

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

WRIT PETITION NO. 3403 OF 2020

PRAJA JAGRUTI SHIKSHAN SANSTHA AHMEDNAGAR
THROUGH SECRETARY AND ANOTHER
VERSUS
GANESH RANGNATH TUPE AND ANOTHER

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Advocate for the Petitioners : Shri S. V. Natu
Advocate for Respondent No. 1 : Shri Abhijit B. Kale

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 2nd MARCH, 2020

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PER COURT :

1. The Petitioner Management is aggrieved by the exparte judgment dated 10/10/2019, delivered by the School Tribunal, Solapur, by which, Appeal No. 10/2016 filed by Respondent No.1 / original appellant has been allowed and he has been granted reinstatement in service with continuity and full back wages.

2. The learned Advocate for the Petitioners submits that Respondent No.2 Education Officer (Primary), would not be a contesting Respondent as on date since the Petitioner is praying for a remand. Leave is,

therefore, sought to delete Respondent No.2. Deletion is permitted at the risk of the Petitioners.

3. I have considered the strenuous submissions of the learned Advocates for the Petitioners and the original appellant. With their assistance, I have gone through the petition paper book.

4. The appellant approached the School Tribunal alleging oral termination with effect from 01/04/2012. The delay caused in filing the appeal was condoned by the Tribunal. After the appeal was registered in 2016, notices were issued to the Respondents. The record reveals that the Petitioners, as well as, the Education Officer were served and none caused an appearance in the matter. The impugned judgment has been delivered exparte. The School Tribunal concluded that the appellant was working as a peon with effect from 13/01/2009 till 12/01/2012 and as the Education Department refused to grant an approval to his appointment, he was disengaged from 13/01/2012.

5. The learned Advocate for the Petitioner Management submits that they have no animosity or grievance against the appellant. When he was engaged as a peon, the School had one sanctioned post. Despite the persuasion of the Petitioner / Management, the Education Department did not grant any approval to the appointment of the appellant. It is contended that though the notice of the Tribunal was served upon the Management, the acknowledgment indicates a signature, which cannot be identified. The person, who has purportedly received the notice from the Tribunal, did not bring it to the notice of the Management. The Management seriously suspects a couple (husband and wife), related to the Appellant's wife to have been involved in this matter as both are employees of the same School. It was only after the appellant approached the Management with the judgment of the Tribunal, that the Management realized that the appellant had received an ex-parte judgment.

6. It is further submitted that the appellant was not

granted an approval. Even today, the Management would not mind granting notional continuity to the appellant without back wages and treat him as a surplus employee. The Management cannot be blamed for the Education Department's refusal / inability to grant approval to the service of the appellant. Now the post of a peon has been abolished. The appellant himself stopped reporting for duties from 13/01/2012 after realizing that the Education Department did not grant approval to his service.

7. The learned Advocate for the appellant submits that he has never abandoned his employment and because he is in need of regular earnings, he has approached the Tribunal for challenging his removal from service. He submits that if this Court remands the matter to the Tribunal only because an *ex parte* judgment has been delivered, heavy costs may be imposed and the entire arrears of back wages be directed to be deposited, so that the appellant can withdraw the said amount.

8. In view of the above, it is obvious that the Management had not levelled any charges against the appellant. The non approval of his appointment is the issue. It is 'word against word' when the Management submits that the appellant stopped reporting for duties and the appellant contends that the Management orally disengaged him.

9. Be that as it may, the fact remains that the impugned judgment is delivered *ex parte*. The appellant, as concluded by the Tribunal, has worked for three years and is out of employment for last eight years. In these circumstances, heavy costs have to be imposed upon the Management and the matter needs to be remanded to the Tribunal for a decision after a contest between the parties.

10. In view of the above, this petition is partly allowed. The impugned judgment stands set aside. The Petitioner shall deposit an amount of Rs. 50,000/- in the School Tribunal, Solapur in Appeal No. 10/2016, which shall stand remitted to the Tribunal, on or before

31/03/2020. The litigating parties shall appear before the Tribunal on 31/03/2020. Notice be issued to the Education Officer.

11. The Petitioner shall submit its written statement alongwith all annexures/documents, on or before 31/03/2020 and no extension of time would be granted. The appellant would be at liberty to withdraw the amount of Rs. 50,000/- as costs, without conditions.

12. If the Petitioners do not deposit the said amount and do not file their written statement as directed, the Tribunal would be at liberty to dispose off the said appeal by restoring the earlier judgment dated 10/10/2019. If all directions as above are complied with by the Management, the Tribunal shall decide the said appeal as expeditiously as possible and in any case, on or before 31/07/2020. All contentions of the litigating parties are kept open, including the contention of the Management that the post of a peon is now abolished.

13. The learned Advocate for the appellant submits that though he has worked for three years with the Petitioners as a peon, he was not paid his monthly salary. The learned Advocate for the Management submits that this is quite improbable. Nevertheless, I deem it appropriate to direct the Management to deposit unpaid salary of the appellant, if not yet paid. Such amount shall be deposited on or before 30/04/2020 and if the Petitioner School operates on grant in aid basis, they are at liberty to seek a refund of the said amount through the salary grants from the State Government.

(RAVINDRA V. GHUGE, J.)

shp/-