

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.10366 OF 2013

1. Shri Chhatrapati Shivaji Shikshan  
Sanstha  
Post Belvande (Sugar), Tq.Shrigonda  
District Ahmednagar,  
Through its President,
  2. The Principal,  
Shri Chhatrapati Shivaji Shikshan  
Sanstha's High School,  
Post Belvande (Sugar), Tq.Shrigonda,  
Dist.Ahmednagar
- PETITIONERS

VERSUS

Anand S/o Suresh Shinde,  
Age-Major, Occu-Service,  
R/o Post Belvande (Sugar),  
Tq.Shrigonda, Dist.Ahmednagar

-- RESPONDENT

Mr.V.D.Hon, Sr.Counsel h/f Mr.A.V.Hon, Advocate for the petitioners.  
Mr.P.V.Barde, Advocate for the respondent.

( CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/03/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners are aggrieved by the impugned award dated 24/09/2013 by which the 2<sup>nd</sup> Labour Court, Ahmednagar has

answered Ref.(IDA) No.6/2011 in the affirmative and by setting aside the oral termination of the respondent, has granted reinstatement with continuity and 25% back wages.

3. I have heard the learned Sr.Advocate for the petitioners and Mr.Barde, learned Advocate for the respondent for quite some time.

4. The basic objections raised by the petitioners before the Labour Court in its written statement Exhibit C-7 are as follows :-

[a] Since the petitioner is an educational institution, reference proceedings under the I.D.Act are not maintainable before the Labour Court.

[b] The respondent should have approached the School Tribunal under the MEPS Act.

[c] The Respondent never worked continuously for 240 days in any calendar year.

[d] He was purely a helper.

[e] Being a daily wager, he cannot claim reinstatement.

5. It is further submitted that though the petitioners filed its' written statement, it did not participate in the proceedings. The respondent was not cross-examined, no evidence was led by the petitioners and final arguments were also not advanced before the Labour Court.

6. Though Mr.Barde submits that the impugned award deals with the merits of the matter and it was conclusively proved on the basis of the P.F. subscription receipts that the respondent was working continuously, I find that the petitioners, owing to lapses on its part, have not participated in the proceedings.

7. In the above backdrop, the matter could be remitted to the Labour Court by directing the petitioners to deposit a portion of the back wages with liberty to the respondent to withdraw some amount, so as to reduce the rigours of litigation being suffered by the respondent.

8. While remanding the matter, one issue needs to be closed in this Court as regards the jurisdiction of the Labour Court to entertain the reference case. In a judgment dated 09/12/2016 delivered by this Court in the matter of Balasaheb Dagadu Yeole Vs.Sangamner Taluka Vikas Pratishthan, WP No.1572/2015, the issue of jurisdiction of the Labour/Industrial Courts in the light of the M.E.P.S.Act, 1977, has been settled. It is concluded that the non-teaching staff working in schools or colleges or universities can approach the Labour/Industrial Courts. This Court has also

concluded that the view taken by this Court (Coram : P.R.Borkar, J.) in Adarsh Shikshan Sanstha Vs.Jaiprakash Ramvilas Lohia and another [2010(1) BCR 810 = 2010(2) Mah.L.J. 924] cannot be said to be a good law. As such, the issue of jurisdiction of the Labour Court in this matter after remand would not be open to be canvassed by the litigating sides and the Labour Court would decide the reference proceedings on its merits.

9. As such, this petition is partly allowed. The impugned award dated 24/09/2013 is set aside only to enable the petitioners to participate in Ref.(IDA) No.6/2011 which is remitted to the 2<sup>nd</sup> Labour Court, Ahmednagar with the following directions :-

[a] The litigating sides shall appear before the said Court on 22/03/2017. Formal notices need not be issued.

[b] Since the issue of jurisdiction is settled, the petitioner would be at liberty to cross-examine the second party workman and thereafter lead evidence.

[c] The Labour Court shall decide the reference proceedings on its own merits.

[d] The petitioners shall deposit an amount of Rs.1,00,000/- towards the unpaid wages from the date of termination before the Labour Court on or before 15/04/2017 as a pre-condition for participating in the said proceedings.

[e] After such amount is deposited, the respondent / second party would be at liberty to withdraw 50% of the said amount

by filing an undertaking/affidavit stating therein that if adverse orders are passed against him in the reference, subject to further litigation, he would re-deposit the same amount without interest in the Labour Court.

[f] In the event, the abovesaid amount is not deposited, this order shall stand recalled, this petition would then stand dismissed and the award of the Labour Court dated 24/09/2013 will then stand restored.

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

( RAVINDRA V. GHUGE, J.)