

Reportable

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3697 OF 2000

Shrikrushna s/o Nilkanth Joshi,
Aged 45 years, Occ. Service,
Assistant Teacher,
Geeta Prashala, Kopargaon,
Taluka Kopargaon, Dist.
Ahmednagar.

... PETITIONER

VERSUS

1. Kopargaon Education Society,
Kopargaon, Through its Secretary
Near Police Station Kopargaon,
Tal. Kopargaon, Dist. Ahmednagar.
2. The Head Master,
Geeta Prashala, Near Police Station,
Kopargaon, Tal. Kopargaon,
District Ahmednagar.
3. The Education Officer (Primary)
Zilla Parishad, Ahmednagar.
4. The Administrative Officer,
Municipal School Board, Kopargaon,
Taluka Kopargaon, Dist. Ahmednagar.

...RESPONDENTS

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Advocate for the Petitioner : Shri S. R. Barlinge
Advocate for respondent Nos.1 and 2 : Shri S. S. Shete

Advocate for respondent No. 3 : Shri S. T. Shelke
Advocate for respondent No. 4 : Shri P. G.
Godhamgaonkar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 28th FEBRUARY, 2019.

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ORAL JUDGMENT :

1. The petitioner, original appellant before the School Tribunal, is aggrieved by the judgment dated 11/07/2000 vide which his Appeal No. 171/1993 challenging his termination with effect from 13/08/1993, was rejected.

2. This Court, by order dated 06/09/2000, directed the Management not to relieve the petitioner from employment, in the event he is not already relieved pursuant to the impugned judgment. Counsel for the petitioner submits that he was already relieved on 14/07/2000.

3. Though the interim relief was continued while admitting the petition vide order dated 20/07/2001,

the petitioner was kept out of employment by the Management as he was already relieved on 14/07/2000.

4. I have considered the submissions of the learned Advocates for the respective sides. The undisputed factors can be summarized as under :-

(a) The petitioner had acquired the qualification of Bachelor of Education (B.Ed.) before joining respondent No.1 (Educational Institution).

(b) The petitioner was appointed as an Assistant Teacher vide appointment order dated 18/06/1982 for a period of one academic year on consolidated salary.

(c) Identical orders were issued in the month of June of each year till 1993, consecutively and he was continued on consolidated wages for each academic year from 1982 till 1993.

(d) On 20/05/1993, the Chairman of the Educational Society passed an order that the petitioner stands terminated with retrospective effect from 01/05/1993, as he was possessing the qualification of

B.Ed., there was no post of an Assistant Teacher for which B.Ed qualification was prescribed and that he did not possess the qualification of D.Ed.

(f) The petitioner approached the School Tribunal for challenging his termination under Section 9 of the MEPS Act, 1977 and prayed for interim relief.

(g) The petitioner was granted interim protection and the Management issued an order dated 26/11/1993, continuing the petitioner in service.

(h) By communication dated 13/08/1993, the Deputy Director of Education, Pune Division had informed the School Management that he has exercised his powers to condone the age bar with relation to the petitioner.

(i) This order has not been challenged before any Court or authority.

(j) The petitioner continued in employment and after the impugned order dated 11/07/2000 was delivered by the School Tribunal, partly dismissing the appeal and partly allowing the appeal, the School Management terminated him on 14/07/2000.

(k) The petitioner has, therefore, effectively worked as an Assistant Teacher from June 1982 till 14/07/2000 (18 years).

(l) The petitioner has attained the age of superannuation on 31/03/2013 at the age of 58 years.

5. Therefore, two issues arise for adjudication. Whether, the petitioner's having acquired the higher qualification of B.Ed., would disqualify him or render him ineligible for being appointed as a primary teacher requiring the lesser qualification of D.Ed. ? Whether the termination of the petitioner, vide order dated 20/05/1993, with retrospective effect from 01/05/1993, could be sustained in the light of the judgment of the learned Division Bench of this Court in *Assaram Raibhah Dhage Vs. Executive Engineer & Ors., 1989 II CLR, 331* ?

6. The first issue came up before the learned Division Bench of this Court in the matter of *Kondiba s/o Dattarao Mirashe Vs. State of Maharashtra & Ors.*

2003 (2) ALL MR 951. It was concluded on the basis of the Government Resolution dated 14/11/1979 that even for appointing Assistant Teachers in Schools imparting education for the I to VII Std., an Assistant Teacher equipped with the qualification of B.Ed. could still be appointed to the D.Ed. Post. The Government, therefore, introduced the G.R., and declared its approval to have B.Ed. Teachers teaching at the primary level. A further G.R. was issued on 26/10/1982 rendering such candidates eligible to be appointed in the D.Ed. category and to be upgraded to the B.Ed. category whenever such post became vacant.

7. The learned Full Bench of this Court in the case of *Jayashree Sunil Chavan Vs. State of Maharashtra and others reported in 2000 (3) Mh.L.J. 605* had taken a different view. The Honourable Apex Court, dealt with the said issue in the matter of *State of Maharashtra and others Vs. Tukaram Tryambak Chaudhari and others (2007 AIR SCW 1321)*. The Honourable Apex Court then concluded in paragraph

No. 23 as under :-

" 23. The decision rendered in Kondiba's case (supra) is closer to the facts of this case. The High Court, in our view, did not commit any error in following the same upon distinguishing the decision rendered by the Full Bench on account of the said Resolution and the Resolution dated 12th November, 2001 adopted on the basis thereof."

8. It is noteworthy that, this very petitioner had approached the learned Division Bench of this Court in Writ Petition No. 3013/1994 since he was not being paid the regular pay scale equivalent to the salary of the teachers who had passed the D.Ed. Examination. Though he was working with the respondent School pursuant to the protection granted by the School Tribunal, his grievance before the learned Division Bench was that his salary was not being paid. The learned Division Bench delivered an order on 11/06/2010 and concluded in paragraph Nos. 2 to 7 as under :-

"2. The petitioner was appointed as an Assistant Teacher in the school run by respondent no.1 vide order

dated 16-6-1982. The petitioner had acquired the qualification of B.Ed. in the year 1985. The petitioner's services came to be terminated vide order dated 20-5-1993 on the ground that he had not passed D.Ed. examination which is an essential training qualification for teaching primary classes. Against the said termination, the petitioner had preferred an appeal before the School Tribunal. The School Tribunal had granted stay to the termination of the petitioner from services.

3. The grievance of the petitioner is that he has not been paid salary in the pay scale of 1200-2040 though he has acquired higher qualification of B.Ed. The services of the petitioner were approved by the Education Officer vide order dated 13-8-1994, with a rider that the petitioner should acquire the qualification of D.Ed.

4. The fact, that the petitioner has passed the training qualification of B.Ed., is not in dispute.

*5. The issue involved in the present case is no longer res integra, in view of the judgment of the Apex Court in the case of **State of Maharashtra & others Vs. Tukaram Tryambak Chaudhari & others (2007 AIR SCW 1321)**. The Apex Court has held that in service graduate teachers with B.Ed. degree, teaching in Primary School to which classes of 5th to 7th are attached, are*

entitled to be appointed and continued as trained teachers in B.Ed. scale. The Apex Court has observed thus :

"In fact, one of the conditions for appointment of in service graduate primary teachers to the converted post carrying the higher pay scale was that such teacher should have obtained a degree in Arts or Science and had also obtained a degree in education namely, B.Ed. While adopting the aforesaid Resolution, the Government was, therefore, fully aware of the fact that there were graduate teachers teaching in standards 5 to 7 in the primary schools. This fact was also referred to by the Division Bench of the High Court in its judgment under appeal. It has been mentioned that one of the contentions raised on behalf of writ petitioners was that in terms of Government Resolution dated 26th October 1982, the petitioners were entitled to be appointed and continued as trained teachers in B.Ed. scale. "

6. *In that view of the matter, the petition deserves to be allowed.*

7. *In the result, the petition is allowed.*

(i) The respondents are directed to treat the petitioner, during the tenure of his service, as a trained Teacher and pay him the salary admissible to trained Teacher from the date on which the petitioner had acquired B.Ed. qualification. The primary duty to pay such salary is of the employer and shall pay the same within a period of six months from today.

(ii) The respondent nos.1 and 2 are at liberty to submit the bills of arrears to the concerned authority. The competent authority shall process the same within a period of three months on receipt of said bills. Arrears of salary shall be paid to the petitioner within a period of six months from today."

9. Concerning the second issue, in *Assaram Raibhah Dhage (supra)*, it is concluded that terminating an employee with retrospective effect, whether he is a temporary or a permanent employee, is unforeseen in law. The observations of the learned Division Bench in paragraph Nos. 1, 2, 3, 4 and 5 are as under :-

"1. The services of an employee, be he permanent

or temporary, cannot be terminated with retrospective effect. Such is the ratio of this judgment.

2. On 7th June 1980, the petitioner, a project displaced person, was appointed as a Mustering Assistant in the Work Charge Establishment at a monthly salary of Rs.200/-. Thereafter he worked continuously without break in service till March 1986, when by a letter of termination dated 11th March, 1986 his services were retrospectively terminated with effect from 1st March, 1986. Hence this writ petition.

3. The petitioner's learned Counsel Miss Purohit is perfectly justified in making a grievance that it is unthinkable that an employee's services can be terminated with retrospective effect, as done in the present case. We join learned Counsel in her astonishment. For that matter, one of the conditions in the letter of appointment is that if the petitioner desired to resign he was liable to pay one month's salary or give one month's notice. It is therefore, ironical that on the other hand, the petitioner's services were terminated with retrospective effect.

4. However, the respondents' learned Counsel Mr. Bhatkar ventures that the date of termination, namely 1-3-1986 in the letter of termination must be typographical error. This is an ipse dixit; it is purely conjecture and speculative reasoning. Significantly enough, in the affidavit-in-reply, no such case of a

typographical error is even faintly suggested. For that matter, despite the fact that in the petition it has been categorically stated in no uncertain terms that by this letter of termination, the petitioner's the services were terminated with retrospective effect from 1st March, 1986, not even then whisper of a denial is to be found in the affidavit-in-reply. Thus the myth of a typographical error stated across the Bar can safely be ruled out.

5. Mr. Bhatkar now takes refuge that the petitioner's appointment was merely temporary. However, he is unable to say under what provisions of law the petitioner's employment, even if temporary, could be terminated with retrospective effect."

10. In the light of the above, it is quite clear that the respondent Management has unjustifiably terminated the services of the petitioner by the order of termination dated 20/05/1993. On these premises, the School Tribunal has apparently fallen in a patent error in not appreciating the law as it stood then. The impugned judgment rejecting the appeal, on the spacious plea taken by the Management that the appellant was appointed temporarily for each academic year for 11 years would not render him

entitled for reinstatement, cannot be sustained.

11. It is quite glaring that the petitioner has worked from June 1982 till 14/07/2000 over the period of 18 years and has been unjustifiably kept out of employment for the last 13 years, considering that he has attained the superannuation age of 58 years in March 2013. His miseries began due to the wrong understanding of the Management and his retrospective termination.

12. In view of these factors, this petition is allowed. The impugned judgment of the School Tribunal dated 11/07/2011 stands quashed and set aside and Appeal No. 171/1993 stands allowed. Consequentially, the order of termination dated 20/05/1993 and the subsequent order dated 14/07/2000, stands quashed and set aside. I am granting continuity of service to the petitioner from the date of his joining duties in June 1982 till the date of his superannuation on 31/03/2013.

13. On the issue of back wages, the petitioner relies upon the judgment of the Honourable Apex Court in the matter of *Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors., (2013) 10 SCC 324*, wherein full back wages have been granted. It is contended that ever since his termination on 14/07/2000, the petitioner is unable to secure any employment as he was already 45 years of age and was rendered age barred.

14. The learned Advocate for the Management submits that the principle of "no work – no wages" should be made applicable to this case and the petitioner should be deprived of back wages. Moreover, the management is in financial difficulties and cannot sustain the burden of 100 % back wages.

15. I do not find that the submissions of the Management deserve to be entertained, for two reasons. Firstly, that the petitioner had offered himself

for work and after working continuously for 11 years, the Management chose to terminate his services with retrospective effect. Despite the protection of the School Tribunal due to which he continued in employment, the Management terminated his services on 14/07/2000 within three days of the impugned judgment. Secondly, unemployment was foisted on the petitioner and that too with retrospective effect.

16. Considering this situation, I find that the petitioner deserves to be granted 70 % back wages as per the various pay commission recommendations applicable from time to time. In my view, this would be an equitable relief to the petitioner and the financial burden on the Management would be reduced by 30 %.

17. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

shp/-