

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 185 OF 1998

Shekar Suresh Shah,
Age: 40 years, Occ. Service,
R/o near Dagedi Door
Amalner, Dist. Jalgaon.

... **Petitioner**

Vs.

1. Yuvraj Bhanudas Kulkarni,
Age: 32 years, Occ. Service,
R/o in front of New Court
Nandadeep Chambers,
Amalner, Dist. Jalgaon.
2. President/Secretary,
Khandesh Shikshan Mandal,
Amalner, Dist. Jalgaon.
3. Head Master
Pratap High School,
Amalner, Dist. Jalgaon.
4. Deputy Director,
Vocational Education,
Nasik Division, Nasik.

... **Respondents**

with

WRIT PETITION NO. 5054 OF 2000

1. The Chairman & Secretary of
Khandesh Education Society,
Amalner, Dist. Jalgaon
2. The Head Master,
Pratap High School,
Amalner, Dist. Jalgaon.

... **Petitioners**

Vs.

1. Yuvraj Bhanudas Kulkarni,
Age: 35 years, Occ. Service,
R/o in front of New Court

Nandadeep Chambers,
Amalner, Dist. Jalgaon.

2. Shekhar s/o Suresh Shah,
Age: 43 years, Occ. Service,
R/o near Dagedi Door,
Amalner, Dist. Jalgaon.
3. Deputy Director of
Vocational Education & Training,
Nasik Region, Nasik.

... **Respondents**

...
Advocate for Petitioner : P.D. Bachate h/f. R.B. Raghuwanshi
in WP No. 185/98

AGP for Respondents: N.T. Bhagat

Advocate for Respondents : P.D. Bachate for R/2 in WP No. 5054/00

Advocate for Respondents : I.A. Chandorikar h/f. P.R. Patil for R/2 &
3 in WP No. 185/98

Advocate for Respondents : L.V. Sangit h/f. V.J.Dixit

...

CORAM : P.R. BORA, J.

DATE : 20-04-2017.

ORAL JUDGMENT :

1. Both these petitions arise out of the order passed by the School Tribunal, Nashik in Appeal No. 35 of 1995 on 14.10.1997. Writ Petition No. 185 of 1998 is filed by Shri Shekhar Suresh Shah who was respondent no. 4 in appeal before the School Tribunal, whereas, Writ Petition No. 5054 of 2000 is filed by the Educational Institution, which was respondent no.1 in the said appeal. Shri Yuvraj Bhanudas Kulkarni had filed the aforesaid appeal. Said Yuvraj Bhanudas Kulkarni is respondent no.1 in both the present Writ Petitions. Petitioner in Writ Petition No. 185 of 1998 is respondent no.2 in Writ Petition No. 5054 of 2000.

2. Shri Yuvraj Bhanudas Kulkarni had filed the aforesaid appeal before the School Tribunal challenging his demotion from the post of 'Assistant Lecturer' to 'Wiring Instructor'. It was his grievance that Shekhar Suresh Shah i.e. the petitioner in Writ Petition No. 185 of 1998 was wrongly appointed on the post of 'Assistant Lecturer' superseding his claim on the said post. The appeal so filed was resisted by the Educational Institution, as well as, Shekhar Suresh Shah. The School Tribunal, however, partly allowed the appeal and directed the school management to forthwith appoint said Yuvraj Bhanudas Kulkarni on the post of 'Assistant Lecturer' and to give him the benefits of the said post from the date of filing of the appeal. Shri Shekhar Suresh Shah and the Educational Institution have filed the present petitions, taking exception to the order passed by the School Tribunal.

3. In Writ Petition No. 185 of 1998, though, the petitioner had prayed to stay the execution of the order passed by the School Tribunal till decision of the petition, no such interim relief has been granted by this Court, however, in Writ Petition No. 5054 of 2000 this Court has passed the following interim order:

1) Heard. Rule to be heard with Writ Petition No. 185 of 1998. Respondents waive service.

2) Shri Sapkal, learned A.G.P. seeks time to take instructions from the Deputy Director of Vocational Education & Training and more particularly the possibilities of absorbing both the lecturers in the post of Assistant Lecturer. Time granted. The Respondent No.3 to file an affidavit

in reply explaining this position within a period of four weeks from today. Petition to be listed for final hearing on 29th March, 2001 at 2.15 p.m. Interim stay in terms of prayer clause (H) to continue until further orders. However, it is clarified that the petitioner management shall pay the salary of Respondent No.1 for the period he works and the Deputy Director of Vocational Education & Training, Nasik shall release the salary bills in respect of both the teachers till the petitions are finally decided.

4. When the matter was taken up for final disposal today Shri Bachate, the learned counsel appearing for the petitioner in Writ Petition No. 185 of 1998 and Shri L.V. Sangit, the learned counsel appearing for the respondent no.1 in both the Writ Petitions expressed their inability to state the present state of affairs, whether their respective clients are still in the employment of the Khandesh Education Society and whether they received the salary for the period they worked with the institution. Both the learned counsel however confirmed that they have no instructions from their respective clients that the interim order passed by this Court on 19.01.2001 has not been complied with. Had there been any non-compliance of the said order both the Teacher's i.e. Shekhar Suresh Shah and Yuvraj Bhanudas Kulkarni certainly have raised a grievance in that regard. Not making of any such grievance by both of them leads to only inference that the interim order passed by this Court on 19.01.2001 has been complied with and both the Teacher's are paid the amount of salary.

5. The order of School Tribunal is challenged in both the Writ Petitions on the ground that when Shekar Suresh Shah was senior to Yuvraj Bhanudas Kulkarni and approval was received to the appointment of Shekar Suresh Shah from the competent authority on the post of 'Assistant Lecturer', the Tribunal should have refrained from interfering with the said order. Perusal of the judgment passed by the School Tribunal reveals that it had held Yuvraj Bhanudas Kulkarni to be more qualified than Shekar Suresh Shah and had consequently held said Yuvraj Bhanudas Kulkarni to be entitled for the post of 'Assistant Lecturer'.

6. At the time when the order came to be passed by the School Tribunal age of Yuvraj Bhanudas Kulkarni was 33 years, whereas, age of Shekar Suresh Shah was 41 years. By way of interim relief granted in Writ Petition No. 5054 of 2000, this Court had stayed the order issued by the Deputy Director of Vocational Education and Training, whereby, Educational Institution was directed to pay the salary of 'Assistant Lecturer' to Yuvraj Bhanudas Kulkarni from 07.08.1996 to 17.11.1999. However, the effect and operation of the judgment and order passed by the School Tribunal has not been stayed by this Court. In absence of any contrary evidence and any complaint by said Yuvraj Kulkarni alleging non-compliance of the order passed by the School-Tribunal, it has to be presumed that the order passed by the School Tribunal directing the

management to appoint Yuvraj Bhanudas Kulkarni on the post 'Assistant Lecturer' has been complied with.

7. As noted earlier vide the interim order dated 19.01.2001, this Court had directed the Director of Vocational Education and Training, Nashik to release the salary bills in respect of both the Teacher's i.e. Yuvraj Bhanudas Kulkarni, as well as, Shekhar Suresh Shah, till the present petitions are finally decided. The interim order was passed by this Court on 19.01.2001 after hearing Writ Petition No. 5054 of 2000 with Writ Petition No. 185 of 1998. Since there is no grievance till date from Shekhar Suresh Shah as about the non-compliance of the interim order passed by this Court, it has to be further presumed that Shekhar Suresh Shah also had received the salary amount. As noted herein-above Shekhar Suresh Shah was aged about 41 in the year 1997, it is evident that by this time he must have retired from services after attaining the age of superannuation.

8. After having considered the facts as aforesaid, it does not appear to me that there is any propriety now in entering into the merits of the petitions. It appears to me that, both the Writ Petitions can be disposed of by making the interim order passed in Writ Petition No. 5054 of 2000 absolute, which would meet the ends of justice. After long lapse of 19 years there is no propriety in setting aside the order passed by the School Tribunal. Further, it is

also not possible to direct the recovery of the salary amount paid to Shekhar Suresh Shah in the intervening period under the directions of this Court, even if the order passed by the School Tribunal is confirmed. In the circumstances, as I mentioned earlier both the present Writ Petitions can be disposed of by making the interim order passed by this Court on 19.01.2001 absolute, which would meet the ends of justice. Order accordingly.

(P.R. BORA)
JUDGE