

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9282 OF 2014

Smt. Sulochana Bhanudas Ugale,
Age 46 years, Occ. Nil,
R/o Katgaon Takali, Tq. Nagar
District Ahmednagar.

..Petitioner

Versus

1. The Secretary,
Junnar Taluka Shikshan Mandal
Aane, Tq. Junnar, Dist. Pune.

2. The Head Master,
Hanuman Vidhyalaya Khatgaon
Takali, Taluka Nagar, District
Ahmednagar.

3. The Education Officer (S),
Zilla Parishad, Ahmednagar.

..Respondents

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Advocate for Petitioner : Shri R.N.Dhorde
i/b Shri V.R.Dhorde

Advocate for Respondents 1 & 2 : Shri D.S.Maisapurkar
h/f Shri A.R.Borulkar

AGP for Respondent 3 : Shri N.T.Bhagat

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CORAM : RAVINDRA V. GHUGE, J.

Dated: March 06, 2017

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ORAL JUDGMENT :-

1. Heard the learned Advocates for the respective parties.
2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the judgment of the School Tribunal, Solapur, dated 30.7.2014, by which, Appeal No. 68 of 2008 filed by the petitioner / appellant has been dismissed.

5. With the assistance of the learned Advocates for the respective parties, I have gone through the entire record and proceedings received from the School Tribunal.

6. The appellant / petitioner has contended that she was working from 8.9.2003 and was orally terminated from her employment w.e.f. 14.6.2007.

7. The petitioner has acquired the qualification of B.A. in 1991 and B.Ed. in 1994. On 8.9.2003, she was appointed as a teacher at Hanuman Vidyalaya, Savargaon Guravachi. On 1.10.2004, she was transferred to the Hanuman Vidyalaya at Khatgaon. From 15.6.2007, she was disallowed from signing the muster roll.

8. The respondent No.1 / management filed its written statement dated 11.9.2009 in the Appeal preferred by the petitioner. In the short written statement of half a page, it was categorically

stated that the petitioner is mis-leading the Tribunal. She has set forth a false story. The management of the institution had never appointed her in it's school and hence, there was no question of transferring her from one school to another. In paragraph Nos.3 and 5, it is specifically contended that the management does not know the petitioner, she was never appointed in service, had never worked in the service of the institution and therefore, there was no question to terminate her services.

9. It needs mention that the management has not stated in this written statement that the petitioner was appointed on temporary basis in two academic years and that she started remaining unauthorizedly absent from 17.9.2004 and her name was, therefore, struck off the attendance register w.e.f. 30.9.2004.

10. It is pertinent to note that the management participated in the proceedings before the School Tribunal purely on the basis of the above stated written statement. Considering the said statements made, the School Tribunal delivered it's judgment dated 8.3.2011, thereby, dismissing the appeal filed by the petitioner.

11. The case put forth by the management becomes further curious considering that the Advocate for the management orally submitted before the School Tribunal while advancing final

arguments, that the petitioner was unauthorizedly absent from 17.9.2004. Apparently the Tribunal missed this serious contradiction in the stand of the management and failed to note that on the one hand, the management has stated in the written statement that the petitioner was never appointed, had never worked, there was no reason to terminate her when she was never appointed and practically set up a stand that the management did not know the petitioner. On the other hand, in oral submissions, it is stated that she is remaining unauthorizedly absent from 17.9.2004.

12. This Court, in Writ Petition No.3323 of 2012, filed by the petitioner, noticed that several documents were not considered by the Tribunal. By order dated 17.1.2014, allowed the Writ Petition and remanded the matter to the Tribunal for reconsideration of all the documents produced and for a fresh adjudication.

13. It appears that, with the above order passed by this Court, the management realized that the falsity in its written statement would be exposed. It, therefore, filed an additional written statement dated 25.8.2015 through the same person, who had signed and filed the earlier written statement on 11.9.2001. There is no dispute that he is the Chairperson of the Junnar Taluka Shikshan Mandal.

14. In the second Written Statement, again a self defeating stand

has been taken by the management. In paragraph No.4, it is stated that the petitioner has not produced any appointment order. In paragraph No.5, it is stated that the management has now produced two appointment orders, dated 8.9.2003 and 14.6.2004 indicating that the petitioner was appointed purely on temporary basis.

15. It has thus emerged from the record that the respondent / management has not acted truthfully before the Tribunal and has attempted to mis-direct the Tribunal. The contentions in the second written statement clearly indicate that the management had filed a false affidavit on 11.9.2009. In the light of the above, it is quite probable that this management has prepared two appointment orders dated 8.9.2003 and 14.6.2004, which according to the management itself, were never issued or served upon the petitioner and were not brought to her notice.

16. Considering the above, I find that this management has acted unethically before the Tribunal and has not hesitated in taking false stands so as to misdirect the School Tribunal, obviously, for being successful in getting an order of dismissal of the Appeal.

17. I have myself verified the record and proceedings placed before me. It appears that there is a post card issued by the Honourary Secretary of Shrirangdas Swami Shikshan Mandal, calling

upon the petitioner to approach the management with original documents. Learned counsel for the management submits that it is a sister concern of the respondent No.1 / educational institution. The date for appearance is mentioned as 14.6.2003. The petitioner contends that she was appointed in the Hanuman Vidyalaya at Savargaon Gurvachi on 8.9.2003. Though this document may not conclusively establish that the petitioner was interviewed before her selection for appointment, it does indicate that this respondent No.1 / management is not maintaining its records properly for reasons best known to the management and those records that are produced appear to be a result of the conflicting stands taken.

18. The petitioner has produced an original diary termed as the 'Arrangement of Periods.' The signature of the petitioner appears till 18.8.2006. This diary indicates the arrangement of periods from 14.9.2005 till 18.8.2006, evidences the signatures of several teachers for different classes and divisions and at several places, the signature of the Supervisor or the Assistant Head Master or the Head Master do appear. The stand taken by respondent No.1 is that this document is bogus. If signatures of several teachers as well as the Supervisor, Assistant Head Master and Head Master appear on the said register, I find that the management has taken a false stand (that it is a bogus diary) only for self serving purposes.

19. There are several other original documents produced by the petitioner before the School Tribunal as like the above and the School Tribunal has not taken the pains to go through each of the documents. It has merely accepted the contention of the management that all these original documents are bogus.

20. Considering the case, in the light of the above factors, it appears that after remand, the School Tribunal, by the impugned judgment dated 30.7.2014, has dismissed the appeal on the ground that the appointment of the petitioner as a teacher cannot be ascertained and she has failed to establish that her appointment was made on a clear, permanent and vacant post.

21. The issue, therefore, is as to whether the petitioner can be reinstated in service. It appears from the record that there was no advertisement published by the respondent / management and the petitioner was appointed on 8.9.2003 without following the basic procedure of holding interviews, selection and appointment. However, from the arrangement of periods diary and the diagonally opposite false stands taken by the management that she was working temporarily from 8.9.2003 to 17.9.2004, it is seen that the petitioner had worked from 8.9.2003 till 18.8.2006. Humans may lie, but the documents would not. The original documents indicate her continuance till 8.8.2006 which is roughly a period of about 2 years

and 11 months, notwithstanding the fact that the procedure for her appointment was never followed by the management.

22. In the light of the peculiar facts as above, as the petitioner has worked only for 2 years and 11 months and through an irregular appointment, I am not inclined to grant her reinstatement in service.

23. However, a strict view is required to be taken as against respondent No.1 / management for its whole hearted attempt of mis-leading the School Tribunal as well as this Court on the basis of its first written statement dated 11.9.2009 and the 2nd Written Statement dated 25.8.2015. Had this Court not remanded the matter back to the Tribunal by its judgment dated 17.1.2014, this mischief played by the respondent No.1 / management would not have been exposed. Owing to the direction of this Court of remitting the appeal for fresh decision to the School Tribunal, it compelled the management to give up its false stand and concede that the petitioner was appointed on 8.9.2003. The situation is further aggravated by the conduct of this management by pointing out two appointment orders dated 8.9.2003 and 14.6.2004, which apparently have not been issued or served upon the petitioner.

24. The Honourable Apex Court in the matter of Kishore Samrite Vs. State of U.P. [(2013) 2 SCC 398], has concluded that litigants who

attempts to mislead the Court or put up a false stand for self-serving purposes, need to be dealt with, with an iron hand. Further in the matter of Bhaskar Laxman Jadhav and Ors. vs. Karamveer Kakasaheb Wagh Education Society and Ors. [AIR 2013 SC 523], paragraph Nos.46 and 49, the Apex Court has ruled that a litigant is expected to narrate all the facts before the Court. Any attempt to suppress the facts, in totality or on the spacious plea that some information was not relevant to be narrated to the Court, the Honourable Apex Court has ruled that it is not for the litigant to decide what facts he would narrate to the Court and which would he hold back from the Court.

25. Considering the above, while granting monetary relief to the petitioner under Section 11(2)(e) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (“the MEPS Act” for short) I am imposing costs of Rs.1,00,000/- (Rs. One Lakh only/-) on respondent No.1 / management to be paid to the petitioner.

26. Section 11(2)(e) of the MEPS Act reads 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)"

27. In the light of the above, this petition is partly allowed. The impugned judgment of the School Tribunal dated 13.7.2014 is

modified. Appeal No.68 of 2008 is partly allowed by directing the respondent No.1 / management to pay salary for six months, under Section 11(2)(e) of the MEPS Act, along with all allowances, as per the VI Pay Commission Recommendations, within a period of six weeks from today, failing which, the said amount shall carry interest at the rate of 6% per annum from the date of the judgment of the School Tribunal. In addition thereto, respondent No.1 / management shall pay an amount of Rs.1,00,000/- (Rs. One Lakh only/-) towards costs to the petitioner within six weeks from today for having attempted to mis-lead the School Tribunal as well as this Court by putting forth a false stand through its written statement dated 11.9.2009.

28. Respondent No.3 - Education Officer shall enquire into the payment of regular salary to the petitioner by respondent No.1 from 8.9.2003 till 18.8.2006 by causing a proper scrutiny of the records of respondent No.1 / institution with regard to both the schools i.e. Hanuman Vidyalaya at Khatgaon Takali and at Savargaon Guravachi and if it is noticed that the petitioner was not paid her salary as per the admissible scale, respondent No.3 shall direct respondent No.1 to make the said payment. This scrutiny shall be completed by respondent No.3 within eight weeks from today and he shall pass necessary orders within two weeks after the scrutiny is over. Compliance report of these directions shall be submitted by

respondent No.3 / Education Officer (S), to the Registrar (Judicial) of this Court on/or before 30.7.2017.

29. Rule is made partly absolute in the above terms.

30. Record and proceedings be returned to the School Tribunal, Solapur forthwith.

31. Learned counsel for respondent No.1 / management prays for staying these directions. Learned Sr. Advocate opposes the said request.

32. Considering the fact that a lady employee has been litigating for the past ten years and has already made two rounds of litigation upto this Court and considering the unethical conduct of respondent No.1 / management which is thoroughly exposed, I deem it proper to reject the said request.

(RAVINDRA V. GHUGE, J.)

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akl/d