

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 3970 of 2021

(1) Secretary/Chief Executive
Officer, Firoz Vidya Samiti,
131, Kedardham, Milind Nagar,
Nagpur-440017.

(2) Head-master,
Firoz Gandhi Vidyalaya, Near
Ring Road, Dhammadip Nagar,
Nagpur-440027.

.... Petitioner

.. Versus ..

(1) Sadique Ramjan Ali
Aged about 45 yrs, Occ. Nil,
R/o Nayi Basti, Azad Nagar,
Teka, Near Salam Sweet Corner,
Nagpur.

(2) Education Officer (Secondary),
Zilla Parishad, Nagpur.

.... Respondents

Mr. V. A. Dhabe, Advocate for the petitioner

Mr. V. N. Patre, Advocate for respondent 1

Mr. S. M. Ukey, Addl. G.P. for respondent 2

CORAM : ROHIT B. DEO, J.

DATED : 07-01-2022

ORAL ORDER

Rule. Rule made returnable forthwith.

2. With consent, the petition is finally heard at the admission stage.

3. The petitioner – management has a limited grievance to canvass. In appeal preferred by respondent 1 – employee challenging the termination pursuant to departmental enquiry, the management preferred application, Exhibit 17 seeking disclosure of certain documents on the premise that the documents have a bearing on the issue whether the appointment of the employee was in accordance with the provision of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (Act) and the Rules framed thereunder.

4. The application, Exhibit 17 is rejected by the Presiding Officer, School Tribunal, Nagpur vide order dated 17-3-2021.

5. I do not see any error in the order impugned to the extent that the application seeking direction to produce the document is rejected. The said order is confirmed to that extent. Fairly, the learned counsel for the petitioner, Mr. Vinay Dhabe also does not urge to the contrary.

6. The management is, however, aggrieved by the observation in paragraph 9 of the order impugned which is that in the earlier round of litigation, the right to object to the validity of the appointment is given up.

7. The earlier round of litigation to which the Tribunal makes a reference is Appeal 42/2009 which was disposed of on the basis of compromise arrived at between the parties out of the Court. In my considered view, the Tribunal clearly erred in relying on the compromise to reach the conclusion which it did. However, the learned counsel for the employee Mr. Patre would argue on the basis of certain decisions that the settled law is that, if the termination of the employee is pursuant to the departmental enquiry conducted in accordance with Rules 36 and 37, the question of framing and deciding the issue whether the appointment was in accordance with the Act, does not arise.

8. I note that the conclusion of the Tribunal is not on the basis of what is submitted by Mr. Patre.

9. In this view of the matter, while no interference in the order impugned is necessary, it needs to be clarified that the compromise in itself does not amount to waiver as is mistakenly assumed by the Tribunal.

10. However, insofar as the submissions of the learned counsel Mr. Patre that even otherwise, the issue does not arise since the management has chosen to conduct the departmental enquiry, and implicit in such decision is the assumption of the management that the

employee is confirmed and duly appointed employee, the issue to validity of initial appointment does not arise, is kept open for the Tribunal to decide at an appropriate stage. Needless to say while the Tribunal is at liberty to frame the issues in accordance with the decision in ***Anna Manikrao Pethe Vs. Presiding Officer, School Tribunal Amravati and Aurangabad Division, Amravati and ors. [1997(3) Mh.L.J. 697]***, the decision would depend on the implication of the decision of this Court in ***Letters Patent Appeal 241 of 2013 in W.P. No. 3619/2012(D) (Sudhakar Balaji Motghare Vs. Adarsha Mahila Mandal, Bhandara and ors.) dated 4-10-2013.***

11. The petition is disposed of in aforesaid terms.

JUDGE

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