

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5427 OF 2017
WITH
WRIT PETITION NO.5466 OF 2017

1. Late Pandurang Totaram Patil
Shikshan Sanstha, Taluka Raver,
Dist.Jalgaon.
Through its Chairman
Shri Pradip s/o Suresh Patil,
Age-40 years, Occu-Service as Chairman,
R/o Prathmik Ashram Shala, Rasalpur,
Tq.Raver, Dist. Jalgaon

2. Late Pandurang Totaram Patil
Shikshan Santha's Prathmik Ashram
Shala Rasalpur, Tq.Raver,
Dist. Jalgaon

-- PETITIONERS

VERSUS

1. The Project Officer,
Integrated Tribal Development Project,
Taluka-Yawal, Dist.Jalgaon

2. Prakash Ratiram Patil,
Age-45 years, Occu-Nil,
R/o Utkhada, Tq.Raver, Dist.Jalgaon

-- RESPONDENTS

Ms.S.P.Mahajan, Advocate for the petitioners.
Mr.S.R.Yadav, AGP for respondent No.1.
Mr.A.D.Pawar, Advocate for respondent No.2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 23/07/2018

ORAL JUDGMENT :

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

2. In the first petition, the Management has challenged the order dated 23/12/2016 delivered by the School Tribunal in Misc.Appl.No.9/2014, by which the application seeking condonation of delay has been allowed on payment of costs of Rs.3,000/-. The cause of action in the said proceedings is the punishment of termination dated 21/09/2012 inflicted upon the respondent/employee.

3. In the second petition, the Management is aggrieved by the order dated 23/12/2016 passed by the same School Tribunal by which M.A.No.3/2014 filed by the employee seeking condonation of delay with regard to the cause of action of his supercession dated 01/06/2010, has been allowed.

4. I have considered the strenuous submissions of the learned Advocate for the Management and for the respondents. The petitioner / Management has drawn my attention to the grounds for challenge formulated in the memo of the petitions in paragraph Nos.2

and 3 in both the petitions. Reliance is placed upon the judgment of this Court in the matter of Rajendra Namdeorao Akre Vs. Rajkumar Bhalerao Balbudhe and another [2016(1) Mh.L.J. 184].

5. The undisputed dates and events in these 2 matters are as under :-

[a] The appellant/employee was superseded on 01/06/2010 and petitioner No.2 was appointed as the Head Master.

[b] The appellant challenged the supercession before the Additional Commissioner, Tribal Development.

[c] This Court entertained WP No.6886/2012 filed by the Appellant and by order dated 08/10/2012, recorded the statement of the Management that the appellant has already been terminated after conducting an enquiry and he would be at liberty to approach the appropriate forum for challenging all his causes of action.

[d] The appellant therefore challenged his termination dated 21/09/2012, before the Additional Commissioner, Tribal Development by preferring an appeal which was allowed on 03/09/2013.

[e] The management challenged the said judgment in WP No.8756/2013. By order dated 29/01/2014, this Court allowed the writ petition and concluded that the appellant will have the liberty to prefer an appeal before the School Tribunal, which has jurisdiction, as the Additional Commissioner had no jurisdiction.

[f] The appellant has preferred two appeals before the School

Tribunal and has filed MiscAppl.No.3/2014 and 9/2014.

[g] Both these applications seeking condonation of delay have been allowed by imposing costs of Rs.3,000/- in each matter. Both these orders are impugned in these petitions.

6. Learned Advocate for the Management submits that the appellant was aware of his supercession as well as his termination. He has intentionally wasted time in approaching the Additional Commissioner, Tribal Development. He even succeeded before the said authority. It is because of the intervention of this Court that it was concluded that the Additional Commissioner, Tribal Development has no jurisdiction and the judgment was quashed and set aside. The Management will be unnecessarily burdened with the back wages, in the event the appellant succeeds before the School Tribunal. If such financial burden is imposed on the Management due to the ignorance of the appellant, it would enable the said appellant to draw an undue advantage of his own wrong and would amount to unjust enrichment.

7. Learned Advocate for the appellant submits that he derives no advantage by delaying the challenge to his termination. He is without salary from 21/09/2012. He has suffered supercession from 01/06/2010 causing financial loss as well as an irreparable harm. He was guided by legal advise to approach the Additional Commissioner,

Tribal Development and he cannot be said to be at fault for a wrong advise given by a Counsel.

8. The reliance placed upon the judgment of this Court in Rajendra (supra) by the Management, is misplaced. In this case, the proceedings initiated by the plaintiff were allowed as the suit was decreed. The defendant preferred the first appeal which was dismissed. The matter reached the Hon'ble Supreme Court which allowed the appeal and remanded the proceedings for a fresh disposal. Thereafter, the first appeal was dismissed in default on 13/06/2011 which was restored on 14/10/2011. Again the first appeal was dismissed in default on 23/11/2011 and an application for restoration was filed on 15/02/2012. The Appellate Court restored the appeal by imposing costs of Rs.10,000/-. In this backdrop, this Court concluded that the costs would not condone the negligence and laxity on the part of the first appellant and as such, in the absence of good reasons, this Court concluded that the appeal does not deserve to be restored.

9. In the instant cases, the appellant succeeded before the Additional Commissioner and his belief that the Additional Commissioner has jurisdiction, was sustained. It is only when this

Court delivered the order on 29/01/2014 that the law was settled that the Additional Commissioner would have no jurisdiction. Hence liberty was granted to the appellant to approach the School Tribunal.

10. In this backdrop, I do not find that laches or oblique motives could be attributed to the conduct of the appellant. Keeping in view the law laid down in Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107] by the Hon'ble Apex Court and the principles crystallized in Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [2013(12) SCC 649], I do not find that impugned orders condoning delay in the above backdrop could be termed as being perverse or erroneous.

11. Learned Advocate for the Management strenuously submits in the alternative that meager costs have been awarded by the School Tribunal and costs of at least Rs.25,000/- in each case should be awarded and the said amount could be donated for the treatment of poor patients.

12. I find some merit in the submissions of the learned Advocate for the Management. As such, the costs awarded by the School

Tribunal in each of these proceedings can be enhanced to Rs.5,000/- (Rs.Five thousand only) and the enhanced amount of Rs.2,000/- (Rs.Two thousand only) in each matter can be deposited by the appellant with the Ghati Hospital.

13. In view of the above, these two petitions are partly allowed only to the extent of enhancing the costs from Rs.3,000/- to Rs.5,000/- in each of the two cases. The appellant shall deposit an amount of Rs.4,000/- towards the costs with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of “**Dean, Government Medical College and Hospital, Aurangabad CSR Fund**”), on or before 10/08/2018. A receipt of such deposit shall be produced before the School Tribunal on or before 20/08/2018 and thereafter the School Tribunal shall register the cases, if still not registered and will proceed further to decide the appeals on their own merits.

14. If found convenient, both the appeals pertaining to supercession and termination can be heard together. Considering the passage of time from the date of the two causes of action and the

apprehension voiced by the Management that they would have to bear unnecessary burden of back wages even for the period of delay, the School Tribunal would endeavour to decide both this appeals expeditiously and preferably on or before 31/07/2019. In the event, it is noticed that the appellant is delaying the matter, the Trial Court may consider the said aspect while deciding the back wages in the event the appellant succeeds in the proceedings before the School Tribunal.

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

(Ravindra V.Ghuge, J.)