

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2152 OF 2009

Smt. Shailaja Chandrakant Shenai.	]	... Petitioner
Versus		
The Secretary, C. K. Khandekar Vidya	]	
Pratishthan, & Ors.	]	... Respondents

ALONG WITH

WRIT PETITION NO.2151 OF 2009

Shri Dilip Prabhakar Panshikar.	]	... Petitioner
Versus		
The Secretary, C. K. Khandekar Vidya	]	
Pratishthan, & Ors.	]	... Respondents

Mr. Sachindra B. Shetye for Petitioners in both Writ Petitions.
 Mr. Ravindra J. Dhond for Respondent Nos.1 & 2 in both Writ Petitions.
 Mr. J. A. Madane, AGP for State - Respondent Nos.3 & 4 in both Writ Petitions.

CORAM :- G. S. KULKARNI J.
DATE :- 17 FEBRUARY, 2017

P. C. :-

1. Writ Petition No.2151 of 2009 is not on board. At the request of Mr. S. B. Shetye, learned Counsel for petitioners, taken on board.
2. Writ Petitions are admitted. By consent, the petitions are heard finally.

3. As the issues in both these petitions are similar, they are being decided by this common order.

4. It is not in dispute that the petitioners in both these petitions were appointed as Full Time Teachers / Instructors by respondent nos.1 and 2 in the subject of 'Maintenance and Repairs of Domestic Electrical Appliances'. They were appointed on permanent posts which were vacant at the relevant time. The appointment was made in pursuance of the regular procedure which was required to be followed by issuance of advertisement, etc. Initially, the appointment was made on temporary basis, however, later, it was made permanent.

5. On 29/03/1997, due to some inadvertent error on the part of the management in applying the reservation roster, the petitioners were told that their services were temporary and that from the end of the month, their services would be terminated. The petitioners being aggrieved by this action on the part of the respondent no.1 - management, initially approached the Civil Court by filing a civil suit. However, as the Civil Court did not have jurisdiction as such disputes would be maintainable before the School Tribunal, in the year 2000, the suit was held to be not maintainable.

6. Accordingly, the petitioners approached the School Tribunal in their respective appeals in question. What has happened before the School Tribunal is very peculiar. On behalf of the management, a reply came to be filed, *inter alia*, contending that the action as taken on behalf of the respondent in terminating the services of the petitioners was erroneous. It was stated that the petitioners were appointed with effect from 18/08/1992 on permanent posts. The respondent -

management contended that it had no grievance in regard to the duties being performed by the petitioners. It was also contended by respondent management that they did not have any objection for appeals of the petitioners to be allowed. Significantly, in addition to this reply, a 'pursis' dated 15/09/2004 came to be filed which was signed by the Secretary, Head Mistress, Vice-Chairman stating that the prayers of the petitioners in the appeal be granted and the appeals be disposed of. The Deputy Director, Vocational Education and Training, who was respondent no.3 before the School Tribunal, also took a position and also granted a no objection to the pursis as filed on behalf of respondent nos.1 and 2, however, stating that respondent no.3 would not be responsible for any monetary loss of the petitioners. Considering the said reply as filed by respondent nos.1 and 2 and the pursis as also the say of respondent no.3, the learned Presiding Officer of the School Tribunal passed the following order on 02/04/2008.

*"Herein pursis filed on behalf of Respondent No.3 is as under -
The Respondents no.1 and 2 have already filed pursis stating that, the appellant is made permanent in service. Pursis is at Ex.22.
Respondent No.3 has no objection to pursis Ex.22.
However, Respondent No.3 is not responsible for any monetary responsibility of Appellant.
Hence pursis."*

Albeit the respondent management categorically conceding before the Tribunal that the appeals of the petitioners be allowed, the learned Presiding Officer proceeded to adjudicate the appeals on merits and dismiss the same by the impugned order. The learned Presiding Officer, in para nos.9 and 10, has made the following observations :-

"9. I have gone through the written arguments (exh.29) filed by the appellant the respondents did not argue out the matter on the other hand they have filed the pursis (Exh.22, 24, 27) informing that the appeal be allowed as it is."

10. Though the respondents by pursis informed to allow the appeal the respondents no.1 and 2 made controversial pleadings to said submissions as they have denied the claim under appeal in toto by their written statement. Therefore, I have to consider the pleadings of the parties, material on record and the law on the point hence I can not act upon the pursis mentioned above."

A perusal of the above findings would indicate that the contention as urged on behalf of the respondent - management in the pursis is not accepted by the learned Presiding Officer of the Tribunal on the ground that there are contradictory pleadings on the part of respondent no.1 - management as observed in para 10 of the impugned decision as noted above and therefore, the learned Presiding Officer thought it appropriate to decide the appeal on merits.

7. Mr. Shetye, learned Counsel for petitioners and Mr. Dhond, learned Counsel for respondent nos.1 and 2, are *ad idem* to submit that the Tribunal has proceeded on an erroneous footing in adjudicating the appeals on merits when it was not called for. This, according to them, was for the reason that the pursis as submitted on behalf of the management was clear inasmuch as case of the petitioners in the appeal was accepted on behalf of the respondent - management in totality with a further submission that the appeal be allowed. It is further submitted that the Deputy Director had also accepted the pursis. It is thus submitted that the effect of pursis has been completely overlooked by the learned Presiding Officer.

8. As urged on behalf of the petitioner and accepted by the respondent management, the petitioners were never placed out of service despite the orders being issued against them which had threatened termination of their services. It is also submitted on behalf

of the petitioners that during the pendency of the appeal, there was interim order which was in operation whereby the services of the petitioners were continued. This protection came to be continued by this Court by the order dated 25/02/2009 in terms of prayer clause (d) of this petition. It is continued till date.

9. The learned Counsel for respondent nos.1 and 2 would submit that the above position is correct and submits that the petitioners are in service as on date and are continued right from the date of their appointment. It is submitted that the respondent - management has no grievance in regard to the services of the petitioners.

10. Considering the above undisputed factual position, in my opinion, the learned Presiding Officer of the School Tribunal was in an error to adjudicate the appeals in question on the ground that the pleadings as filed on behalf of the management were contradictory or inconsistent. The Tribunal would not be correct in doing so, in view of the respondent nos.1 and 2 subsequently contending before the Tribunal to allow the petitioner's appeals, as stated in the pursis. In my opinion, the effect and consequence of the pursis and the clear position taken on the part of the management not to contest the proceedings and for that matter, the respondents even did not argue the matter, as recorded by the learned Presiding Officer in para 9 of the impugned order, was something which was significant, not to adjudicate the appeal of the petitioners.

11. Also in the present proceedings, the submission on behalf of the petitioners that the impugned order passed by the Tribunal be

quashed and set aside, is supported by the respondent - management. The stand on behalf of the respondent - management is thus consistent to the stand which has been taken by them before the School Tribunal in the pursis. It may be observed that before the Tribunal, there was thus no lis between the parties as is evident from the clear stand of the respondent - management as taken in the pursis. The approach of the learned Presiding Officer, in my opinion, thus, was erroneous and contrary to the record in passing the impugned order.

12. Resultantly, the petitions are required to be allowed. They are accordingly allowed in terms of prayer clause (b). There shall be no order as to costs.

(G. S. KULKARNI, J.)