

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6927 OF 2020

The President
High School, Lohara,
Taluka Lohara,
District Osmanabad

.. Petitioner

Versus

1. Ratnakar Rajaram Potdar,
Age 33 years, Occu. Nil,
R/o. Patoda Road, Near Waghmode
Hospital, Lohara, Taluka Lahora,
District Osmanabad
2. The Education Officer (Secondary),
Zilla Parishad, Osmanabad,
District Osmanabad
3. The Secretary
Lohara High School, Lohara,
District Osmanabd (Deceased)
4. The Headmaster,
Lohara High School, Lohara,
Taluka Lohara, District Osmanabad .. Respondents

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Mr. Santosh S. Jadhavar, Advocate for petitioner
Mrs. Anjali Bajpai Dube, Advocate for Respondent no.1
Mr. P. G. Boarde, A.G.P. for Respondent no. 2 – State

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 07-12-2021

JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally with
consent of the learned Advocates for the appearing parties.

2. This petition takes an exception to the ex-parte Judgment and order dated 08-07-2020 passed by the learned Presiding Officer, School Tribunal, Pune Region at Solapur, in Appeal No. 2 of 2016, thereby allowing the appeal filed by respondent no. 1 challenging the order of his otherwise termination.

3. Respondent no.1 filed Appeal No. 2 of 2016 claiming that he was appointed as a Junior Clerk on 15-06-2012 under the appointment order issued by the Headmaster / respondent no.4. Respondent No.1 was never allowed to sign the muster roll as there was dispute between the management. Proposal for approval of his services was never forwarded to the Education Officer and from 15-01-2016, he was restrained from attending the School, and therefore, his services are otherwise terminated. After filing of the appeal, it appears from the impugned order that the notices were sent and served on the respondents, however, the present petitioner and respondents no. 3 and 4 did not appear in the matter and the matter proceeded *ex-parte* against the petitioner and respondents no. 3 and 4. The Education Officer appeared and filed its say opposing the prayers of respondent no. 1. The learned Tribunal, on the basis of record placed before it, allowed the Appeal. The said order is impugned in the present petition.

4. Heard the learned Advocate for the petitioner, learned Advocate for respondent no. 1 and learned Assistant Government Pleader for respondent no. 2. Though respondents no. 3 and 4 are duly served, none appears for them.

5. The learned Advocate for the petitioner assailed the impugned order stating that it is passed in violation of the principles of natural justice and the relevant documents were not placed before the Tribunal. Fair opportunity of hearing was denied to the petitioner and the other respondents in the appeal and, in that view of the matter, the impugned order is unsustainable.

6. The learned Advocate for respondent no.1, on the other hand, strenuously opposed the petition, contending that though the petitioner and the other respondents were duly served, they failed to appear and hence they cannot now claim that opportunity of hearing was not given to them. She tried to argue on the merits, contending that the appointment of respondent no.1 is valid. She further submitted that there is a dispute in the management, which is reflected in affidavit-in-reply filed before the Tribunal by the Education Officer. In that view of the matter, the petitioner has no locus to challenge the order passed by the Tribunal. She, therefore, submitted that writ petition is without merit and the same may be dismissed.

7. The learned Assistant Government Pleader, on the other hand, by relying on the affidavit filed by the Education Officer before the Tribunal, contended that appropriate orders may be passed.

8. It is not in dispute that the Tribunal proceeded *ex-parte* against the petitioner and respondents no. 3 and 4. The proper facts and relevant records was not placed before the Tribunal when the appeal of respondent no.1 was heard and allowed. The impugned order is therefore, in my view, vitiated only on the ground that the petitioner and respondents no. 3 and 4, were not heard in the matter. Though, it is accepted for the sake of arguments that, there is dispute in the management, however, this cannot be a ground to permit the petitioner to continue on the post, if in case his appointment is found to be without following due procedure of law / rules. In that view of the matter, I am not inclined to accept the arguments of respondent no. 1 that since there is a dispute between management, the petitioner has no locus to challenge the order passed in favour of respondent no. 1 by the School Tribunal.

9. For the afore-stated reasons, the impugned order of the Tribunal is liable to be set aside and the matter is required to be

remitted back to the School Tribunal. Hence, the following order :-

ORDER

- I) The writ petition is allowed.
- II) The impugned Judgment and order dated 08-07-2020 passed by the learned Presiding Officer, School Tribunal, Pune Region at Solapur, in Appeal No. 2 of 2016, thereby allowing the appeal filed by respondent no. 1, is hereby quashed and set aside.
- III) The matter is remitted back to the School Tribunal. The Tribunal shall decide the appeal on merits after hearing all the concerned parties, within a period of three months from the date of receipt of the writ of this order.
- IV) Rule is made absolute in the above terms with costs of Rs.25,000/- (Rs. Twenty Five Thousand) to be paid by the petitioner to the District Legal Aid Services Authority, Osmanabad.

**(NITIN B. SURYAWANSHI)
JUDGE**

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