

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6020 OF 2019

Mahatma Jyotiba Phule Jivan
Shikshan Prasarak And Apang
Seva Mandal, Walgud

Petitioner

Versus

The State of Maharashtra
& others

Respondents

Mr. Anandsingh Bayas, Advocate for the petitioner.
Mr. P.M. Kulkarni, AGP for respondents No. 1, 2 and 4.
Mr. S.S. Jadhavar, Advocate for respondent No. 6.

CORAM : Ravindra V.Ghuge, J.

DATE : 26th November, 2019.

PER COURT :

1. The petitioner-management is aggrieved by the judgment of the Appellate Authority cum Regional Deputy Commissioner , Social Welfare, Latur, dated 24.05.2018, communicated to the management vide communication dated 11.06.2018 by which, Appeal No. 1/2017 filed by respondent No. 6 – original appellant, has been allowed. The oral termination dated 20.02.2017 followed by the written termination dated 13.03.2017, have been quashed and set aside and he has been granted reinstatement with continuity in

service and back wages. Though the judgment is delivered on 24.05.2018, it is conceded that the same has not been implemented.

2. The learned Advocate for the petitioner-management has strenuously submitted the following points :-

- A) The respondent is a temporary employee, though he has been working for 18 years.
- B) Earlier, he had been terminated and he was granted reinstatement with continuity.
- C) Writ Petition no.7863/2009 filed by the management was admitted and there is no relief in favour of the management.
- D) The respondent was supposed to reside at the campus of the said school which is a residential school and yet he was residing outside.
- E) He was arrogant and his behaviour was objectionable and not proper.
- F) He was not interacting properly with the students or with the management.
- G) He was not responding to the notice.
- H) He was issued with the order of dismissal from service.
- I) He has not challenged the written order of dismissal dated 13.03.2017.
- J) He has attained the age of superannuation on 31.03.2018 and there is no question of reinstatement in service.

3. The learned Advocate for respondent No. 6 submits as under :

- A) The respondent/employee was working from 2001 continuously.
- B) On account of the earlier dismissal order, he had to litigate with the management and he succeeded before the appellate authority.
- C) Though the management preferred writ petition in the High Court, they were not granted relief and they had to reinstate respondent no. 6 under the order of this Court.
- D) It is admitted that he was residing outside the village and it would have been appropriate had he resided in the school.
- E) The direction of the management was not to reside within the precincts of the residential school, but to reside in the village.
- F) No charge-sheet was served upon him notwithstanding the long list of allegations being voiced by the management.
- G) No Departmental Enquiry was conducted and no charges were proved against him.
- H) He had received one notice calling upon him to explain as to why he was not residing in the village and he had specifically and frankly replied to the management that he was residing in a rented premises away from the village.
- I) He has not suppressed the fact that he was residing a little away from the village.

4. The learned Advocate for the management submits that even today, the management is willing to initiate a departmental enquiry and issue a charge-sheet cum show cause notice against respondent No. 6.

5. The learned Advocate for the appellant submits that when he was in employment, the management abdicated its powers to conduct an enquiry. Having superannuated almost 20 months ago, he would not consent for commencement of any enquiry.

6. I find from the record that insofar as the stigmatic dismissal of the appellant from service is concerned, this is an open and shut case. Though the learned Advocate for the management has tried to indicate from a stray notice calling upon the employee to state his place of residence, the employee has specifically submitted reply clarifying that he was residing in a rented premises a little away from the village and had conceded that he was not residing in the village. He has not suppressed anything from the management. Had the management been aggrieved by the conduct of the appellant, it should have either taken away the charge from him or should have commenced a departmental enquiry against him. The management

has done neither. In fact, it appears from the conduct of the management that rather than taking affirmative steps, it has practically abdicated its powers and has neither relieved the appellant from the said duty, nor had commenced a regular departmental enquiry.

7. In view of the above, a stigmatic dismissal from service without following the due procedure of law cannot be sustained. The learned Advocate for the management has then taken a stand that the appellant was a temporary employee. It is unbelievable that the employee who is working for seventeen years could be said to be a temporary employee. Even otherwise, the law is well settled by the Honourable Apex Court in the judgment of **Radhey Shyam Gupta Vs. U.P. State Agro Industries Corporation Ltd. And another** [(1999) 2 Supreme Court Cases 21 and **Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta and others** [AIR 1999 Supreme Court 983], that even if a temporary employee or probationer is charged with a misconduct and if the order of removal is stigmatic, a departmental enquiry is mandatory. A temporary or a probationer, can be removed by a non-stigmatic order.

8. The learned Advocate for the management has then taken a stand that the written order dated 13.03.2017 has not been challenged in the appeal. It appears from the impugned judgment that much was argued on the said written order and similarly, the thrust of the arguments of the petitioner in this Court is also on defending the order dated 13.03.2017. Ideally, the appellant should have amended the prayer clause and should have added a prayer to challenge the said order. However, now that the litigation is over and the petitioner has already superannuated and since this Court has considered the order dated 13.03.2017 from all angles, I do not find that the petitioner-management, which has behaved unscrupulously, can be given such an advantage under fortuitous circumstances.

9. In view of the above, the impugned judgment quashing the oral and written termination of the appellant granting continuity in service, cannot be faulted and this petition fails to that extent.

10. On the quantum of back wages, I raised a query to the learned Advocate for the appellant that since he has indeed committed a mistake in residing away from the village, whether he should be deprived of a portion of the back wages. Notwithstanding

the inaction on the part of the management, the learned Advocate relied upon the judgment of the Honourable Apex Court in the matter of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & others** [2013(10) SCC 324] wherein full back wages were granted and he has fairly stated that this Court may decide the quantum of back wages.

11. The learned Advocate for the management submits that the appellant be deprived of the entire back wages.

12. I find that the error committed by the appellant by residing away from the village, though he has frankly informed the management in response to a show cause notice, needs to be penalised. This would be a fit case to deprive him of 30% back wages.

13. In view of the above, this petition is partly allowed. The direction to pay full back wages is modified with a direction that the management shall pay 70% back wages to the appellant on or before 15.01.2020, failing which the said amount shall carry interest at the rate of 6% p.a. from the date of the judgment of the appellate

authority till the amount is actually paid. The interest component shall not be paid from the State exchequer or the funds of the institution and shall be paid from the personal bank account of the President Mr. Bharat Sambhajirao Sarwade.

14. In view of the above, the writ petition is partly allowed.

Ravindra V.Ghuge
Judge

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