

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

WRIT PETITION NO. 2776 OF 2008

1. Shiv Chhatrapati Shikshan Sanstha,
Latur, Through its Secretary,
2. Rajarshi Shahu College,
Latur, Through its Principal.

... **Petitioners**

(Orig. Respondents No.2 and 1)

VERSUS

1. The State of Maharashtra,
Through Secretary Education
Department Mantralaya, Mumbai.
2. The Deputy Director of Vocational
Education, Bhadkal Gate, Aurangabad.
3. Balasaheb s/o Venkatrao Zadke,
Age 45 years, Occu. Service,
R/o. C/o. Rajarshi Shahu College,
Latur, Dist. Latur.

...**Respondents**

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Advocate for the Petitioners : Shri S. V. Warad
AGP for Respondent Nos. 1 and 2 :- Shri S.W.Munde
Advocate for respondent No. 3 : Shri R. J. Godbole

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 21st FEBRUARY, 2019.

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ORAL JUDGMENT :

1. The petitioner educational institution is aggrieved by the judgment and order dated 14/12/2007 delivered by the School Tribunal, by which, Appeal No. 140/2006 (old No. 32/1995) has been allowed and the following directions have been issued :-

- "1. The appeal is hereby allowed.
2. The impugned termination order dated 30.03.1995 w.e.f. 15.6.1995 passed by the R/M is hereby quashed and set aside.
3. The Respondent's No.1 & 2 are hereby directed to reinstate the appellant on the post of teacher alongwith continuity of service.
4. The respondents No.1 & 2 shall calculate & fix proper salary of the appellant from the date of order and it shall be disbursed to the appellant as per rule.
5. The Respondent/Management is hereby directed to pay the cost of Rs. 1000/- to the appellant and bear their own".

This Court passed an order on 08/04/2008 and stayed clause 4 and 5 reproduced above.

2. The prayers put forth by respondent No. 3 original

appellant employee, in his appeal read thus :-

"A) That the appeal be allowed.

B) That, the impugned order of termination dt. 30.3.1995 bearing No. RSM/Astha/94-95-4345 issued by Respondent No.1 be quashed and set aside.

C) To hold that appellant is permanent employee of Respondent and entitled for continue in service and entitled for all permanency benefits in the college of Respondent No.1.

D) That, respondent be directed to pay the difference of pay scale as appellant is entitled for pay scale of Rs. 2000-3200 Dearness allowance etc. as permissible order rules.

E) To direct Respondent to pay the salary of Appellant for period of 15.04.1990 to 15.6.90.

F) To grant any other suitable relief for which appellant is entitled for."

3. When this Court heard this matter at admission stage on 26/03/2009, it noted that the prayer put forth by the appellant at prayer clause D reproduced above was beyond the scope of the School Tribunal under Section 9 of the MEPS Act, 1977. Keeping this aspect in view and the earlier order of this Court dated 08/04/2008, this Court, therefore, passed an order on 26/03/2009 as under :-

" Heard Shri Warad learned counsel for the petitioners.

Rule. Ad-interim relief granted on 8.4.2008 shall continue till disposal of the petition. Respondent employee may avail the remedy available for ventilating the grievance independently in accordance with law."

4. I have heard the learned Advocates for the respective sides and the learned AGP, at length. I have perused the Government Resolution dated 04/08/1993 and dated 21/06/1995, by which, employees appointed in teaching, as well as, non teaching categories in Bifocal Course, are not to be disengaged if the scheme is brought to an end and such employees are to be accommodated on available positions in other courses. The petitioner Management conducts Bi-focal course on no grant basis.

5. It is noteworthy that the appellant had approached the School Tribunal for challenging his termination order dated 30/03/1995, by which, it was proposed that he would be disengaged with effect from 15/06/1995. He was, therefore, continued in employment in view of the pending proceedings.

After his appeal was allowed and the Management approached this Court, he continued in employment and consequentially, he has worked from 01/08/1989 till this date in 2019. The Management submits that he is in employment for the past about 30 years. The appellant makes a statement that he would be attaining the age of superannuation on completing 58 years of age on 20/07/2020.

6. As such, it is obvious that the appellant has worked for about 30 years and has about 17 months left for attaining superannuation. The issue of deciding his pay scale and Dearness Allowance would fall beyond the purview of the jurisdiction of the School Tribunal under Section 9 of the Act. This Court has, therefore, granted liberty to the appellant (by its order dated 26/03/2009) to raise an appropriate issue before the competent authority which would decide the said aspect in accordance with law and the government resolutions.

7. This Court had declined to state the order of continuing the appellant in employment after considering the rival contentions of the parties and the grounds raised by the

Management. It would, therefore, be unfair to entertain this issue raised by the Management which may result in unsettling the appellant who has settled in employment for the last 30 years.

8. I am, therefore, of the view that when the appellant has settled in employment in the last 30 years, though on account of fortuitous circumstances, this litigation needs to be given a quietus considering the view of the Honourable Apex Court in the matter of *Ku. Pushpa Ramdas Zatake Vs. The Divisional Controller, Maharashtra State Road Transport Corporation, decided on 09/07/2018 in Petition (s) for Special Leave to Appeal © No(s). 22618/2017*. Hence, I find that this petition is rendered of an academic interest.

9. This petition, therefore, is partly allowed to the extent of quashing the directions set out in clause 4 and 5 of the impugned order reproduced above.

10. Needless to state, the appellant would be at liberty to seek a remedy with reference to prayer clause 'D' set out in the

appeal and since prayer clause 4 and 5 have been stayed by this Court and now set aside.

11. If the appellant approaches the competent authority of the department of education, which is said to be respondent No.2 herein, within six weeks from today, the said authority would cause a detailed enquiry into his grievance and after considering the record and taking into account the submissions of the Management and the appellant, would decide the said issue as expeditiously as possible and in any case within a period of four months from the date of the lodging of the grievance by the appellant. For the sake of clarity, prayer clause 'D' put forth by the appellant shall, therefore, be considered by the competent authority. All contentions of the litigating sides are kept open.

12. Rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)

shp/-