

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 115 OF 1998

1. Shramik Shikshan Mandal
(A Public Trust registered under
the Bombay Public Trusts Act),
A/p-Parsamal, Tq. Sindkheda,
Dist. Dhule, through its President.
2. Pujya Sane Guruji Madhyamik Vidyalaya,
Chougaon, Tq. Sindkheda, Dist. Dhule.
Through its Head Master. ...Petitioners.

Versus

1. The State of Maharashtra.
2. Jaysing S/o. Mithesing Girase,
Age. 46 yrs, Occ. Teacher,
R/o. Parsamal, Tq. Sindkheda,
Dist. Dhule.
3. Backward Classes Cell,
Commissioner's Office,
Nasik, Division Nasik.
4. Education Officer,
Zilla Parishad,
Dhule, District Dhule. ...Respondents.

WITH

WRIT PETITION NO. 119 OF 1998

1. Shramik Shikshan Mandal
(A Public Trust registered under
the Bombay Public Trusts Act),
Tq. Sindkheda, Dist. Dhule,
through its President.
2. Pujya Sane Guruji Madhyamik Vidyalaya,
Chougaon, Tq. Sindkheda, Dist. Dhule.
Through its Head Master. ...Petitioners.

Versus

1. The State of Maharashtra.
 2. Sattarsing S/o. Chandrasing Girase,
Age. 28 yrs, Occ. Service,
R/o. Virdel, Tq. Sindkheda,
Dist. Dhule.
 3. Backward Classes Cell,
Commissioner's Office,
Nasik, Division Nasik.
 4. Education Officer,
Zilla Parishad,
Dhule, District Dhule.
- ...Respondents.

WITH
WRIT PETITION NO. 128 OF 1998

1. Shramik Shikshan Mandal
(A Public Trust registered under
the Bombay Public Trusts Act),
Tq. Sindkheda, Dist. Dhule,
through its President.
 2. Pujya Sane Guruji Madhyamik Vidyalaya,
Chougaon, Tq. Sindkheda, Dist. Dhule.
Through its Head Master.
- ...Petitioners.

Versus

1. The State of Maharashtra.
 2. Bhimsing S/o. Bhagwansing Girase,
Age. 36 yrs, Occ. Teacher,
R/o. Bhade, Tq. Sindkheda, Dist. Dhule.
 3. Backward Classes Cell,
Commissioner's Office,
Nasik, Division Nasik.
 4. Education Officer,
Zilla Parishad,
Dhule, District Dhule.
- ...Respondents.

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Advocate for Petitioners : Shri P.R.Patil
AGP for Respondent 1 & 4 : Shri S.S.Daund
Advocate for Respondent 2 : Ms. Pradnya Talekar
h/f Shri S.B.Talekar

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CORAM : RAVINDRA V. GHUGE, J.
Dated: May 09, 2017

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ORAL JUDGMENT :-

1 These three petitions have been admitted by this Court on 17.2.1998 and by a common interim order, interim relief was granted to the petitioner / management, by which the impugned judgments in favour of the respondent No.2 / employees in all these matters were stayed. Consequentially, all these respondents / employees (hereinafter referred to as the “appellants”) were kept out of employment from April 1993.

2 I have heard the submissions of the learned counsel for the petitioner / management and the original appellants in extenso.

3 Learned counsel on behalf of the appellants has cited the following reported judgments.

- i. Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327],
- ii. *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh* [(2013) 5 SCC 136],
- iii. *BSNL Vs. Man Singh* [(2012) 1 SCC 558],

- iv. *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohan Lal [2013 LLR 1009],*
- v. *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others [(2013) 10 SCC 324],*
- vi. *M/s Hindustan Tin Works Pvt. Ltd. Vs. The Employees of M/s Hindustan Tin Works Pvt. Ltd. - (1979) 2 CC 80,*
- viii. *Murari Mohan Deb Vs. Secretary to the Government of India - (1985) 3 SCC 120,*
- ix. *Educational Society Tumsar Vs. State of Maharashtra - (2016) 3 SCC 512,*
- x. *St.Ulai High School Vs. Shri Devendraprasad Jagannath, [2007(109) Bom.L.R. 60 = 2007(1) Mh.L.J. 597],*
- xi. *Manorma Verma Vs. State of Bihar - 1994 Supp (3) SCC 671,*
- xii. *Shri Bhagwan Mahavir Primary School Vs. Presiding Officer - 2014 (3) Mh.L.J. 161,*
- xiii. *Matoshri Ramabai Ambedkar Vidyarthi Vasatigruh Vs. Bharat D. Hambir - 2008 BCI 1 and*
- xiv. *Sayyed Maksood Ali Sayyed Roshid Ali Vs. Uruj-E-Urdu Education Society - 2011 (4) Mh.L.J. 952.*

4 For the sake of clarity, the details about the services of the appellants in these three petitions are as under:-

- (i) Appellant Jaysing Girase is B.A., B.Ed.
- (ii) Appellant Sattarsingh was a Peon and no qualifications were prescribed.

(iii) Appellant Bhimsingh Girase is B.A., B.P.Ed.

(iv) Appellant Jaysingh was initially appointed as an Assistant Teacher on 1.7.1989. He was then appointed as an in-charge Head Master in between 1991 and 1992. He was again appointed as an Assistant Teacher for the academic year 1992-93.

(v) Appellant Satarsingh was appointed as a Peon on 1.3.1990. He is said to be terminated on 1.4.1991 and again appointed for one year upto 1992. He is said to be terminated on 1.4.1992 and yet again appointed for the year 1992-93.

(vi) Appellant Bhimsingh was initially appointed as an untrained Teacher on 15.10.1987. He is said to have left the services in 1989. In 1990, he was again appointed as an untrained Teacher and terminated on 1.4.1991. For the academic years 1991-92 and 1992-93 he was appointed as an Assistant Teacher.

5 The cause of action for these three appellants arose on account of the refusal of the petitioner in granting them an appointment order for the academic year 1993-94. They approached the School Tribunal by filing Appeal Nos.36, 37 and 38 of 1993. It was contended that the management prevented them from reporting for duties on 12.6.1993 which was the beginning of the academic year 1993-94.

6. The appeals were initially allowed ex-parte when the petitioner / management did not cause its appearance despite the service of Court notice. By judgment dated 7.1.1995, these appellants were granted reinstatement with continuity and backwages by the School Tribunal. The petitioner / management approached this Court in Writ Petition Nos.1081 to 1983 of 1996. Suffice it to say that the matter was remanded by this Court on the condition of payment of Rs.25,000/- to each of the appellants for remanding the matter. Ultimately, by the impugned judgment, dated 29.9.1997, all the appeals were allowed under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the MEPS Act" for short) and the appellants were granted reinstatement with continuity and 50% backwages.

7 After these matters were before this Court, the impugned judgments were stayed. Eventually the matter reached the Honourable Apex Court and each of these appellants were granted Rs.25,000/- towards continuing the stay to the impugned judgment. Consequentially, all these appellants have been out of employment for the past about 24 years.

8 Shri Patil, learned counsel for the petitioner / management has primarily canvassed the following points:-

(i) None of these appellants have been granted regularization, were not in regular employment and hence have no right to employment.

(ii) None of these appellants were granted approval by the Education officer and hence they could not be continued in employment.

(iii) Each of these appellants have resigned voluntarily by resignation letter dated 20.4.1993, which were accepted on 22.4.1993.

(iv) Each of these appellants were appointed *de-hors* the reservation and considering the backlog, they could not be continued in employment as they did not belong to the reserved categories.

9 Learned counsel for the appellant has pointed out from the impugned judgment that the theory of reservation put forth by the management was an attempt to mis-lead the School Tribunal and the Tribunal has accordingly concluded that the said attempt was only to defeat the claim of the appellants. She further points out that the petitioner / management has nowhere challenged the manner of appointment of the appellants, their qualifications for being eligible to appointment and the legality of their appointments. She points out from the record that the petitioner / management had never taken up these grounds. She hastens to add that the appellant Sattarsingh was a Peon and no qualification was prescribed Both the

other appellants were having requisite qualifications and hence, there was no issue about their eligibility to be appointed.

10 After considering the submissions of the learned counsel for the respective sides and upon going through the record, I find that the management has taken a peculiar stand at the initiation of the process for terminating the services of these appellants. It was stated by the management that the School record of the X standard examination had plunged and consequentially, the dismal performance of the students indicated that the two appellants, who are Teachers, could be said to be responsible for the debacle of the School's performance. Surprisingly, even Sattarsingh who is a Peon was said to be responsible for the bad performance of the X Standard students.

11. It cannot be appreciated that a Class IV Peon could have any contribution for lifting the performance of the X Standard students. Moreover, the record reveals that the students have failed badly in the English subject and none of the two appellants / Teachers ever imparted education in the English subject. One was a History teacher and another was a Geography teacher. In this backdrop, I do not find that the impugned judgment could be termed as perverse or erroneous, when the bad result of the X standard examination was exclusively on account of the bad performance in the English subject.

12 The petitioners have also taken a stand that one of the appellants - Jaysingh Girase - was an in-charge Head Master and he is responsible for the bad performance. This aspect has also been dealt with by the School Tribunal, since in the academic year preceding the disengagement of the said appellant, he was an Assistant Teacher.

13 The petitioners have taken a stand that these appellants have resigned voluntarily since they were given a notice of termination dated 15.1.1993. They were also given a show cause notice on 31.12.1992.

14 The School Tribunal has dealt with this aspect of resignation. All the resignations are identical, in a typed form and carrying the same date 20.4.1993. A resolution is said to have been passed by the petitioner / management accepting the resignation letters within 48 hours on 22.4.1993. There is no evidence of convening the meeting for acceptance of the resignations.

15 Section 7 of the MEPS Act clearly provides that an employee who intends to resign from his post, shall draw up a letter of resignation in duplicate and sign both the copies of that letter by putting a date thereon. One copy is to be forwarded to the

management by registered post. Rule 40 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("MEPS Rules" for short) mandates three months notice for acceptance of resignation in case of a permanent employee and one month's notice in case of a temporary employee.

16 As such, the issue would be as to whether these appellants, who have not been granted approval and orders of confirmation, could be said to be permanent employees. Section 5(2) of the MEPS Act reads as under:-

"Section 5 - Certain obligations of Management of private schools.

(1)

(2) Every person appointed to fill a permanent vacancy except shikshan sevak shall be on probation for a period of two years. Subject to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed :

Provided that, every person appointed as shikshan sevak shall be on probation for a period of three years."

17 The learned Full Bench of this Court in the matter of St. Ulai (supra), has concluded that lack of approval or refusal of approval to

the appointment of an employee cannot be a ground for terminating his services and cannot be an impediment for his continuation in services. It was established before the Tribunal that though the management has shown gaps in employment of these appellants only for the period of summer vacations, they were artificial break and since the summer vacations need to be computed while considering the length of service, the Tribunal concluded that these appellants were deemed to be permanent employees since the Assistant Teachers have worked for about 4 years and the Peon had worked for about 3 years.

18 When these appellants were legally qualified to be appointed and the petitioner / management had appointed them on year to year basis and had continued them for the period mentioned above, the Tribunal in my view, has rightly concluded that they are deemed permanent employees.

19 In this backdrop, by relying upon Section 7 of the MEPS Act and Rule 40 of the MEPS Rules, the Tribunal has concluded that the acceptance of resignation was in violation of these provisions and hence were unsustainable.

20 I have gone through the resignation letters and the resolutions claimed to have been passed by the petitioners for accepting the said

resignations. There is no dispute that these three resignation letters are identical, all are typed out and they bear the signatures of these appellants at the bottom of the page. The appellants have contended that they have not submitted these resignations. Nevertheless, these resignations have been accepted within 48 hours and the factum of convening a special meeting of the Governing Council of the petitioner and passing of such resolution for accepting such resignations, was not proved by the management.

21 This case takes a curious turn on account of the fact that the management has never conveyed to these appellants their decision of acceptance of resignation and the dates on which they are being relieved. These documents have seen the light of the day only after this Court remanded the matter back to the Tribunal by setting aside the *ex parte* judgments and on imposing costs upon the petitioners. Until that moment these appellants have never received any communication as regards the acceptance of resignation. So also no such document was placed before the Tribunal to show that the acceptance of resignation was conveyed to the appellants and that they have received such communication. In this backdrop, I do not find that the conclusions drawn by the Tribunal on the facts of these cases could be termed as being perverse or erroneous.

22 In so far as the contention of the petitioner / management

that these three positions occupied by the appellants were reserved for backward classes is concerned, the Tribunal has concluded that a false case was put up by the management. Learned counsel for the petitioner has strenuously tried to impress this Court that these appellants did not deserve to continue in employment because of the backlog of the reserved categories, being seen from the record. It is stated that the B.C. cell of the Education Department has confirmed the backlog.

23 I find that this eventuality has occurred much after the disengagement of the appellants. The documents placed on record were disbelieved by the School Tribunal. I find that the advertisement published by the petitioner / management, which is referred to in paragraph No.9 of the impugned judgment does not in any manner indicate that the posts on which these appellants were appointed, were subject to any backlog of reservation. The appointment orders also do not indicate this aspect. Proposals for approval were not sent by the management to the Education Department, which indicates the conduct of the management of deliberately suppressing the proposals so as to keep the appellants temporary. The conduct of the management of appointing these appellants for each academic year and terminating them at the stroke of the summer vacation and suppressing their appointments from the Education Officer, would establish apparent unfair and

malafide conduct of the management.

24 Notwithstanding the above, if at all there was any backlog, the petitioner could have done away with the said backlog by ensuring that future appointments are made from the reserved categories. Considering these aspects, I find that the conclusion of the Tribunal in paragraph Nos.9 and 10 of the impugned judgment that the management had tried to mis-direct the Tribunal, does not appear to be perverse or vitiated.

25 The petitioners vehemently contend that these three appellants have again applied in 1993 for reemployment in the academic year 1993-94 and hence, by their conduct it needs to be inferred that they have accepted their termination. I find this to be yet another attempt of the management for misdirecting this Court. The modus operandi of the management was to disengage the appellants, to terminate them after every academic year at the stroke of vacations and compel them to apply for a fresh appointment. This was to create a picture that they are reapplying for appointment. These practices of the management have been tested in law over several decades and have been termed as artificial breaks (H.D.Singh Vs. Reserve Bank of India - (1985) 4 SCC 201 and State of Haryana Vs. Piara Singh (3 Judges Bench) (1992) 4 SCC 118.) This contention therefore, needs to be rejected instantly.

26 Issue before this Court is that in the light of the interim orders of this Court and the orders of the Honourable Apex Court, the impugned judgment was stayed and these appellants have been out of employment for 24 years. Appellant Jaysingh has attained the age of superannuation in 2008, having put in 4 years of service. Appellant Bhimsingh has put in 6 years in service and would be attaining the age of superannuation in 2019. Appellant Sattarsingh worked for 3 years as a Peon and his retirement would be in 2027. The Tribunal has granted reinstatement with continuity and 50% backwages to all these appellants.

27 I have considered the judgments cited by the learned counsel for the appellants. In the matter of Deepali (supra), the Honourable Apex Court has granted 100% backwages with reinstatement and continuity. None of these appellants have challenged the denial of 50% backwages by the School Tribunal. Considering the unfair conduct of the management and the pendency of this litigation, for which these appellants cannot be faulted and it is merely a matter of their destiny, I find that the appellant Sattarsingh can be reinstated in service with continuity and 50% backwages, as on the date of this judgment. He would consequentially be able to work for ten years and support himself and his family.

22 Section 11(e) and (f) of the MEPS Act read as under:-

“Section 11 - Powers of Tribunal to give appropriate reliefs and directions.

(1)

(2) *Where the Tribunal, after giving reasonable opportunity to both parties of being heard, decides in any appeal that the order of dismissal, removal, otherwise termination of service or reduction in rank was in contravention of any law (including any rules made under this Act), contract or conditions of service for the time being in force or was otherwise illegal or improper, the Tribunal may set aside the order of the Management, partially or wholly, and direct the Management,-*

(a)

(b)

(c)

(d)

(e) *where it is decided not to reinstate the employee or in any other appropriate case, ¹[to give to the employee twelve months' salary (pay and allowances, if any) if he has been in the service of the school for ten years or more and six months' salary (pay and allowances, if any) if he has been in service of the school for less than ten years], by way of compensation, regard being had to loss of employment and possibility of getting or not getting suitable employment*

thereafter, as it may specify; or

(f) to give such other relief to the employee and to observe such other conditions as it may specify, having regard to the circumstances of the case.”

29 Appellants Jaysing and Bhimsingh who are Assistant Teachers and have not been in the teaching profession for 24 years as they have claimed to be unemployed, I do not find that any purpose would be served in reinstating appellant Bhimsingh who has only 2 academic years prior to his retirement. Appellant Jaysingh has already attained the age of superannuation in 2008. In this backdrop, I find that the impugned judgment of the Tribunal, by which reinstatement is impossible with appellant Jaysing and impracticable with appellant Bhimsingh, needs to be modified. Considering the conduct of the petitioner / management, I deem it appropriate to exercise jurisdiction under Section 11(2)(f) by which, other reliefs in lieu of resintatment can be granted to the two appellants having regard to the circumstances of the case.

30 These petitions are, therefore, partly allowed. The impugned judgment to the extent of grant of reinstatement with continuity and 50% backwages in the case of appellant Jaysing is modified and he will stand entitled to continuity of service with all retiral benefits till his age of superannuation, which is 2008. His 50% backwages shall be

computed till the age of retirement on the basis of the gross salary payable as per the different Pay Commission's recommendations applicable from time to time.

31 Similarly, the directions of the Tribunal in favour of appellant Bhimsingh shall stand modified and he shall be granted continuity in service with 50% backwages and the date of judgment of this Court would be the date of his superannuation for the purposes of calculating his retiral benefits.

32 Learned counsel for the appellants Bhimsingh and Jaysingh submits on instructions that the said directions are acceptable to them.

33 The petitioner / management shall, therefore, calculate the backwages of all these appellants and ensure payment of the said amounts from the funds of the management within a period of 12 weeks from today, failing which these amounts shall carry interest at the rate of 6% per annum from the date of the impugned judgment of the Tribunal. Similarly, the gratuity amounts payable to the two appellants shall also be paid by the petitioners in the above mentioned time frame and subject to the same direction for interest in case of delay.

34 Their proposals for retiral benefits shall be forwarded by the petitioner / management within eight weeks from today. Payment of backwages to appellant Sattarsingh will be in the light of the above directions / time frame and interest, if payment is delayed, as like the other two appellants, shall be payable. Sattarsingh shall be reinstated by the petitioners within eight weeks from today.

35 Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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akl/d