

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

WRIT PETITION NO. 2894 OF 1997

- 1 Nagaon Education Trust.
Nagaon, District Dhule.
Through its President.
- 2 Gangamai Polytechnic Nagaon,
District Dhule.

...PETITIONERS

-VERSUS-

- 1 Hemant Chaitram Gharate,
Age : Major, Occupation : Nil,
R/o C/o Shri S.B.Patil, Advocate,
Pratik 16, Adarsha Colony,
Dhule.
- 2 S.S.Mahajan,
Age : Major, Occupation : Nil,
R/o C/o Shri S.B.Patil, Advocate,
Pratik 16, Adarsha Colony,
Dhule.
- 3 Director of Technical Education,
Maharashtra State, Dhobi Talav,
Mumbai.
- 4 Deputy Director of Technical
Education, Nashik Region,
Nashik.
- 5 Board of Technical Education,
Maharashtra State, Bandra (East),
Mumbai.

...RESPONDENTS

WITH

WRIT PETITION NO.2895 OF 1997

- 1 Nagaon Education Trust.
Nagaon, District Dhule.
Through its President.
- 2 Gangamai Polytechnic Nagaon,
District Dhule.

...PETITIONERS

-VERSUS-

- 1 Sanjay Uttamrao Sonawane,
Age : Major, Occupation : Nil,
R/o C/o Shri S.B.Patil, Advocate,
Pratik 16, Adarsha Colony,
Dhule.
- 2 Prashant Ramdas Mahale,
Age : Major, Occupation : Nil,
R/o C/o Shri S.B.Patil, Advocate,
Pratik 16, Adarsha Colony,
Dhule.
- 3 Sanjay Jagannath Bagul,
Age : Major, Occupation : Nil,
R/o C/o Shri S.B.Patil, Advocate,
Pratik 16, Adarsha Colony,
Dhule.
- 4 Director of Technical Education,
Maharashtra State, Dhobi Talav,
Mumbai.
- 5 Deputy Director of Technical
Education, Nashik Region,
Nashik.
- 6 Board of Technical Education,
Maharashtra State, Bandra (East),
Mumbai.

...RESPONDENTS

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Advocate for Petitioners : Shri Y.B.Bolkar h/f Shri R.B.Raghuwanshi.
Advocate for Respondents/ Employees : Shri S.S.Patil.
AGP for Respondents/ State : Shri N.T.Bhagat.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd February, 2017

Oral Judgment :

1 In both these matters, the same Petitioner Trust has challenged the same judgment of the School Tribunal dated 15.05.1997 by which Appeal Nos.25/1996 till 31/1996 and 33/1996 have been allowed. The termination order dated 24.06.1996 w.e.f. 01.07.1996 is quashed and set aside and they are granted reinstatement with continuity and 50% back wages.

2 I have considered the submissions of the learned Advocates for the Petitioner Trust and the Respondents/ Employees, who are the original Appellants.

3 All these Respondents/ Appellants (Employees) have joined service with the Petitioner in between September, 1987 till September, 1994. Mr.Gharate and Mr.Vishwas Sonwane joined in 1987, Mr.Mahajan joined in 1991 (now deceased), Mr.Sanjay Sonwane and Mr.Mahale joined

in November, 1992 and Mr.Patil and Mr.Bagul joined in September, 1994.

4 On 24.06.1996, the Principal of the Petitioner College directed each of these Appellants to submit their statements of marks and their certificates indicating acquiring of Bachelor or Master's Degree in Engineering, within a period of six days, failing which their services would stand terminated from 01.07.1996. Apparently, all these employees are deemed permanent in the light of Section 5(2) of the MEPS Act, 1977.

5 After the Appellants approached the School Tribunal against such notice, the Petitioner Management turned around and took a stand that they have never terminated these Appellants. The Tribunal, therefore, granted interim relief and permitted the Appellants to join the duties.

6 The Appellants have come forward with the case before the Tribunal as well as before this Court that despite the above, the Management merely created a picture of allowing the Appellants to join the duties, but in fact kept these Appellants away from employment. They have, therefore, filed the representation before the College and yet, they were not granted reinstatement. Subsequently, though their appeals have been allowed, they have taken up employment elsewhere and ever since have settled in employment as they were qualified engineers.

7 The only issue, therefore, before this Court is as to whether, these Appellants could be compensated for the illegalities committed by the Petitioner Management?

8 The School Tribunal, by a detailed judgment, has concluded that the notice dated 24.06.1996 indicating that these Appellants would be terminated from 01.07.1996, was apparently illegal and unsustainable. In my view, the said conclusion is legal and sustainable.

9 It, however, cannot be ignored that the Petitioner appears to have succeeded in keeping all these Appellants at bay. It is improbable that such Appellants, who are in need of employment, would not report for duties even after the School Tribunal granted interim relief in their favour. There have to be circumstances by which these Appellants were restrained from joining duties and which the Management is capable of so doing.

10 Considering their qualifications and their need for employment, these Appellants have taken up employment elsewhere, as is canvassed by Shri Patil, otherwise they would have ended up in spending long time in litigation and their time would be consumed in litigation rather than earning livelihood for themselves and their families. Shri Patil,

therefore, submits that it is these circumstances that compelled the Appellants to struggle for existence and survival and accordingly, they took up employment elsewhere. One of them i.e. Mr.Mahajan has passed away.

11 Considering the above and keeping in view Section 11(2)(e) of the MEPS Act, 1977 which provides for grant of compensation of six months salary with allowances for employees who have worked for less than 10 years and who cannot be reinstated, I deem it proper to partly allow these petitions and modify the impugned judgment.

12 In the light of the above, these Writ Petitions are partly allowed. The direction of the School Tribunal to reinstate the Appellants with 50% back wages, considering that the Appellants have taken up employment elsewhere, is substituted by the direction to the Petitioner Management to pay six months' salary with all allowances under Section 11(2)(e) of the MEPS Act, 1977 to each of the Appellants including the legal heirs of the deceased Mr.Mahajan at the rate of the 5th Pay Commission recommendations or such pay commission recommendations as were admissible and payable in July, 1996 to the permanent employees. The said amount shall be paid within a period of SIX WEEKS from today, failing which the Petitioner/ Management would be liable to pay interest

at the rate of 6% per annum on the entire amount from the date of the judgment of the School Tribunal.

13 Rule is made partly absolute in the above terms.

14 Needless to state, these directions would apply to those Appellants against whom the Petitioner has preferred the petitions.

15 It is informed by the Respondents that three original Appellants were party to Writ Petition No.2896/1997 which has been dismissed in default by this Court on 12.02.1998. As such, insofar as those Appellants are concerned, they would be at liberty to take recourse to the remedies available in law for seeking execution of the School Tribunal's judgment.