IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3590 OF 2017

Vitthal Nivrutti Jadhav .. Petitioner.

Vs.

The Head Master,
Maharashtra Balvikas
High School & Ors. .. Respondents.

Ms. Rekha Musale with Mr.Nitin L. Rajguru for the petitioner.
Mr. A.G. Kothari for Respondent Nos.1 and 2.
Ms. Vaishali Nimbalkar AGP for the State.
Mr. Prakash Patil, Incharge Deputy Education Inspector, North Zone, Mumbai present.

CORAM : A.K. MENON, J.

DATED : 30TH JANUARY, 2018

P.C. :

1. By this petition, the petitioner challenges the impugned order of the School Tribunal dated 12th July, 2016 whereby the appeal came to be dismissed. The petitioner was appointed by respondent no.1 – School as a "Shikshan Sevak" from 21st June, 2010 and was initially working for respondent no.1 - school. The petitioner was initially appointed in the Royal Public Academy and Junior College from 22nd August, 2010. On or about 8th January, 2011 the petitioner tendered

his resignation apparently because the school was not an aided school. Thereafter the petitioner was appointed in another school under the Management of Respondent Nos.2 which was a Marathi Medium School. He resigned from the second school on 24th April, 2012 as can be seen from Exhibit-D and just before the petitioner resigned from the Marathi Medium school, vide application dated 20th April, 2012 Exhibit-E, the petitioner applied to respondent no.1 seeking an appointment in the Hindi Medium school which is the third institution run by respondent no.2. The petitioner came to be appointed with effect from 28th April, 2012 for a period of three years which would have ended on 28th April, 2015. The petitioner also executed an undertaking in relation to his employment on the same day. The copies of the letter of appointment and undertaking are found at Exhibit-F. The petitioner joined his post in the third school as evident from the letter dated 28th April, 2012 addressed to the Principal of respondent no.1-School.

2. It is the case of the respondent nos.1 and 2 that although the petitioner submitted the joining report on 28th April, 2012 he did not report to work. On account of his continued absence, the school issued a letter dated 1st October, 2013 recording the fact that his continued absence would be treated as abandonment of his post. On or about 16th January, 2014 the petitioner addressed a complaint to

the third respondent (Education Inspector) raising grievance, however, this complaint came to be withdrawn by two separate letters dated 3rd July, 2014 and 9th July, 2014. Vide letter dated 21st November, 2013 the petitioner is seen to have addressed a letter to the Maratha Mandir's Worli Night High School seeking appointment as a teacher in the said school. In the said letter the petitioner admits that he is presently not employed in any day school. This letter is to be found as part of Exhibit "X" (colly) filed by respondent no.1 before the School Tribunal. In paragraph 20 of the impugned order, the Tribunal records that respondent nos.1 and 2 filed documents which included letter of abandonment dated 1st October, 2013, statement of marks as well as letters of the respondents dated 21st November, 2013 and other relevant documents which included replies from Bhairav Vidyalay, and Abhinav Gyan Mandir where the petitioner had claimed he had attended as a representative of third school, namely, the Hindi Medium School.

3. The case of the petitioner is one of absolute denial. According to the petitioner the records maintained by the respondent no.1 has been manipulated. Reliance is placed upon the muster maintained by the said school in respect of two other employees Mr.Singh Vinod Kumar and Mr.Upadhay Vinod Kumar, who were reportedly not in service of respondent no.1 – school on the material dates and in

particular on 3rd February, 2015 and 26th February 2015. As far as the petitioner is concerned, the record does not indicate his presence. The impugned order has upheld the contention of respondent no.1 that the petitioner had failed to report for work and was deemed to have abandoned services with effect from 31st October, 2013 and remained absent from 28th April, 2012, namely, date on which he tendered the joining report. It is therefore found that pursuant to abandonment of service the name of the petitioner was removed from the muster roll on 1st November, 2013.

4. Ms. Musale appearing on behalf of the petitioner would submit that as per the records of the respondent nos. 1 and 2, the appellant was working as a Shikshan Sevak since 21st June, 2010 and was appointed at Royal Public Academy and Junior College run by the respondent no. 2 since 22nd August, 2010 and he had taken permission of signing authority for leave for a period of six months as set out in the written arguments filed on behalf of the petitioner on 17th November, 2015.

5. According to the petitioner he never worked with the Royal Public Academy and Junior College. He belonged to a poor family and was in need of a job. Ms.Musale states that the respondent no. 2 had forged some documents so as to show the petitioner has a qualification as M.A., B.Ed without his knowledge and manipulated records to show that petitioner had resigned on 8th January, 2011. The respondents

had threatened him against filing any complaint and therefore the petitioner did not make any grievance of the aforesaid acts of the respondent nos. 1 and 2. According to the petitioners submission respondent no. 2 had shown the petitioner as employed with Marathi – Medium School as Assistant teacher on 1st July, 2011 and further recorded that petitioner had resigned on 24th April, 2012 but according to the petitioner he never worked with respondent no. 1 in the Marathi Medium.

6. It is the petitioner's case that on or about 20th April, 2012 the petitioner requested the Principal of respondent no. 1 to appoint him as Shikshan Sevak and that on 25th April, 2012 respondent no. 1 and 2 called petitioner for an interview for trained teachers and accordingly the interview was conducted and petitioner secured 90% marks in the interview. He relied upon the appointment letter issued to him on or about 28th April, 2012.copy of which is annexed at Exhibit F. The petitioner admits that he was working in Maratha Mandir's Worli Night High School and that he had informed the night school that he was not serving in any day school because petitioner had not been paid salary by the respondent and he was badly in need of money.

7. It is submitted by Ms. Musale that petitioner had sought no objection certificate from respondent no.1 permitting her to work in night school but that was declined. This contention is contradicted by the

contents of an affidavit in sur-sur-rejoinder filed before the School Tribunal in which while denying that the petitioner was not in employment from 31st October, 2013, he has stated that the question of the petitioner meeting the respondent or requesting for a no objection certificate to work in the night school in November, 2013 did not arise. Ms. Musale further submitted that the Principal of Abhinav Vidyamandir, Trombay had issued letter dated 5th October, 2013 and the Principal of Bhairav Vidyalaya, Kamraj Nagar, Ghatkopar had issued letter dated 9th December, 2013 recording that students of the petitioner's school had participated in drawing competitions accompanied by the petitioner as a teacher. In an attempt to demonstrate that the records of the School were manipulated the petitioner has relied upon the muster maintained by the school in report of the said Mr.Singh and Mr.Upadhyay, copies of which are annexed to the petition from page no.203 onwards. Ms. Musale therefore submitted that relief be granted to the petitioner.

8. Mr. Kothari on behalf of the Respondent Nos.1 and 2 submitted that the Petitioner had abandoned his post right after joining the school. Although the petitioner submitted the joining report on 28th April, 2012 he did not report to work. On account of his continued absence, the school issued a letter dated 1st October, 2013 recording the facts that his continued absence would be treated as abandonment of his

post. Mr. Kothari further submitted that the Bhairav Vidyalaya had vide letters dated 3rd December 2014 clarified that they did not have any information whether the respondent no.1 school had participated in the said competition. In the circumstances question that the petitioner being involved with the said competition did not at all arise. He submitted that the Petitioner's case is unbelievable and fraught with inconsistencies. He supported the order of the Tribunal.

9. Having heard rival contentions of the parties, I am unable to find substance in the contention of the petitioner that his services came to be orally terminated. The allegation of oral termination is not substantiated. It is pertinent to note that petitioner has placed reliance upon two documents such as the letter issued by Bhairav Vidyalaya and Abhinav Vidyamandir. Reliance is also placed upon the muster roll for the months from June, 2011 to February, 2015 in relation to the attendance of Singh Vinod Kumar and Upadhyay Vinod Kumar. The petitioner cannot establish his case of oral termination by reference to these records and /or any other surrounding circumstances. In my view the case of abandonment appears correct. The petitioner's involvement with the respondent has a chequered history. The School Tribunal found that there is sufficient evidence to come to the conclusion that appellant remained absent from 28th April, 2012 viz. the date of his appointment and subsequently his services were

terminated with effect from 31st October, 2013 on the ground of voluntary abandonment of services. The contention that there was oral termination on 5th September, 2014 was not found believable as there is no evidence on that aspect of the matter.

10. For the aforesaid reasons there is no case for interference with the impugned order in writ jurisdiction of this Court. Accordingly I pass the following order :

(a) Writ Petition is dismissed.

(b) No orders as to costs.

(A.K. MENON,J.)