

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 1737 OF 2021

Public Education Society and anr.
Vs.
Hussain Khan Lalkhan Pathan and anr.

**WITH
WRIT PETITION NO. 1755 OF 2021**

Public Education Society and anr.
Vs.
Yunus Khan Daulat Khan and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S.M. Vaishnav, Advocate for petitioners in both writ petitions.
Mr. Mohd. Ateeque, Advocate for respondent No.1 in both writ petitions.
Mr. D.P. Thakare, Addl. GP for respondent/State in both writ petitions.

CORAM : MANISH PITALE J.

DATE : 15.03.2022.

In both these petitions, the first respondents have approached the School Tribunal challenging orders dated 06.09.2016 terminating their services. The petitioner society had on earlier occasions terminated the services of the said respondents and on every occasion the School

Tribunal had held in favour of these respondents granting relief of reinstatement with back-wages.

2. In the instant round of termination of their services and filing of appeals before the School Tribunal, the petitioner-Management had filed replies justifying the orders of termination of service.

3. During the pendency of the appeal, the petitioner-Management passed Resolutions to withdraw the termination of services of the said respondents. After doing so, the petitioner-Management filed applications in the pending appeals, stating that since the management had decided to withdraw the termination of service of the respondents, no cause of action survived and that the appeals deserved to be disposed of.

4. This was opposed by the respondents/employees on the ground that such unilateral steps on the part of the Management cannot render the appeals infructuous, particularly when the question of back-wages and other reliefs sought by the respondents deserved to be considered on merits by the Tribunal.

5. The aforesaid applications were taken up for consideration and by assigning identical reasons, the Tribunal rejected the applications. The present petitions have been filed by the petitioner-Management challenging the said orders.

6. Mr. Vaishnav, learned counsel appearing for the petitioner-Management in both these writ petitions submitted that nothing survived in the appeals pending before the Tribunal and that therefore, the impugned orders deserved to be set aside. The very basis of the grievance raised on behalf of the respondents before the Tribunal, was taken away and that therefore, the appeals deserved to be disposed of.

7. The learned counsel for the petitioner-Management placed reliance on the judgment of this Court in the case of *Osmanabad District Swatantra Sainik Samiti Vs. Jagannath Pandurang Kshirsagar, 2016 (3) Mh.L.J. 181* and *Shrisht Dhawan (smt) Vs. M/s. Shaw Brothers, 1992 (1) SCC 534*.

8. On the other hand, Mr. Mohd. Ateeque, learned counsel appearing for the first respondents in both these writ petitions submitted that the reasoning of the Tribunal was in consonance with furtherance

of justice and that the petitioner-Management could not be permitted unilaterally to pass Resolutions after long pendency of the appeals, only with a view to render the appeals infructuous. It is submitted that the writ petitions deserve to be dismissed.

9. Heard learned counsel for the rival parties and perused the material on record.

10. The facts of the present cases show that the petitioner-Management has repeatedly terminated the services of the first respondents in these writ petitions and on every occasion the School Tribunal has found such orders of termination of services as unsustainable. Consequently, repeated orders of reinstatement in service with back-wages have been passed in favour of these respondents. It is brought to the notice of this Court that despite such orders in favour of the first respondents, till date relief of back-wages granted by the Tribunal is actually not disbursed by the petitioner-Management in favour of the respondents.

11. In the latest round of litigation the services of the first respondents stood terminated, upon which they filed appeals before the Tribunal. The petitioner-Management appeared before the

Tribunal and filed its replies, seeking to justify the orders of termination of service. It is an undisputed fact that the appeals have been pending before the Tribunal from the year 2018.

12. The petitioner-Management claims that by Resolutions dated 23.09.2019, it was decided that the orders of termination of services issued against the first respondents in both these petitions stand withdrawn. It is on the basis of these Resolutions that the petitioner-Management claims that the Tribunal no longer had jurisdiction to consider the appeals, as the very basis of the grievance of the respondents was taken away.

13. The aforesaid contention raised on behalf of the petitioner-Management has been dealt with by the Tribunal in the impugned orders as follows:

11. In view of above, it is patent that the facts of the present case are quite different. Here, after arrival of cause of action the appellant preferred present appeal. After 3 years the respondent Management withdrawn termination without making any whisper about back-salary. Hence, the dispute still persis on the point of back-salary. To succeed in that prayer, the appellant will have to show that the termination was not legal.

12. From above it is clear that there is no satisfaction of full claim of the appellant. In this background, if the appeal is held as untenable strong

prejudice will entail to the appellant on the point of his back-salary claim. The Management cannot be given latitude to withdraw termination order on their terms and to challenge tenability of the appeal. If such pleas are entertained, in each case the Management would drag the matter for years together and then withdraw the termination to the prejudice of an employee. It will frustrate the edifice of the MEPX Act which is enacted for providing stability in the service to an employee in the Private Schools. Had it been the case that they had accorded all relief to the appellant then it would have been different contingency. In that case the appellant would not have proceeded with the matter. However, in above set of facts and especially considering previous history of litigation, I do not find any merit in present application.

14. This Court is in agreement with the aforesaid reasoning given by the Tribunal. It is correct that if Managements like the petitioner before this Court are permitted to escape or avoid the consequences of its actions by subsequently passing Resolutions and claiming that the orders of termination of services have been withdrawn, it would be easy for such Managements to harass their employees. In these cases, the background in which the latest round of litigation is pending demonstrates the manner in which the petitioner-Management has been issuing orders of termination of services repeatedly against the respondents and then claiming that the very basis of the grievance of the respondents is taken away. Despite orders passed in favour of the

employees in the earlier rounds of litigation nothing has been paid towards back-wages to the respondents. There is no whisper in the resolutions passed by the petitioner-Management, purportedly withdrawing the latest orders of termination of service, regarding payment of back-wages and addressing other grievances of the respondents. In these circumstances, it cannot be said that the Tribunal committed any error in passing the impugned orders.

15. Insofar as the judgment on which reliance is placed by the learned counsel appearing for the petitioner-Management, suffice it to say that the facts are distinguishable. In the case of *Osmanabad District Swatantra* (supra), the case was of oral termination of service, which was specifically refuted by the Management and it was contended that the employee was not terminated from service and he could very well continue. Such are not the facts in the present cases and therefore, the judgment is inapplicable. Insofar as the judgment of the Hon'ble Supreme Court in the case of *Shrisht Dhawan* (supra) is concerned, it is more on the question of error in jurisdictional facts rendering an order ultra vires. This Court does not find the law laid down in the said judgment of any assistance to the petitioner-

Management while assailing the impugned orders passed by the Tribunal.

16. In view of above, the writ petitions are dismissed.

17. The Tribunal is directed to dispose of the pending appeals, as expeditiously as possible.

JUDGE

PRITY S
GABHANE

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by PRITY S
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Date:
2022.03.19
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