospective effect. Such is the ratio of this judgment.

2. On 7th June 1980, the petitioner, a project displaced

person, was appointed as a Mustering Assistant in the Work Charge Establishment at a monthly salary of Rs. 200/-. Thereafter he worked continuously without break in service till March, 1986, when by a letter of termination dated 11th March, 1986 his services were retrospectively terminated with effect from 1st march, 1986. Hence this writ petition.

3. The petitioner's learned Counsel Miss Purohit is perfectly justified in making a grievance that it is unthinkable that an employee's services can be terminated with retrospective effect, as done in the present case. We join learned Counsel in her astonishment. For that matter, one of the conditions in the letter of appointment is that if the petitioner desired to resign he was liable to pay one month's salary or give one month's notice. It is therefore, ironical that on the other hand, the petitioner's services were terminated with retrospective effect.

4. However, the respondents' learned Counsel Mr. Bhatkar ventures that the date of termination, namely 1-3-1986 in the letter of termination must be typographical error. This is an ipse dixit; it is purely conjecture and speculative reasoning. Significantly enough, in the affidavit-in-reply, no such case of a typographical error is even faintly suggested. For that matter, despite the fact that in the petition it has been categorically stated in no uncertain terms that by this letter of termination, the

petitioner's services were terminated with retrospective effect from 1st March, 1986, not even then whisper of a denial is to be found in the affidavit-in-reply. Thus the myth of a typographical error stated across the Bar can safely be ruled out."

6. Secondly, the termination order cannot be sustained since lack of approval cannot be a reason for termination in the light of the judgment delivered by the learned Full Bench of this Court in the matter of Saint Ulai High School Versus Shri Devendraprasad Jagannath [2007 (1) Mh.L.J. 597].

7. Shri Dixit, has strenuously submitted that the respondent No. 1 / employee was appointed against ST category and the approval was also for ST category. Normally, in my view there can be no interference in the approval granted unless it is subjected to a specific challenge. However, in this case, the advertisement pursuant to which the respondent / employee was appointed, did not indicate that the applications were called for filling in the post reserved for the ST category. In the absence of such a clause and in the absence of reservation, the

petitioner cannot contend that the respondent was appointed against ST category. Moreover, her appointment order dated 31/12/1995, also does not state that she was appointed as against the ST category.

8. It also cannot be ignored that she was appointed on probation for a period of two years, though the probationary period was not specifically mentioned. The MEPS, Act, prescribes two years probation. So also, the model roaster placed on record indicates that there was one post available for the OBC category and the reservation that was carried forward in 1995 was of one post against SC category and one post against the ST category. This was besides the appointment of the respondent / employee on the post reserved for OBC as is indicated by the model roaster. On this count, as well, the appointment cannot be faulted.

9. I have considered the impugned judgment in the light of the submissions of the litigating sides. Keeping in view, the law laid down in the matter of Asaram Raibhah Dhage (Supra), the

termination of the respondent / employee cannot be sustained. So also, it cannot be stated that she was appointed against the ST category. In this backdrop, the impugned judgment of the School Tribunal to the extent of granting reinstatement with continuity in service can neither be branded as being perverse nor erroneous.

10. Shri Dixit, has then submitted that full back wages cannot be granted as a matter of course. He submits that whether the respondent / employee was gainful employed has not been established. In my view, when it comes to a workmen working in an industrial establishment, the law laid down by the Hon'ble Apex Court in the matter of J.K. Synthetics Ltd. Versus K.P. Agrawal, [(2007) 2 SCC 433], will be applicable. A workmen would have to step into the witness box and lead evidence for establishing that he is not in employment, had made an effort for alternate employment and yet could not secure employment. In the instant case, it has been denied that she is in gainful employment and it was in less than two years that the Tribunal has allowed the appeal. It appears that the

appeal was filed in 1996, for challenging the termination of June 1996, and in about 18 months, the School Tribunal has allowed the appeal.

11. Shri Dixit, submits that the petitioner institution is not in a good financial condition, and full back wages cannot be paid. Shri Shelke, submits that once the termination of a teacher is held to be bad in law, full back wages have to be paid in the light of the judgment of the Hon'ble Apex Court in the matter of Deepali Gundu Surwase Versus Kranti Junior Adhyapak Mahavidhyalay [(2013) to SCC 324], where the Apex Court has granted full back wages. As such, I do not find any such convincing reason or justifiable reason, by which, the back wages to be paid to the respondent / employee could be reduced.

12. In the light of the above, this petition being devoid of merits is, therefore, dismissed. Rule is discharged.

13. The petitioner has not deposited the amount of Rs.

35,000/- (Rupees Thirty Five Thousand only) in this Court as noted in paragraph No. 2 in this judgment. Consequently, I deem it proper to impose interest on the said amount at the rate of 3 % from the date of the direction of this Court which is 27/07/1998. As such, the petitioner / management shall pay the full back wages from 13/06/1996 till actual reinstatement of the respondent / employee on 30/07/1998, along with interest at the rate of 3 % per annum from August, 1998. This entire amount shall be paid within 12 weeks from today, failing which the rate of interest of 3 % shall stand enhanced to 6 % from August, 1998 till the amount is actually paid.

(RAVINDRA V. GHUGE, J.)

S.P.C.