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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 48 OF 2009
IN
WRIT PETITION NO. 6291 OF 1997

Shri Sukhdeo Bapu Pawar
Age about 34 years, Occ. Service
Resident of at and Post Dongargaon,
Taluka Sangola, Dist. Solapur.

.. Appellant

Versus

1. Samajik Sanskritik Congress
Maharashtra (Mumbai) Shakha,
Alegaon, Taluka Sangola,
Dist. Solapur.
2. The Headmistress,
Ashokrao Desai Krishi Vidyalaya
Alegaon, Taluka Sangola,
Dist. Solapur.
3. The Education Officer (Secondary)
Zilla Parishad, Solapur.
4. The State of Maharashtra .. Respondents

Ms. Jayshree Tripathi i/by Mr. A. K. Kapadnis for Appellant.
Mr. K. S. Thorat, AGP for Respondent Nos.3 and 4.

CORAM: PRADEEP NANDRAJOG, CJ. &
SMT. BHARATI DANGRE, J.

NOVEMBER 27, 2019.

ORAL JUDGMENT [Per Pradeep Nandrajog, CJ.] :

1. Learned Counsel for the Appellant seeks an adjournment which we decline for the reason having perused the impugned Judgment dated October 19, 2007 partly allowing Writ Petition No. 6291 of 1997 filed by the Respondents, we are of the opinion that it would be futile to adjourn the hearing of the Appeal since we have appraised ourselves of the relevant facts.

2. The Appellant was appointed as a Peon by the 1st Respondent to work at its school, the 2nd Respondent. The Management i.e 1st Respondent issued a memo to the Appellant on 19th April, 1996 seeking an explanation as to why he had left the duty without intimation on 18th April, 1996. The Appellant did not respond to the memo, but wrote a letter on 28th April, 1996 alleging therein that he was stopped from signing the muster roll from 19th April, 1996. The 1st Respondent required the Appellant to report for duty and wrote a letter to said effect on 31st May, 1996.

3. The Appellant filed an Appeal before the School Tribunal contending that his services were illegally terminated and the obvious defence of the Respondents was that it was a case of voluntary abandonment of duties evinced by the memo issue by them on 19th April, 1996. In the appeal the respondent took the stand that the appellant was free to report for work and thus the appellant started working from 17th July, 1996.

4. It obviously became a word of mouth versus a word of mouth. The word which came out from the mouth of the Appellant was that he was prohibited from signing the muster roll on 19th April, 1996. The word of mouth from the Management was that the Appellant had stopped reporting voluntarily having abandoned the duties on 18th April, 1996. The only material to break the impasse was the letter dated 31st May, 1996 where-from it can be inferred that the Management was writing to the Appellant to report for duty.

5. Notwithstanding the said documentary evidence which could have broken the deadlock, the Appeal filed by the appellant was allowed by the School Tribunal vide order dated 29th August, 1997 directing reinstatement with back-wages.

6. Writ Petition filed by the Management has been disposed of noting that the Appellant was working i.e. had been

reinstated. Back-wages have been denied, to the said extent decision of the of the School Tribunal has been set aside. The impugned order notes that as a matter of fact the workman was directed by the School Tribunal to report for duty and with effect from 17th July, 1996 had been working.

7. The totality of the evidence suggests that probably the Management was right. Not only they wrote to the Appellant on 31st May, 1996 that he should report for work but even before the School Tribunal at the first available opportunity informed the Tribunal that the Appellant could come back and work. Indeed, the Appellant started working effect from 17th July, 1996.

8. As we have perused the aforesaid facts conclusions there-from would be self propelling. This was the reason why we decline to defer hearing in the appeal which has remained pending in the record room of this court for nearly ten years.

9. The Appeal is dismissed.

10. No costs.

Pravin D.
Pandit

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Pravin D. Pandit
Date: 2019.11.28
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SMT. BHARATI DANGRE, J.

CHIEF JUSTICE