

(1)

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

WRIT PETITION NO.12995 OF 2017

**BABURAO ANANDA RAHATE
VERSUS
THE STATE OF MAHARASHTRA AND ORS.**

...

Mr S. R. Kedar, Advocate for petitioner;
Mr K. B. Jadhavar, A.G.P. for respondent/State
Mr P. B. Salunke, Advocate h/f Mr v. G. Salgare, Advocate for
respondent Nos.3 to 6

CORAM : SMT. BHARATI DANGRE, J.

DATE : 1st February, 2022

PER COURT:

1. Heard the learned Counsel for the petitioner. Perused the writ petition, wherein the following relief has been sought :

“B. Be pleased to quash and set aside the order dtd. 3/3/2017 passed by the Ld. Presiding Officer, School Tribunal Aurangabad Division, Aurangabad in Appeal No.03/2016 to the extent of 50% of back-wages of salary to the Petitioner from the date of termination till the date of reinstatement of the Petitioner and be directed the Respondents to pay full back-wages i.e. 100% instead of 50%.”

2. With the assistance of the learned Counsel for the petitioner, I have perused the order passed by the School Tribunal, Aurangabad Division, on 03/03/2017, entertaining the appeal filed

(2)

under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The claim of the appellant before the Tribunal, being that he was eligible to be appointed as an 'Assistant Teacher' and upon an advertisement, being issued for the post of Headmaster in the School, he came to be selected for being appointed to the said post, but he was issued appointment order to the post of an Assistant Teacher, on 01/09/2006. Approval was granted to his post as a 'Trained Graduate Teacher' on probation for a period of two years w.e.f. 15/11/2011, and the approval was not accorded from the date of his appointment, i.e. 01/09/2006. It is the case of the petitioner, that on 26/08/2013, the Education Officer (Primary) empowered the petitioner to sign on salary bills and act as In-charge Head Master.

3. On account of some false complaint being lodged against the petitioner, he was ill-treated and his salary was not paid. He approached this Court vide Writ Petition No.781/2005 and the direction was issued to the Management, not to terminate his services.

(3)

Despite this, his services came to be terminated by an order dated 23/02/2015, with a retrospective effect from 15/12/2014.

It is this order of termination, which was assailed before the Tribunal and the Tribunal, on recording a finding that impugned termination order was issued without following the procedure prescribed under Rule 36 and 37 of the Maharashtra Employees of Private Schools (Condition of Services) Rules, 1981, i.e. without holding any enquiry and particularly since the appellant was a permanent employee of the School, the Management was duty bound to conduct an enquiry before major punishment of dismissal was imposed.

4. In the wake of the said finding being rendered, the order of termination is quashed and set aside, with a direction to the Management, to reinstate the appellant within a period of 40 days from the date of the order by granting him the benefit of continuity of service and consequential benefits.

Upon reinstatement, the respondents were directed to pay 50% back-wages to the appellant from the date of his termination, till the date of his reinstatement. The Tribunal is justified in the said directions with the following observations:

(4)

“26. So far as the quantum of back wages is concerned, admittedly, the appellant was not on work. Considering the fact that the appellant did work in the school for around seven years, considering the fact that the management has terminated the services of the appellant arbitrary. In such circumstance, awarding 50% of back wages will meet the ends of justice. Hence I answer these points accordingly and proceed to pass the following order.”

5. The observations of the Tribunal to the effect that the appellant is not entitled for 100% back-wages on the principle of ‘no work no pay’ is the law as laid down by the various authoritative pronouncement of the Hon’ble Apex Court as well as this Court and therefore, I do not find any illegality in ordering 50% back-wages. The order passed by the School Tribunal do not warrant any interference on this ground and the present petition deserves to be dismissed by upholding the impugned order. Writ petition is accordingly dismissed.

(SMT. BHARATI DANGRE, J.)