

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10704 OF 2017

THE SECRETARY BALAK SHIKSHAN PRASARAK MANDAL & ANR
VERSUS
GANPAT GANGARAM NARSIKAR AND OTHERS

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Advocate for Petitioners : Shri Patil S.A. h/f Shri Salunke V.D.
Advocate for Respondent 1 : Shri Patil Indrale A.V.
AGP for Respondent 2 : Shri Yadav S.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 24, 2018

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PER COURT :-

1. While issuing notices on 6.9.2017, this Court had passed the following order:-

“1. The petitioner / management is aggrieved by the judgment of the School Tribunal dated 3.12.2016, which is challenged in this petition filed on 20.7.2017. The Tribunal has set aside the oral termination of the respondent / appellant dated 16.8.2005.

2. Contention of the petitioner is that the appellant was terminated by a written order issued on 7.7.2004. It is also contended that the appellant was terminated after conducting an enquiry. Written order of termination was not challenged and an imaginary oral termination theory on 16.8.2005 was put forth by preferring an appeal in 2012.

3. Record reveals that the appellant had approached a wrong

forum and was finally relegated to preferring an appeal under Section 9 by order dated 20.3.2012 passed by the learned Division Bench of this Court in Writ Petition No.932 of 2012. Delay caused in approaching the School Tribunal was directed to be condoned by the learned Division Bench by specifically observing to that extent in paragraph No.5 of the said order. The said order of the learned Division Bench has not been challenged by the petitioner.

4. *Though the petitioner / management contends that an enquiry was conducted against the appellant in the light of the stigma attached while terminating him purportedly on 7.7.2004, the said defence has turned out to be a pretense and it was revealed that no enquiry was conducted by the petitioner / management.*

5. *The appellant was working from 1.7.1995 as a Peon and his services were approved by the competent authority. After about 9-10 years of permanent service, he was terminated by passing a resolution in the General Body Meeting dated 7.7.2004. A permanent employee without conducting a departmental enquiry cannot be terminated on the ground of having committed a misconduct and such a stigmatic termination without any enquiry cannot be sustained.*

6. *It also appears from the impugned judgment that the proof of service of the written termination was not adduced before the Tribunal and the petitioner did not establish that the resolution dated 7.7.2004 terminating the services of the appellant was served upon the appellant.*

7. *Considering the above, to the extent of allowing of the appeal by setting aside the termination order, I do not find that the*

impugned judgment could be termed as being perverse or erroneous. I am, therefore, not entertaining this petition to the extent of the setting aside of the termination.

8. *It is however, apparent that the School Tribunal has granted 50% backwages from 16.8.2005. The appellant had approached the wrong forum and thus time was wasted till he preferred his appeal on 26.12.2012. In this backdrop, whether the petitioner / management could be penalized even for the period of delay in approaching the Tribunal is the only issue to be considered in this petition.*

9. *As such, issue notice to the respondents, returnable on 10.10.2017 only to the extent of considering whether the appellant would be entitled for the backwages granted by the Tribunal for the period 16.8.2005 till 26.12.2012.*

10. *Learned AGP waives service for respondent No.2.”*

2. This matter was heard at length on 17.7.2018, 19.7.2018 and today.

3. Learned Advocate for the petitioner / management submits on instructions that if the respondent / original appellant is agreeable for waiving the backwages for the two years of delay caused and is agreeable to accept 30% backwages excluding the period of two years, till the judgment of the School Tribunal, dated 13.12.2016, the

management is agreeable to bury the dispute and put an end to the litigation.

4. Learned counsel for respondent No.1 / appellant submits, on instructions, that the said appellant is agreeable to the aforesaid proposal of the management on the condition that the backwages as well as the wages payable to the appellant after the date of the judgment of the School Tribunal, should be first cleared and only thereafter, the salary grants of the management, which are withheld by the Education Department should be released.

5. Considering the above, this petition is partly allowed by modifying the judgment of the School Tribunal dated 3.11.2016 in Appeal No.51 of 2012, by consent of the parties as follows:-

(A) The appellant has waived the backwages for the period 16.8.2005 till 15.8.2007.

(B) The management agrees to pay the backwages to the extent of 30% of the total backwages payable to the appellant from 16.8.2007 till December, 2016, within eight weeks.

(C) The appellant would be entitled to continuity of service from 16.8.2005 onwards since his termination has been set aside as being illegal with consequential service benefits.

(D) The management shall pay the monthly wages to the appellant from January 2017, within eight weeks.

(E) After the management clears of these legal dues of the appellant and intimates the Education Department to that extent, the non-salary grants withheld by the Education Department would be released.

(RAVINDRA V. GHUGE, J.)

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akl/d

Ajay
Kishanrao
Losarwar

Digitally signed
by Ajay
Kishanrao
Losarwar
Date:
2018.07.24
18:00:45 +0530