

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6341 OF 2012

VAISHALI ASARAM JAGTAP AND ORS
VERSUS
THE STATE OF MAHARASHTRA AND ORS

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Advocate for Petitioners : Shri Kakade Amol N .

AGP for Respondents 1 & 2 : Smt. Choudhary V.S.

Advocate for Respondent 3 : Shri Shelke S.T.

Advocate for Respondents & 5 : Shri Deshmukh Ajinkya
h/f Shri Hon A.V.

Advocate for Respondents 6 & 7 : Shri Anjanwatikar V.B.

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CORAM : RAVINDRA V. GHUGE & SUNIL K. KOTWAL, JJ.

Dated: November 14, 2017

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PER COURT :-

1. By this petition, these three petitioners have putforth their prayers below paragraph Nos.23(B), (C), (D), (E-1) and (E-2), which read as under:-

"(B) That by issuing writ of mandamus or any other appropriate writ, order or direction in like nature, respondent may kindly be directed to grant approval to the services of the petitioners as permanent employee and further to pay regular salary along with consequential benefits as per the Government norms.

(C) That by issuing writ of mandamus or any other appropriate writ, order or direction in like nature, the

advertisement issued by respondent No.4 dated 5th June 2012 Exhibit "E" may kindly be quashed and set aside and further regularize the services of the petitioners on the said post.

(D) Pending hearing and final disposal of this writ petition, the respondent no.4 and 5 may kindly be restrained from terminating the services of the petitioners without following due procedure of law.

(E-1) That by issuing appropriate writ, order or direction in like nature, the appointment orders dated 31.7.2013 issued in favour of respondent No.6 and 7 may kindly be quashed and set aside.

(E-2) Pending hearing and final disposal of this writ petition the Education Officer respondent No.3 may kindly be restrained from granting approval to the services of the respondent Nos.6 and 7."

2. We have heard the learned Advocates for the respective sides for sometime. We are informed by the learned counsel for the petitioners that during the pendency of this Writ Petition, these petitioners have been orally refused work sometime in 2012 and they have been kept out of employment.

3. We find that prior to the amendment in this petition and even

thereafter, this Court has not granted interim relief to these petitioners.

4. The issues that have been raised before us post amendment to the petition are as under:-

(A) Whether these petitioners have been working for about ten years in between 2002-2012?

(B) Whether they were subjected to any selection process and appointment orders were issued?

(C) Whether their 'otherwise termination' could be held unsustainable?

(D) Whether the non-grant of approval could be a ground for terminating their services in the light of the judgment delivered by the learned Full Bench of this Court in the matter of St.Ulai High School Vs. Shri Devendraprasad Jagannath, [2007(109) Bom.L.R. 60 = 2007(1) Mh.L.J. 597]?

5. We find that, on the one hand, we could have gone into the aspect of refusal of approval to these petitioners. However, on the other hand, considering their 'otherwise termination', we would have to deal with their purported unlawful oral termination which would fall within the exclusive domain of the School Tribunal

under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

6. We are of the view that we cannot exercise jurisdiction not vested in us by law on the pretext of exercising our extra-ordinary jurisdiction under Article 226 of the Constitution of India.

7. Considering the above, we find it appropriate to allow the petitioners to approach the School Tribunal for challenging their otherwise termination and the grounds on which the management may have orally terminated their services.

8. As such, this petition is disposed off with liberty to the petitioners to approach the School Tribunal. The time spent by the petitioners in this Court from the date of their termination till the passing of this order shall be a good ground for condonation of delay, in the event the petitioners prefer their appeals within six weeks from today. If such an appeal is filed and upon condonation of delay, the Tribunal shall endeavour to give preference to the appeal and decide it expeditiously considering the oral termination of 2012.

9. Needless to state, all the contentions of all the parties are kept open.

(SUNIL K. KOTWAL, J.)

(RAVINDRA V. GHUGE, J.)

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