

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3689 OF 2014

ASHADEVI VIJAYRAO WAGH, LRS AND OTHERS
VERSUS
THE PRESIDENT, GIRNA VIDYA PRASARAK MANDALS SECONDARY AND
HIGHER SECONDARY SCHOOL

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Advocate for Petitioners : Shri V.B.Garud
Advocate for Respondents 1 & 2 : Shri S.H.Tripathi
Advocate for Respondent 4 : Shri S.S.Dixit

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 06, 2017

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PER COURT :-

1. Heard learned Advocates for the respective parties.

3. I find this case to be an example of denying a Teacher a right which flowed under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the MEPS Act" for short) and Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("MEPS Rules" for short). Unfortunately, she has passed away during the pendency of the litigation before the School Tribunal.

4. I have considered the submissions of the learned Advocates for the respective sides.

5. The deceased petitioner had approached the School Tribunal at Nasik in Appeal No.57 of 2009, claiming appointment as a Supervisor on the basis of her seniority at the School operated by the management at Mehunbare, Taluka Chalisgaon, District Jalgaon.

6. The deceased was working as an Assistant Teacher with the respondent institution from 12.6.1978. Admittedly, respondent Nos.4 to 6 are junior to her in the seniority list placed on record for the category "C" Assistant Teachers. The deceased petitioner was senior by appointment as well as age. Respondent No.4 was appointed after two years on 11.7.1980 in the D.Ed. scale, when the deceased was appointed in the B.Ed. scale. Respondent No.5 was appointed on 5.7.1984 and respondent No.6 was appointed on 1.6.1980 in D.Ed. scale and on 12.6.1986 in the B.Ed. scale.

7. Respondent No.4 was appointed as a Supervisor on 15.6.2008, ignoring the claim of the deceased. He was subsequently appointed as Head Master on 12.8.2008, ignoring the claim of the deceased.

8. The Education Officer (S), issued an order on 9.3.2009 to the respondent / management indicating that if the deceased was agreeable to be the Head Mistress at the school at Khadki Sim, she needs to be appointed as she is the senior most teacher in the said

category.

9. By another communication dated 9.3.2009, the Education Officer concluded after hearing the deceased as well as the management, that the deceased is not agreeable to work as Head Mistress at Khadki Sim and she is agreeable to become the Supervisor at the school at Mehunbare. The management had agreed to this proposal before the Education Officer, which is recorded by the Education Officer in the said order.

10. Despite the above, the respondent Nos.1 and 2 management have neither complied with the directions of the Education Officer, nor did they grant the right of the deceased petitioner.

11. The petitioner / deceased was, therefore, compelled to approach the School Tribunal in Appeal No.57 of 2009. The said appeal has been dismissed for two reasons. Firstly, that the deceased appellant had retired on 31.3.2010 from service and passed away on 15.6.2011 and secondly, that the appointments of respondent No.4 as Head Master and respondents 5 and 6 as Supervisors was a temporary assignment and was not a regular appointment.

12. Shri Tripathi, learned Advocate for respondents 1 and 2 / management strenuously submits that a stand was taken in the

written statement that the appointments of respondents 4 to 6 were only as in-charge Head Master / Supervisor. The deceased appellant was having some voice problem and some students have complained that her voice vibrates while delivering lectures. When called upon to read the appointment orders as Head Master / Supervisors, placed on record, the learned counsel for the management submits that there is no mention in these appointment orders that respondents 4 to 6 were only in-charge Head Master / Supervisors. When called upon to explain as regards the deceased's purported voice problem, he submitted that there was no medical examination and no Doctor had submitted that she is not capable of teaching.

13. From the above, I find that the management has put forth a lame excuse that some students find that the deceased's voice was vibrating. I find no merit in such submissions, inasmuch as, they smack of victimization. There is no dispute that the deceased was conducting classes and was imparting education till she superannuated.

14. It can only be said to be the misfortune of the deceased / petitioner that the School Tribunal failed to consider these aspects and erroneously relied upon the contention of the management that the respondents were holding in-charge positions, when in fact, they were specifically appointed by orders as Head Master / Supervisors

which are placed on record.

15. There is no dispute that there is no special pay or extra emoluments for a Supervisor inasmuch as, the deceased had declined to accept the assignment as Head Mistress at the school at Khadki Sim. However, her right to work as a Supervisor at the school at Mehunbare has been unlawfully taken away from her by the management notwithstanding that the Education Officer had directed the management. The affidavit in reply entered by the Education Officer reiterates this aspect.

16. Considering the above, since there cannot be any scope for appointment as a Supervisor in view of the superannuation of the petitioner, who has subsequently passed away, I find this to be a good for imposing exemplary costs by way of compensation on respondent No.1 / management which should be paid to the surviving husband of the petitioner Shri Sadashiv Krishnarao Deshmukh.

17. In the light of the above, this petition is partly allowed. The impugned judgment of the School Tribunal dated 1.3.2013 is quashed and set aside. Appeal No.57 of 2009 is partly allowed and respondent No.1 / management is directed to pay compensation of Rs.1,00,000/- (Re. One Lakh only/-) to the surviving husband of the deceased Shri Sadashiv Krishnarao Deshmukh within a period of six weeks from

today, failing which the said amount would carry interest at the rate of 6% per annum from the date of superannuation of the deceased / petitioner.

(RAVINDRA V. GHUGE, J.)

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