

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

931 WRIT PETITION NO.5892 OF 2021

SHESHRAO ANANDRAO WABALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners :Mr. Panpatte V. S.
AGP for Respondents State: Mrs. V. S. Chaudhari
Advocate for Respondents 3 & 4 : Mr. M.P. Tripathi

CORAM : RAVINDRA V. GHUGE, J.
DATE : 11th March, 2022

ORDER:

1. Admittedly, the petitioner has been working in the Zilla Parishad School for the periods 08.08.2012 to April, 2013, 16.08.2016 to 29.04.2017 and 15.06.2017 to 14.10.2017. He was conducting two lectures either for a day or total in a week for the 6th to 8th Standards. The contention is that this is permissible in the light of the Government Resolution dated 01.07.2017, when he was already employed with Respondent No.3.

2. The learned Advocate for the petitioner initially stated that respondent No.3 had permitted the petitioner to go to the Zilla Parishad school by way of an additional work. When called upon to show the permission granted by respondent no.3, he submits that there was no permission either in writing or even oral.

3. The contention of respondent No.3 Management is that they had never terminated the petitioner. He had voluntarily stopped reporting for duties from August, 2016 and he reported to the school alleging termination on 03.01.2019. He further submits that the Government Resolution permits only a guest instructor to move around in more than one institutions to deliver lectures on hourly basis. When the petitioner was a permanent employee, the G.R. would not permit him to deliver guest lectures in any schools and surely not without the written permission of the Management which was never accorded to him. He, therefore, submits that as to whether the petitioner voluntarily stopped reporting for duties from August, 2019 or whether the management has denied employment to him on 03.01.2019 and if that be so, where was he working in this period, are questions which the petitioner will have to answer.

4. Both the learned Advocates as well as the learned AGP concede that there is a provision for condonation of delay in Clause 77(5) of the Special School Code, Part-III (Discipline). As such, I find that if the petitioner can make out a case of oral refusal of work from 03.01.2019, the delay for filing the appeal would be only 7 days excluding the 45 days limitation. If the Management succeeds in establishing that he was absconding from August, 2016, the proceedings initiated by the petitioner can be rejected on delay as well as on merits.

5. Since a service dispute is involved, no purpose would be served in admitting this petition as the petitioner would get stuck in this Court considering the present pendency and may not get a decision in his petition in a decade or two.

6. Therefore, by the consent of the parties, this petition is partly allowed by setting aside the order dated 24.01.2020.

7. In the interest of justice, I am issuing the following directions:

(a) Since I find that the date of the cause of action is a mixed question of facts and law and for which the parties will have to lead evidence, which would eventually amount to recording of evidence in the main appeal itself, the Appellate Authority cum-Regional Deputy Commissioner, Social Welfare Department, Latur is directed to register the appeal filed by the petitioner.

(b) The litigating parties shall appear before the Appellate Authority on 11.04.2022 at 11.00 a.m.

(c) The Management is at liberty to file its written statement to the appeal, preferably on or before 30th April, 2022.

(d) Both the parties shall lead evidence as regards the cause of action in view of their pleadings and the Appellate Authority, while

considering the appeal on its merits, would first consider as to whether the cause of action has arisen in August, 2016 when the petitioner allegedly absconded or whether it arose on 03.01.2019 when the Management purportedly refused employment.

- (e) If the Appellate Authority concludes that the petitioner had voluntarily stopped reporting for duties from August, 2016, his appeal can be rejected on the ground of delay as well as for lack of cause of action. However, if it is concluded that the cause of action arose on 03.01.2019, the delay of 7 days, which is minor, can be condoned and the Appellate Authority would then deliver a verdict on the merits of the case.
- (f) All contentions of the litigating parties are obviously kept open.

(RAVINDRA V. GHUGE, J.)

JPC