

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7801 OF 2018

Dnyanparasarak Shikshan Sanstha
Through its Chairman/Secretary,
Panchdeep Society ... Petitioner
Versus

... Petitioner

... Respondents

Ms. Neesha Mailagir I/b Mr. Anil D. Joshi for the Petitioners.
Mr. Jitendra H. Oak for Respondent No.1.

CORAM : S.C.GUPTE, J.

DATE : 27 JULY 2018

P.C. :

Heard learned Counsel for the Petitioners and Respondent No.3, who is the affected party and appellant before the School Tribunal.

2 Respondent No.3 was working as a teacher in the Petitioner's school. He challenged the school management's action of orally terminating him with effect from 27 December 2016. The management, on the other hand, claimed that he was never terminated, but merely informed that he had been rendered surplus; he, on his own, stopped attending the school thereafter and that, in the premises, the impugned order of the school tribunal was not correct. The school tribunal held that, in the first place, no proper procedure was followed before declaring the appellant as

surplus. The management placed reliance on Rules 25A and 26 of the Act and the Rules. The tribunal noted that the management had not come with the case of abolition of the post due to closure of the school. Hence, Rule 25A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (the "Rules") would not apply. The tribunal noted Rule 26 which provided for retrenchment of a permanent employee by giving three months' notice on any of the grounds mentioned in clauses (i) to (v) of Sub-rule (1) thereof. The tribunal observed that if it were the case of the management that due to reduction in number of classes, divisions or students or closure of course or other similar bona fide reason, a permanent employee could not be continued in service, it could retrench him by duly following the procedure prescribed in Rule 26, which *inter alia* required giving of a notice to the employee and seeking of an approval from the Education Office. Admittedly, no such notice was issued to Respondent No.3. So also, no prior approval of Education Officer or Deputy Director was obtained in this behalf. In the premises, the tribunal held that the retrenchment of Respondent No.3 on the ground that he had been rendered surplus, was contrary of the provisions of the Act and the Rules. The tribunal also examined the management's contention that it was Respondent No.3 himself, who had stopped reporting for duty. The tribunal in this behalf noted the management's letters dated 27 December 2016 and 2 January 2017. By these letters, Respondent No.3 was informed that the post had been abolished after the staffing pattern was revised, and he was rendered surplus, being the juniormost amongst the teachers, but there was no instruction as to whether he should continue to resume his duties. There was nothing on record to show that Respondent No.3 had absented himself after 27 December 2016; no document such as muster roll

of teachers was produced in support of the management's case. So also, there was no notice issued to Respondent No.3 for his alleged absence on duty. Besides, immediately after these communications were addressed to him, Respondent No.3 sought redressal of his grievance from the Education Officer. All these circumstances showed the case to be of oral termination of service without following due process of law rather than deliberate absence on the part of the teacher. The tribunal, in the premises, allowed his appeal and set aside the termination referred to as an otherwise termination and directed his reinstatement with 60 per cent back wages. No infirmity can be found with the impugned order of the tribunal.

3 Learned Counsel for the Petitioners submits that the school is not in a position to pay the teacher back wages though they are not averse to reinstatement. Learned Counsel submits that this school admits adivasi students and considering the number of students etc., the teacher indeed had been rendered surplus. That may be, but the management is still duty bound to follow the procedure prescribed by law before retrenchment of any teacher. If it is the case of the management that they never meant to retrench him, but simply declared him to be surplus, then the management always meant to retain him. In that case, there should be no difficulty in both retrenchment and payment of back wages, since their contention implies that the school management was prepared to retain Respondent No.3 and would have in such a case paid full wages to him. What the school tribunal has ordered in the present case is reinstatement of Respondent No.3 with 60 per cent back wages. That should present no difficulty.

4 Learned Counsel for the Petitioners relies on the Supreme Court judgment in the case of **Secretary, Akola Taluka Education Society Vs. Shivaji**.¹ Learned Counsel relies on the observations of the Supreme Court in this case whereby the Supreme Court confined the award of back wages to 25 per cent from the date of termination until reinstatement. This order was passed by the Supreme Court, in its own words, “ in the peculiar facts and circumstances of this case”. It cannot be cited as a binding legal precedent to be followed in all cases. Besides, the Supreme Court in that case found the law partly in favour of the management. The teacher's challenge in that case was on similar grounds, namely, violation of Rule 26(1) for want of retrenchment notice and of Rule 26(2) for want of prior approval of the Education Officer. Whereas the Supreme Court found in favour of the teacher on the ground of Rule 26(1), since admittedly three months' notice had not been given prior to the retrenchment, the court found that the case simply did not come within the purview of sub-clause (ii) of clause (2) of Rule 26 and hence, there was no need to obtain prior approval of the Education Officer. In the premises, the Supreme Court interfered with the order of full back wages granted by the tribunal along with reinstatement. The school management had in that case produced substantial evidence before the court showing a sharp decline in the strength of students and difficult financial circumstances of the school. This fact was not disputed by the teacher. In these peculiar facts and circumstances, the court restricted back wages to 25 per cent, though it did not interfere with the order of reinstatement.

5 In the present case, the school tribunal, after taking into account the

1 Appeal (Civil) No.1816 of 2007, Decided on 5 April 2007

relevant facts and circumstances of the case, has awarded back wages of only 60 per cent. Unless this court finds the quantum of back wages ordered by the tribunal to be perverse, this court is not expected to interfere with the same. The conclusion drawn by the school tribunal appears to be a possible view based on the material available before the court and in the premises, no interference is warranted.

6 Accordingly, there is no merit in the petition. The petition is dismissed. No order as to costs.

7 It is clarified that back wages are payable to Respondent No.3 from the date of his termination and not from any anterior date.

(S.C. GUPTE, J.)

Rajesh
Vasant
Chittewan

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by Rajesh Vasant
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