

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 484 OF 1998

1. President, Nesu Seva Shikshan
Sanstha, Shehi, Tq. Navapur,
District Dhule.

2. Head Master,
Nesu Seva Shikshan
Sanstha, Shehi, Tq. Navapur,
District Dhule.

..Petitioners

Versus

1. Kalidas Dagadu Pawar
Age 28 years, Occ. Service
R/o Mandane, Tq. Shahada,
District Dhule.

2. Education Officer (S),
Zilla Parishad, Dhule.

3. State of Maharashtra.

..Respondents

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Shri L.V.Sangeet, Advocate for the petitioners,
Shri S.P.Brahme, Advocate for respondent No.1 and
Shri S.P.Tiwari, AGP for respondents 2 and 3.

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WITH
WRIT PETITION NO. 5181 OF 1999

Kalidas Dagadu Pawar
Age 29 years, Occ. Service
R/o Mandane, Tq. Shahada,
District Dhule.

..Petitioner

Versus

1. The President / Secretary
Nesu Seva Shikshan Sanstha,
Shehi, Tq. Navapur, District Dhule.

2. The Head Master
Nesu Seva Shikshan Sanstha
Sanchalit, Vanwashi Madhyamik
School, Shehi, Tq. Nawarpur,
Dist. Dhule.

3. The Education Officer,
Zilla Parishad, Dhule.

..Respondents

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Shri S.P.Brahme, Advocate for the petitioner,
Shri L.V.Sangeet, Advocate for respondent Nos.1 and 2 and
Shri S.P.Tiwari, AGP for respondent No.3.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: February 16, 2017

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ORAL JUDGMENT :-

1. The petitioner in the first petition is the management, which is respondent in the second petition. The respondent No.1 in the first petition is the employee, who is the petitioner in the second petition.

2. The management is aggrieved by the judgment of the School Tribunal dated 19.12.1997, by which, Appeal (Dhule) No.40 of 1996 filed by the employee / appellant has been partly allowed. He is granted compensatory costs of Rs.1,000/- and reinstatement in service with continuity. The appellant is aggrieved by the same judgment only to the extent of the denial of backwages.

3. Both these petitions have been admitted.

4. The appellant has been reinstated on 1.1.1998.

5. I have considered the strenuous submissions of Shri Sangeet, learned Advocate for the management and Shri Brahme, learned Advocate for the appellant / employee.

6. This Court had stayed the impugned judgment on 2.2.1998, while issuing notice. By order dated 10.3.1998, the ad-interim order was vacated after considering that the appointment order dated 6.8.1994 clearly indicated that he was appointed on probation for one year. There is no dispute that the appellant had worked for the academic years 1994-95, by virtue of the appointment order dated 6.8.1994. He was continued in the academic year 1995-96 by another appointment order dated 26.6.1995, issued under Schedule “D” of Rule 9(5) of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (“MEPS Rules” for short).

7. The events that have occurred pursuant to the filing of these petitions will have a bearing on the result of these petitions. From 1.1.1998, the appellant has been reinstated in service and he is working for the last about 19 years. Apparently he is deemed permanent under Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (“the

MEPS Act” for short) and must have been accorded approval by now. He is about 40 years' old today and has settled in employment.

8. Considering this position, I am of the view that the equities will have to be balanced and the service of the appellant, who has settled in employment, cannot be disturbed. At the same time, the claim of the employee for backwages, which has been refused by the Tribunal for a period of about 16 months, will have to be ignored so as to balance the equities between the two sides. Shri Sangeet rightly submits that if the claim for backwages denied by the Tribunal 20 years ago, is to be reopened, then the nature of appointment of the appellant will also have to be reconsidered by ignoring the fact that 20 years have lapsed.

9. In the peculiar facts as recorded above, I find that the equities could be balanced by not disturbing the employment of the appellant, who has settled down in the last 19 years and by ignoring his claim for backwages for 16 months.

10. It is only in the light of the peculiar facts as above, that I am disposing off both these petitions by sustaining the judgment of the School Tribunal. Rule stands discharged.

11. To the extent of Rs.1000/- as is directed by the School

Tribunal, Shri Brahme graciously submits that considering the equitable order passed, he is not interested in the said amount and which can be donated to the Advocates' Bar Association of Bombay High Court, Bench at Aurangabad, if not already paid to the appellant. Shri Sangeet, therefore, submits that in this situation, the said amount of Rs.1,000/- would be donated to the Advocates' Bar Association of Bombay High Court, Bench at Aurangabad within a period of eight weeks.

(RAVINDRA V. GHUGE, J.)

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akl/d