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

WRIT PETITION NO.7614 OF 2018

Vivekanand Education Society
a Registered Trust, Through it's
Secretary.

... Petitioner

V/s.

State of Maharashtra
Through Secretary,
School Education Department
and ors

... Respondents

**ALONGWITH
WRIT PETITION NO.5430 OF 2018**

Dr. Mrs. Lekha Rajesh Visaria

... Petitioner

V/s.

Vivekanand Education Society
and ors

... Respondents

Mr. Nasir M. Shaikh, for the Petitioner in W.P.
No.7614 of 2018

Mrs. Vaishali Nimbalkar, AGP for respondent Nos. 1 to
3 in W.P. No.7614 of 2018

Mr. N.V. Bandiwadekar, i/by Ashwini N. Bandiwadekar,
for respondent No.4.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 27th NOVEMBER, 2018.

P.C. :

1] Heard learned counsel for the petitioner and respondents.

2] Admit.

3] With the consent of learned counsel for both the parties, these petitions are taken up for final hearing at the stage of admission itself.

4] The contesting parties in this petition, namely “Vivekanand Education Society” and “Dr. Rajesh Visaria”, are hereinafter to be referred as, “petitioner” and “respondent respectively.

5] Writ Petition No.5430 of 2018 has been preferred by the respondent employee against the petitioner challenging the order dated 27.4.2018, passed by School Tribunal, rejecting respondent's prayer for staying the termination order dated 21.4.2018.

6] Writ Petition No.7614 of 2018 has been preferred by the petitioner, taking exception to the order dated 20.06.2018, passed by the School Tribunal, Mumbai, thereby granting relief in favour of respondent, holding that the order dated 21.4.2018 terminating services of the the respondent is illegal as per Section 4(6) of the Maharashtra Employees of Private School Act, and further imposing costs of Rs.25,000/- on the petitioner.

7] The grievance of the learned counsel for the petitioner is that the petitioner has already filed Application at Exh.5, before the Tribunal contending inter alia that the petitioner has withdrawn termination letter dated 21.04.2018 as the said letter was issued

inadvertently and there was technical lacuna. Accordingly, statement was made before this Court also in W.P. No.5430 of 2018 on 3.5.2018 that the petitioner will not act upon letter dated 21st April, 2018. Despite this fact, the Tribunal has not disposed off the said proceeding and continued to hear and pass the impugned order. According to learned counsel for the petitioner, therefore, the order of the Tribunal cannot be sustainable in law at all.

8] To substantiate his submission learned counsel for the petitioner has relied upon before the Tribunal and also before this Court, on the order dated 2.3.1993, passed by the Division bench of this Court in W.P. No.407 of 1993 in the matter of **Ex-Sepoy Uma -vs- The Union of India and others**. It is submitted that in the said Writ Petition also, the order of termination issued against the employee had been withdrawn by the management and hence it was held that,

“The jurisdiction of the School Tribunal had come to end and hence there was no justification for the Tribunal to proceed with the appeal solely to examine the correctness of the reasons for withdrawal of the order”.

It was further held that :-

“In view of withdrawal of termination order, the appeal has become infructuous and ought to have been disposed

off as such”.

9] The Tribunal has distinguished this judgment on the count that the said judgment does not reflect whether the withdrawal of the termination order was conditional or unconditional. It is observed by the Tribunal that, “in the said Writ Petition, the withdrawal of the Notice of termination must be unconditional and if it was conditional one, as in the present case, then it would have certainly given place and discussed by Their Lordships to lay down the law to that effect”.

10] The Tribunal has, thus, held that judgment of the Division Bench of this Court was not of any help.

10] In my considered opinion, however, it was totally irrelevant whether the withdrawal of termination order is conditional one or unconditional one. As the termination order itself is withdrawn by the management, there remained no lis before the Tribunal as the appeal has become infructuous.

11] Moreover, in the instant case, the petitioner has only reserved its right to take proper decision/further course of action, in accordance with law. Needless to state that said right was always available to the petitioner. Petitioner just wanted to ensure that withdrawal of termination order should not be construed to mean that the petitioner does not intend to take any such action of

termination against the petitioner, which is permissible in accordance with law. Hence, merely because this right was reserved, that does not mean that the legality of termination order which was withdrawn should be again looked into by the Tribunal or its correctness should be decided.

11] The impugned order, therefore, passed by the School Tribunal cannot be sustainable in law. Hence it is quashed and set aside. Writ Petition No.7614 of 2018 filed by petitioner stands disposed off accordingly.

12] As a result, Appeal No.21 of 2018 filed by the respondent before the Tribunal, having become infructuous, stands disposed off as dismissed.

13] As Writ Petition No.5430 of 2018 is preferred against the interlocutory order dated 27.4.2018, passed in said appeal, it has also become infructuous. Hence stands disposed off as dismissed.

14] Both the petitions are disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]