

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4946 OF 2007

PETITIONERS :-

1. Vidarbha Gramin Shikshan Sanstha, Akola, Through its Secretary, C/o Akola Arts, Commerce and Science Junior College, Behind Sahakari Nagar, Malkapur Road, Gandhi Nagar Post Office, Akola – 444 004.
2. Principal, Akola Arts, Commerce and Science Junior College, M.C.V.C. Branch, Ambika Nagar, Shivar, Taluka and District Akola.

...VERSUS...

RESPONDENTS :-

1. Presiding Officer, School Tribunal, Amravati.
2. Rajkumar son of Motiram Khedkar, aged about 41 years, Occupation Service, Residing C/o. S.G.Chavan, Near Hanuman Mandir, Asara Colony, Ring Road, Tahsil and District Akola.
3. State of Maharashtra, through its Directorate, Vocational Education and Training, Mantralaya, Mumbai 32.
4. Deputy Director, Vocational Education and Training, Regional Office at Amravati, Taluka and District Amravati.

Mr. R.A.Haque, Adv., Adv. for the petitioners.
Ms M.A.Barabde, AGP for respondent Nos.1, 3 and 4.
Mr. Prafulla S. Khubalkar, Adv. for respondent No.2.

CORAM : N.B.SURYAWANSHI, J.

RESERVED ON : 21.10.2021

PRONOUNCED ON : 29.10.2021

J U D G M E N T

This petition takes exception to the judgment dated 27/09/2007 passed by the School Tribunal Amravati in Appeal No.25 of 2004 thereby allowing the appeal filed by respondent No.2-Junior College Teacher and granting him relief of reinstatement with full back wages and consequential benefits.

2. Undisputed facts in nutshell are as follows:

Petitioner No.1 is a society running petitioner No.2-Akola Arts, Commerce and Science Junior College, which is having Minimum Competency Vocational Course (for short "M.C.V.C.") branch. Respondent No.2 was initially appointed on 31/12/1997

as Junior College Teacher on probation for a period of two years by petitioner No.2. His services came to be terminated by order dated 31/12/1999. He was thereafter reappointed on 02/02/2000. Respondent No.4-Deputy Director of Vocational Education and Training issued a communication dated 26/05/2003 informing the petitioners to discontinue the M.C.V.C. branch and no further admission should be made in Class-XI for Academic Session 2003-04. The petitioners therefore issued one month's notice dated 17/06/2003, thereby terminating the services of respondent No.2-teacher. Respondent No.2 filed Writ Petition No.2771 of 2013 challenging the said termination, wherein by way of interim order, the effect and operation of the said order was stayed. In the meanwhile, respondent No.4-Deputy Director issued communication dated 21/07/2003 to petitioner No.2-College thereby granting permission to the petitioner No.2-College to continue the M.C.V.C. section for Academic Session 2003-04. On receipt of this letter, petitioner No.1-Society issued appointment orders to all the employees including respondent No.2 working under M.C.V.C. branch. On

18/11/2003, petitioner No.2 issued appointment order and appointed respondent No.2 as Junior College Teacher with effect from 18/07/2003 to 30/04/2004. On 30/04/2004, termination order was issued to respondent No.2-teacher. Respondent No.2-teacher, therefore, filed Appeal No.25 of 2004 challenging the proposed action of termination with effect from 30/04/2004. By way of amendment, respondent No.2 challenged the termination order dated 30/04/2004. The Tribunal allowed the appeal. The petitioners are aggrieved by the judgment and order dated 27/09/2007 passed by the School Tribunal.

3. Heard the learned Advocate for the petitioner, learned Advocate for respondent No.2 and learned AGP for respondent Nos.1, 3 and 4.

4. The learned Advocate for the petitioners assailed the impugned judgment and order contending that initially when the appeal was filed under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for

short “Act of 1977”), respondent No.2 challenged the proposed termination order in the appeal. Thereafter, by amending the appeal, termination order was challenged. Even the amendment was filed beyond 30 days, the School Tribunal ought not to have been entertained the same. According to the learned Advocate for the petitioners, the observations of the Tribunal are beyond the scope of section 9 of the Act of 1977 and rule 25A(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short “Rules of 1981”). He submitted that Rule 25A of the Rules of 1981 does not cast a duty on the teacher to send the name of surplus teacher to the Deputy Director. The termination order was issued to respondent No.2 as the recognition of the M.C.V.C. branch was withdrawn by respondent No.4-Deputy Director. The learned Advocate submitted that perverse findings are recorded by the School Tribunal while allowing the appeal. He further submitted that respondent No.2 is in service in terms of the interim order passed by this Court on 17/12/2007. He submitted that the School Tribunal erred in coming to the conclusion that petitioner No.1-Society had not

followed the procedure laid in sub-rule (2) of Rule 25A of the Rules of 1981. He further submitted that respondent No.2 was out of service from 01/05/2004 to 31/12/2007. There was no averment in the appeal that respondent No.2-teacher was not gainfully employed for this period. In that view of the matter, according to him, the School Tribunal erred in granting full back wages to respondent No.2-teacher. He therefore, submitted that the impugned judgment and order passed by the School Tribunal is liable to be quashed and set aside by allowing the instant petition.

5. In support of his submissions, the learned Advocate for the petitioners placed reliance in **Asha Education Society and another v. Nandkishore Shrikrishna Wankhedkar and others**, reported (2017) 15 SCC 125, AIR SC 5681, **Rajnarayan v. Dy. Director of Edu.**, reported in AIR 2017 SC 5681, **Rajasthan State Road Transport (Corporation, Jaipur v. Phool Chand (Dead) through Lrs**, reported in AIR 2018 SC 4534 and **Management of Regional Chief Engineer, P.H.E.D. Ranchi v. Their Workmen Rep.**

By District Secretary, reported AIR 2018 SC (Supp.) 961.

6. Per contra, the learned Advocate for respondent No.2-teacher supported the judgment and order of the School Tribunal. He argued that the amendment was never challenged when it was allowed. Therefore, it was become final and now the petitioner is not entitled to challenge the same. He further submitted that Rule 25A of the Rules of 1981 is applicable to the permanent employees and even the petitioners have accepted that respondent No.2 was a permanent employee. He further submitted that vide communication dated 21/07/2003, the petitioners were informed that on the condition of undertaking submitted by them, the recognition to M.C.V.C. branch was allowed to continue for the Academic Session 2003-04. The terms and conditions mentioned in the undertaking were to be complied with within three months and the re-inspection of petitioner No.1-Society was to be conducted within three months. In that view of the matter, there was no occasion for the petitioners to issue termination order before the re-inspection to be done by respondent No.4-Deputy

Director. According to him, the reason for termination was non-existent. He further submitted that respondent No.2 was in employment from the date of filing of appeal. Therefore, there was no occasion to make a statement that he was not gainfully employed. He submitted that illegality of the termination caused by the petitioners is established on record, hence, the School Tribunal has rightly granted full back wages to respondent No.2.

7. He further submitted that Rule 25A (2) of the Rules of 1981 casts a duty on the Management to intimate the names of the employees to be terminated, retrenched or who are rendered surplus to respondent No.4-Deputy Director, by relying on Rule 26(4) and 27 of the Rules of 1981. He submitted that in case a de-recognition, the employees are liable to be protected. He further submitted that the M.C.V.C. branch was continued even after the Academic Year 2003-04 and is in continuation till date and respondent No.2 is serving with the petitioners. He further submitted that all the other teachers of M.C.V.C. branch, whose services were terminated along with respondent No.2, were

continued in service even after the Academic Year 2003-04. However, respondent No.2 was victimized as he had filed appeal before the School Tribunal. He, therefore, submitted that there is no merit in the challenge raised by the petitioners. The School Tribunal has passed a well reasoned order, which is not required to be interfered with in extraordinary writ jurisdiction.

8. In support of his submissions, the learned Advocate for respondent No.2 relied on the decisions of Hon'ble Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak**, reported in (2013) 11 SCC 324, **Bhuvnesh Kumar Dwivedi v. Hindalco**, reported in (2014) 11 SCC 85, **PGI of Medical Education v. Rajkumar**, reported in (2001) 2 SCC 54 and **Jayantibhai Rajobhai Patel v. Municipal Council Narkhed**, reported in (2019) 17 SCC 184.

9. The learned Assistant Government Pleader appearing for respondent Nos.1, 3 and 4 supported the order passed by the School Tribunal. She also submitted that in the year 2004 itself,

the colleagues of respondent No.2, whose services were terminated along with respondent No.2, were reinstated, pursuant to the advertisement. The learned AGP therefore, supported the impugned judgment and order passed by the School Tribunal.

10. In reply, the learned Advocate for the petitioners by relying on **Rajnarayan S. Pathak v. Deputy Director of Education**, reported in **2004 (2) Mh.L.J. 927** submitted that it is not the duty of Management to inform the names of surplus teachers to the department. He further relied on the decisions of Hon'ble Supreme Court in **AIR 2018 SC 4534** (cited supra) and **AIR 2018 (Supp.) 961** (cited supra) to contend that a reinstatement with full back wages cannot be claimed as of right. In this behalf reliance is also placed by him on the decision of Hon'ble Supreme Court in *Civil Appeal No.8215-8216 of 2011* to contend that whether an employee after dismissal was gainfully employed is within his special knowledge and therefore, the burden is on the employee to come out with a case that he was not gainfully employed during the relevant period.

11. Heard learned Advocate for the parties at length. Perused the record.

12. The record indicates that respondent No.2 is a permanent teacher who was initially appointed on probation vide appointment order dated 31/12/1997 to teach the subject of building maintenance. On completion of the probation period, the appointment of respondent No.2 was approved by respondent No.4-Deputy Director of Vocational Education and Training. The petitioners have failed to produce on record termination order dated 31/12/1997 and reappointment order dated 02/02/2000, therefore, it is clear that respondent No.2 has acquired deemed permanency as contemplated by the Act of 1971. The petitioners have terminated the services of respondent No.2-teacher by relying on Rule 25A of the Rules of 1981. This rule relates to termination of services of permanent employee. This also fortifies the contention of respondent No.2 that he was a permanent teacher.

13. It is not in dispute that respondent No.4 vide communication dated 03/06/2003 informed the petitioners to close the M.C.V.C. section from the Academic Session 2003-04 and the non-teaching staff of the M.C.V.C. section be terminated as per Rule 25A of the Rules of 1981.

14. In terms of rule 25A of the Rules of 1981, respondent No.4-Deputy Director has power for issuing order to terminate the services of permanent employees on account of de-recognition of the school/course under M.C.V.C. It is therefore, for the Management to intimate the names of the teachers, who are terminated on account of de-recognition, so as to enable the Deputy Director to maintain a list of the teachers for absorption.

15. It is also brought on record by amendment that after submitting undertaking by petitioner No.1-Society, respondent No.4-Deputy Director granted permission to conduct the M.C.V.C. branch to petitioner No.2 from the next Academic Session. There

were permanent teachers, whose services were terminated on account of de-recognition of M.C.V.C. branch along with respondent No.2, were reappointed by petitioner No.1-Society. If the petitioners had forwarded the name of respondent No.2 to respondent No.4-Deputy Director, then respondent No.4-Deputy Director would have directed the petitioners to absorb respondent No.2. In this view of the matter and considering the peculiar facts of the present case, the School Tribunal has rightly come to the conclusion that procedure of sub-rule (2) of rule 25A of the Rules of 1981 is not followed by the petitioners while terminating the services of respondent No.2 and therefore, the termination is illegal.

16. Admittedly, after continuation of the M.C.V.C. branch after the Academic Year 2004 onwards, petitioner No.1-Society has not reappointed respondent No.2 only on the ground that appeal filed by him was pending before the School Tribunal, though they reappointed other colleagues of respondent No.2, whose services were terminated on account of de-recognition of

M.C.V.C. branch. They are also given benefit of continuation of services. Admittedly, respondent No.2 is in service with effect from 31/12/2007 in terms of interim order dated 17/12/2007 passed by this Court. In this view of the matter also, I find no substance in the challenge raised by the petitioners to the judgment and order passed by the School Tribunal. The School Tribunal has given valid reasons in support of the findings arrived at. No merit is found in the challenge raised by the petitioners to the impugned judgment and order passed by the School Tribunal.

17. In **Rajnarayan S. Pathak v. Deputy Director of Education** (supra), the Division Bench of this Court has held that the right of employee to approach the Department for enlisting himself/herself as a candidate who should be employed by management of other schools on account of closure of the school where he/shall was working, cannot be taken away without affording opportunity of putting forward their case. This decision was rendered in the different facts and ratio of the same is not helpful to the case of the petitioners.

18. The learned Advocate for the petitioners assailed the direction of granting full back wages to respondent No.2 by relying on **Asha Education Society and another v. Nandkishore Shrikrishna Wankhedkar and another** (supra), **P. Karupaiah (D) Thr.Lrs v. General Manager, Thruuvalluvar Transport Corporation Ltd.** (supra), **Educational Society, Tumsar and ors. v. State of Maharashtra and ors.** (supra) and decision in **National Gandhi Museum v. Sudhir Sharma** (supra). In all these decisions, the Hon'ble Supreme Court has considered the direction for payment of back wages given under the Industrial Disputes Act, Act of 1971 and has also considered that where the employee does not aver that he was not gainfully employed during the relevant period, then he is not entitled for full back wages. In the present case, in the additional affidavit, respondent No.2 has made a statement that he was not gainfully employed anywhere and he remained unemployed and jobless from 01/05/2004 to 31/12/2007. It is also averred in the written statement filed by respondent No.2-teacher that he alone has been singled out, since all the other employees, who had been terminated, have been reinstated by the

petitioners and they are granted continuity of service. It is further averred that the post on which respondent No.2 was working, is still vacant and petitioner No.2-College was never de-recognized in spite of the communication issued by respondent No.4. In this view of the matter, the direction of back wages given by the School Tribunal cannot be faulted with.

19. The learned Advocate for respondent No.2 was right in placing reliance on **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya** (supra) to contend that since the impugned termination order was found to be illegal, the School Tribunal was justified in granting full back wages to respondent No.2. In **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya** (supra), it is held as under:

“38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the

Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages."

The above ratio is squarely applicable to the facts of the present case.

20. The finding of fact reached by the School Tribunal cannot be interfered in writ jurisdiction as there is no error of law apparent on the face of the record in the impugned judgment. There is nothing on record to show that while recording the findings of fact, the School Tribunal has refused to consider/admit admissible and material evidence or has admitted inadmissible evidence. The findings of fact recorded by the School Tribunal are based on material available on record.

21. In **Hindusthan Tin Works (P) Ltd. v. Employees**, reported in (1979) 2 SCC 80, it is held that full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating the departure. In the case in hand the only ground raised for justifying the impugned termination order is that it was issued on account of withdrawal of recognition by respondent No.4-Deputy Director. However, the facts on record indicate that the M.C.V.C. branch was continued even after the order of de-recognition was passed. In that view of the matter, the argument of the petitioners that the termination order was issued because of withdrawal of recognition is unacceptable. The learned School Tribunal was justified in granting full back wages to respondent No.2, particularly taking into consideration the fact that the impugned termination order was illegal.

22. In my view, since the other teachers/colleagues of respondent No.2, who were also terminated along with respondent No.2 on account of de-recognition, were reinstated and they granted continuity in service, but respondent No.2 was

not reinstated by the petitioners, in this view of the matter, the direction of granting full back wages to respondent No.2 cannot be faulted with.

23. For the aforestated reasons, there is no merit in the challenge raised in the present petition. The impugned judgment is not required to be interfered with in extraordinary writ jurisdiction. In the result, the writ petition is dismissed.

24. Rule stands discharged. No costs.

(N. B. SURYAWANSHI, J.)

Later on –

At this stage, the learned Advocate for the petitioners submitted that the stay granted by this Court on 05/06/2008, in respect of back wages may be continued for a period of eight weeks so as to enable the petitioners to challenge this order.

The Stay granted on 05/06/2008 is continued for a period of eight weeks.

(N. B. SURYAWANSHI, J.)