

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13067 OF 2016

Progressive Education Society,	]	
Through Chairman its Chairman	]	
Dr. Gajanan Ramakant Ekbote & Anr.	]	... Petitioners
Versus		
Shri Laxmikant Mahadev Sherkhane & Ors.	]	... Respondents

ALONG WITH
WRIT PETITION NO.13068 OF 2016

Progressive Education Society,	]	
Through Chairman its Chairman	]	
Dr. Gajanan Ramakant Ekbote & Anr.	]	... Petitioners
Versus		
Shri Dilip Dada Khandale & Ors.	]	... Respondents

Mr. Rakesh P. Saroj for Petitioners in both Writ Petitions.
 Mr. Mihir Desai i/b Mr. Sarnath Sariutta Pramod for Respondent No.1 in both Writ Petitions.
 Mr. J. A. Madane, AGP for Respondent Nos.2 & 3 in both Writ Petitions.

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

P. C. :-

1. Writ Petitions are admitted. By consent, heard finally.

2. Both these petitions challenge a common order passed by the learned Presiding Officer, School Tribunal, Pune, in appeals filed by respondent no.1 - employees as arrayed in both these petitions.

3. The subject-matter of the appeals before the School Tribunal (for short, 'Tribunal') was an order of termination passed by the petitioner - management dated 19/08/2016 terminating services of respondent no.1 in both these petitions. The case of the petitioner is that the order of termination came to be passed after a charge-sheet was issued to these employees and a full-fledged domestic enquiry being conducted on the said charge-sheet. The employees (respondent no.1 in both writ petitions) being aggrieved by the termination of their services, approached the School Tribunal by filing their respective appeals being Appeal No.62 of 2016 and Appeal No.63 of 2016. Interim applications were moved in the appeals seeking a mandatory relief of reinstatement during the pendency of these appeals.

4. By the impugned order dated 05/11/2016, the interim applications of respondent no.1 - employees are allowed, granting interim relief of reinstatement in the following terms :-

- “(i) Applications Exh.5 in both the appeals are granted and they are entitle to resume their respective duties during pendency of these appeals. Consequently termination orders dated 19/08/2016 are stayed.*
- (ii) The respondent / management is directed to allow appellants to resume their duties on or before 01/12/2016.*
- (iii) Copy of this order be put in Appeal No.63 of 2016 at Exh.5.”*

5. In assailing the impugned order, the learned Counsel for petitioners submits that the School Tribunal was in an error to pass interim orders awarding reinstatement, which amounts to granting a final relief. It is submitted that in view of the settled position in law as laid down in catena of decisions, interim reliefs of this nature could not have been granted.

6. On the other hand, Mr. Desai, learned Counsel for respondent no.1 - employees in both these petitions, would submit that the case of the employees is required to be considered on the facts as they emerge in the present dispute. It is submitted that the Tribunal has recorded *prima facie* findings that the enquiry was defective. If that be the position, then the Tribunal was justified in passing the impugned orders permitting the respondent - employees to resume duty during the pendency of the appeals, by granting a stay on the termination order. In support of his submissions, he placed reliance on the decision of the Supreme Court in the case of ***Zenit Mataplast P. Ltd. Vs. State of Maharashtra & Ors.***¹.

7. On hearing the learned Counsel for parties and after perusing the impugned order passed by the School Tribunal, I find that there is much substance in the contentions as urged on behalf of the petitioners. It is settled principle of law that an interim relief can always be granted in the aid of and as ancillary to main relief available to the parties on final determination of their rights in the proceedings. (see ***State of Orissa Vs. Madangopal Rungtha***²). It is also well-settled that granting interim relief and more particularly in the nature of a reinstatement, ought not to be granted when an employee has been dismissed by way of punishment, for proved misconduct, pursuant to a domestic enquiry being held and a challenge is to the fairness of the enquiry and to the fairness of the findings of the Enquiry Officer. The law in this regard is well-settled as consistently held by the Supreme Court that such an interim relief which is in the nature of a final relief cannot be granted. (See ***Public Services Tribunal Bar Association***

¹ 2009 DGLS (SC) 1309

² AIR 1952 SC 12

Vs. State of U. P. and another³, State of U. P. and others Vs. Sandeep Kumar Balmiki and others⁴, Bhankra Byas Managing Board Vs. Suresh and another⁵.

8. In the case of ***U. P. Junior Doctors' Action Committee and others Vs. Dr. B. Sheetal Nandwani and others⁶***, the Supreme Court held that it is well-known that as rule of practice and procedure, at interlocutory stage, relief which is asked for and is available, at the disposal of the matter, is not granted. To grant such a relief at the threshold create lot of difficulties and in case where the party ultimately loses in a case, embarrassing situation crops up.

9. The Tribunal could not have overlooked the above clear position in law in granting a reinstatement by the impugned interim order pending a final decision in the appeals. Further, on the reasoning as recorded in the impugned order, such interim order should not have been passed. The observations as made in para 14 of the impugned order, are findings which, in my opinion, cannot be arrived at, at the *prima facie* interim stage of the proceedings, as these are the very issues which are required to be considered at the time of final adjudication of the appeal considering the entirety of the material. In any case, the impugned order is not an order which in aid of the final relief but the final relief itself.

10. In the circumstances, the submission of Mr. Mihir Desai, as urged on behalf of respondent no.1 employees, cannot be accepted as the same would go contrary to the above settled position in law. There

³ (2003) 4 SCC 104

⁴ 2009 III CLR 550

⁵ 2009 III CLR 841

⁶ AIR 1992 SUPREME COURT 671

cannot be an exception as made by the Tribunal to these well-settled principles, as noted above. I do not find that the facts in question were so unconscionable, glaring or exceptionable that a departure from the settled norms of not granting an interim relief which is in the nature of final relief could have been made. Thus, the reliance of Mr. Desai, learned Senior Counsel for respondent no.1, on the decision in the case of ***Zenit Mataplast P. Ltd. Vs. State of Maharashtra & Ors.***⁷, also cannot be accepted. There can be no dispute on the propositions of law as seen in para nos.23 to 25 of this decision. The parameters of passing interim orders on applications under Order 39 Rule 1 of CPC are well settled. However, the position is not the same in the present case. The issue in these proceedings is in regard to a service dispute where the principles of law as laid down in the decisions as noted above would be squarely applicable.

11. Resultantly, the impugned orders cannot be sustained, and are accordingly quashed and set aside. The writ petitions are allowed in these terms. There shall be no order as to costs.

12. At this stage, Mr. Desai, learned Counsel for respondent no.1, submits that respondent no.1 be permitted to approach the Tribunal with a request to decide the appeals expeditiously as the respondents - employees are out of service. His request is not unreasonable. The respondent - employees are permitted to approach the Tribunal with a request to take up hearing of the appeals as expeditiously as possible. The Tribunal shall consider the request of the respondents - employees on its own merits and considering its docket.

⁷ Writ Petition No.6419 of 2014, Judgment dated June 17, 2015

13. Writ Petitions are disposed of in the above terms.

(G. S. KULKARNI, J.)