

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12663 OF 2016

The Headmistress/Head Master]
Ashokrao Desai Krushi Vidyalaya]
Alegaon, Taluka Sangola, Dist. Solapur & Anr.] Petitioners

Vs.

Mr. Sadashiv Maruti Sangolkar & Ors.] Respondents

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Mr. Shikur G. Kudle, for petitioners.
Mr. Anvil Kalekar i/b Niranjan P. Shimpi, for respondent No.1.
Mr. S.D. Rayrikar, A.G.P for respondent No.3.

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CORAM : R.G. KETKAR, J.

DATE : 9TH JUNE, 2017.

P.C.

Heard Mr. Kudle, learned Counsel for petitioners, Mr. Kalekar, learned Counsel for respondent No.1 and Mr. Rayrikar, learned A.G. P for respondent No.3 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 20th November, 2015 passed by the learned Presiding Officer,

School Tribunal, Solapur in Appeal No. 25 of 2015 [for short 'Tribunal']. By that order, Tribunal allowed the appeal preferred by first respondent and set aside oral termination order dated 5th April, 2014 and held that oral otherwise termination order dated 5th April, 2014 is illegal and accordingly set aside. The Tribunal ordered reinstatement of the first respondent with continuity of service as 'Naik' from the date of his termination and with full back wages. Petitioners/management was directed to comply with this order within 30 days from the date of receipt of the order.

3. In support of this Petition, Mr. Kudle has taken me through the additional affidavit dated 22nd February, 2017 made by Balwantrao Mahadev Babar, Local President of Samajik Sanskrutik Congress, Maharashtra, Mumbai. He also invited my attention to the letter dated 15th May, 2014 addressed by Head Mistress of Shri Ashokrao Desai Krushi Vidyalaya, Alegaon to the first respondent as also communication addressed by Head Mistress to the Education Officer (Secondary) dated 15th May, 2014. He submitted that respondent No.1 was directed to file affidavit to deal with averments made in the Petition. He submitted that respondent No.1 is acting at the behest of some unauthorized persons who are interested in closing down the School in question. Respondent

No.1 is under impression that without working in the School, it is possible to get back wages under the so called plea of otherwise termination. Respondent No.1 in his explanation dated 5th May, 2014 made it clear that he was asked to give explanation for having remaining absent on 4th April, 2014 and after the receipt of explanation from him, he will be allowed to sign on the Muster Roll clearly shows admission on the part of the first respondent that petitioners never precluded respondent No.1 from discharging duties. This also proves bona fides on the part of petitioners as by letter dated 15th May, 2014, respondent No.1 was called upon to resume duties, failing which, having responsible for the costs and consequences.

4. By letter dated 15th May, 2014, explanation given by respondent No.1 was not accepted as it was false, frivolous and misleading. Respondent No.1 never gave advance intimation about his absence on 4th April, 2014. By calling upon respondent No.1 to give in writing that he will not commit mistake of remaining absent again without prior intimation does not amount to pressurizing him.

5. Mr. Kudle submitted that by another letter dated 15th

May, 2014 addressed to the Education Officer (Secondary), request was made to visit the School either by himself or through his responsible officer working in his office for the purpose of finding out whether respondent No.1 is attending School in question or not. Mr. Kudle submitted that leave application of another employee namely Mr. Surwase for casual leave was sanctioned on 3rd April, 2014. Thus, allegation made by respondent No.1 to the effect that on 2nd April, 2014 and 3rd April, 2014, Head Mistress was not present in the School and hence, he could not submit leave application in advance is false. He submitted that at the behest of rival group of management, many employees are acting against the petitioners as a pressurizing tactics. Respondent No.1 is puppet in the hands of rival group of the petitioners. He submitted that Tribunal was not justified in allowing the appeal, thereby, ordering continuity of service and payment of full back wages.

6. On the other hand, Mr. Kalekar supported the impugned order. He has taken me through the written statement filed by Management before the School Tribunal and in particular paragraphs 15, 16 and 17 thereof as also the letter dated 5th May, 2014 addressed by the first respondent to the petitioners. Mr.

Kalekar also relied upon order dated 14th November, 2008 passed by this Court in Writ Petition No. 7191 of 2008 against one Mr. Sukhdeo Bapu Pawar and first respondent. The learned Single Judge of this Court observed that services of permanent employee could not have been dispensed with by refusing him permission to sign the Muster Roll. Though the management had submitted that they had called upon the first respondent to join duty, the Tribunal has recorded a finding of fact that the signature of the first respondent in token of having received the letters was not taken and there was nothing on record to show that these letters were, in fact, served on the first respondent. From the material on record, it is clear that at the material time, first respondent had complained that the management is preventing him from reporting for duty and signing the Muster Roll. He submitted that petitioners are repeatedly following practice of prohibiting the permanent employees from signing Muster Roll. He, therefore, submitted that no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused material on record. By order dated 1st February, 2017, petitioners were directed

to deposit 50% of the back wages in this Court in terms of order dated 5th April, 2014 passed by the School Tribunal. The said order was reviewed by order dated 16th March, 2017. In that order statement of the petitioners/management that respondent No.1 can resume his duties, as noted in the order dated 11th January, 2017 was recorded. Mr. Kalekar submits that respondent No.1 has resumed duties and is presently working in the School.

8. A perusal of the impugned order and in particular paragraphs 9 and 10 thereof shows that Tribunal observed that main allegation against the first respondent for preventing him to sign the Muster Roll is that he remained absent on 4th April, 2014 without getting prior sanction or without submitting the leave application. Respondent No.1 denied said allegations and submitted that respondent No.2 was not present in the School for giving intimation in advance and after attending the Court date when he tendered leave application in person, respondent No.2 refused to accept it. Therefore, he sent that letter by post. A perusal of letter dated 5th May, 2014 addressed by first respondent also shows that his case was before the Tribunal. In the morning on 4th April, 2014, respondent No.1 went to give application which was not accepted by the Head Mistress. She, in turn, directed the

first respondent to submit that application to the President. Then he approached the President. He also declined to accept the said application. After perusal of the material on record, School Tribunal accepted the contention advanced by the first respondent. Tribunal also noted that by letter dated 12th April, 2014 and by further letters, management asked the first respondent to submit apology and undertaking in writing that he remained absent without prior intimation and henceforth he will not commit such mistake and will not remain absent without prior sanction. Tribunal further noted that Head Mistress was forcing first respondent to admit that he had committed mistake by remaining absent without prior intimation and after admitting the said fact in writing and submitting undertaking, he will be allowed to sign the Muster Roll. Such type of conduct on the part of Head Mistress is against the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'Act'] If there is any misconduct on the part of the employee, management has to take steps against him as per the rules framed under the Act. Management or Head Mistress cannot force employee for submitting any undertaking or apology in writing as per their demand. Tribunal, therefore, noted that conduct of the management in not allowing the first respondent to sign the

Muster Roll unless and until he submits undertaking and apology asked by them certainly amounts to illegal termination and accordingly set aside termination of first respondent.

9. Mr. Kalekar invited my attention to the order dated 14th November, 2008 passed by this Court in Writ Petition No. 7191 of 2008. In paragraph 3, this Court observed thus:

“The Tribunal was justified in holding that if the management had any complaint against the First Respondent in respect of the commission of an act of misconduct, it was open to it to hold a disciplinary enquiry. The services of a permanent employee could not have been dispensed with by refusing him permission to sign the Muster Roll. Though the management had submitted that they had called upon the First Respondent to join duty, the Tribunal has recorded a finding of fact that the signature of the First Respondent in token of having received the letters was not taken and there was nothing on the record to show that these letters were, in fact, served on the First Respondent. Be that as it may, it is abundantly clear from the material placed on the record that at the material time the First Respondent had complained that the management was preventing him from reporting for duty and signing the Muster Roll. The Tribunal was on the basis of the evidence on record, justified in holding that the employee with a long service of fifteen years was arbitrarily dealt with and removed unlawfully. The Tribunal has restricted the grant of back wages to only 30%. The order for the grant of back wages does not, in the circumstances, warrant interference in the exercise under Article 226 of the Constitution of India, particularly, having regard that the conduct of the management was patently illegal and arbitrary. There is no merit in the petition which will accordingly stand dismissed.

10. After considering material on record, I do not find that Tribunal committed any error in passing the order. I also do not find any merit in any of the submission of Mr. Kudle. Hence, Petition fails and the same is dismissed.

11. At this stage, Mr. Kudle orally applies for stay of direction to pay 100% back wages. He is, however, not in a position to make a statement that in case petitioners do not get favourable order from higher Court, he will pay back wages. In view thereof as also having regard to the fact that Execution Proceeding is filed, oral application for stay is rejected.

[R.G. KETKAR, J.]