

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

WRIT PETITION NO. 4369 OF 2013

Kanhaiyyalal Gajbhiye

-- Petitioner

Vs.

Bhartiya Jagruti Shikshan Sanstha and others -- Respondents

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.C. Dharmadhikari, Advocate for Petitioner

Mr. A.D. Mohagaonkar, Advocate for Respondent Nos.1, 2 & 4

Mr. Anoopsingh Parihar, Advocate for Respondent No.3

CORAM : MANISH PITALE, J.

DATE : 14 MARCH 2022

By this petition, the petitioner has challenged the judgment and order dated 27/06/2013, passed by the School Tribunal, Nagpur, whereby the appeal of the petitioner was partly allowed and the order terminating service of the petitioner was quashed and set aside. The respondent No.3 – Education Officer (Primary), Zilla Parishad, Gondia, was directed to place the name of the petitioner in the surplus waiting list and absorbed him in aided school by giving top priority.

2. When this petition came up for hearing on 08/07/2015, this Court noticed the cleavage of opinion on the question of applicability of Rules 25-A, 26 and 27 of the Maharashtra Employees of Private School (Conditions of Service) Rules, 1981, to the question of absorption of employees similarly placed like the petitioner herein, when the school in question stood derecognized. Upon noticing such cleavage of opinion, this Court referred the following question for determination by a Larger Bench.

“Whether the principles of termination laid down under rule 27 of the Rules of 1981 are required to be followed while effecting termination under rule 25A of the Rules of 1981?”

3. On 09/10/2020, the aforesaid question was decided authoritatively by a Full Bench of this Court and it was answered in following manner :

“61. In the result, for the reasons stated herein above, we answer the question “Whether the principles of termination laid down under rule 27 of the Rules of 1981 are required to be followed while effecting termination under rule 25A of the Rules of 1981?” in terms that the principle of common seniority stated in rule 27(d) read with rule 27(e) of the Rules, 1981 would have to be followed while effecting termination under rule 25A of the Rules of 1981, in a case where, the Management runs more than one school.”

4. Mr. A.C. Dharmadhikari, learned counsel appearing for the petitioner submitted that in view of the question being answered in favour of the petitioner, the impugned order passed by the Tribunal deserves to be modified. This is particularly in the background that in pursuance of order dated 08/07/2015, passed by this Court, the respondent No.3 – Education Officer was directed to take a decision on the entitlement of the petitioner to receive post retirement benefits. It is submitted that in pursuance of the direction of this Court, the respondent No.3 has indeed passed an order, which is now subject matter of challenge before the Division Bench of this Court.

5. With the passage of time and subsequent events, particularly, the position of law being authoritatively laid down by the Full Bench in the aforesaid judgment dated 09/10/2020, it is submitted on behalf of the petitioner that Clause 3 of the impugned order deserves to be modified and appropriate relief deserves to be granted to the petitioner.

6. In response, Mr. Parihar, learned counsel appearing for respondent No.3 submitted that the said respondent has already passed an order pertaining to pensionary and other benefits of the petitioner, by taking into consideration the date of derecognition of the school i.e. 14/6/2002 and that any modification in the

impugned order of the Tribunal may lead to further complications in the matter.

7. Mr. A.D. Mohagaonkar, learned counsel for the respondent Nos. 1, 2 and 4 submitted that with passage of time, if the petitioner is interested only in pensionary benefits and other terminal benefits, the same can be decided in accordance with law and that appropriate directions can be given to the respondent No.3 in that regard.

8. It is an undisputed position that the Tribunal in the impugned judgment and order itself held that the order terminating the service of the petitioner was unsustainable and accordingly, quashed and set aside the same. In normal course, an order of reinstatement with or without payment of back wages ought to have followed. But, the Tribunal, after holding that the order of termination of service was quashed and set aside, gave a direction to the respondent No.3 to place the name of the petitioner in the surplus waiting list and absorb him in aided school. Although it is submitted on behalf of the petitioner that the fact that he was to attain the age of superannuation on 30/06/2013 i.e. merely three days after the date on which the impugned judgment and order was passed, was brought to the notice of the Tribunal, there is no reference to the same in the

impugned judgment and order. As a result, this aspect has been completely ignored.

9. This Court is of the opinion that after about 9 years of the appeal of the petitioner being partly allowed by the Tribunal, at this stage, if the said direction of the Tribunal contained in clause 3 in the operative portion of the impugned order is to be taken into consideration, with the position of law being clarified by the Full Bench of this Court in the aforesaid judgment dated 09/10/2020, even if the said clause is to be modified and a direction of reinstatement is to be given, the fact that the petitioner attained the age of superannuation on 30/06/2013, is a factor that cannot be ignored. At this point in time, after passage of so many years, this Court is not inclined to hold that the petitioner would be entitled to back wages, even if the prayer for modification of the aforesaid clause is to be granted. As on today, it would be in the interest of justice that the effect of such modification on granting all pensionary and other terminal benefits is kept in focus. There is no dispute about the fact that the order of termination of service was quashed and set aside and the said order has attained finality, to the extent that it was never made subject matter of challenge by any of the respondents.

10. The clarification of the position of law given by the Full Bench of this Court in the aforesaid judgment ought to enure

to the benefit of the petitioner and on applying the same to the facts of the present case, it becomes clear that the petitioner could have been absorbed in the other school being run by the respondent – Management and with the order of the Tribunal setting aside the order of termination of service, he certainly would be entitled to consequential benefits, particularly pensionary and other terminal benefits in accordance with law.

11. In view of the above, this Court is convinced that clause 3 of the impugned order deserves to be modified, in the interest of justice. Accordingly, the writ petition is partly allowed by holding that clause No.3 of the impugned order is set aside and modified to read as follows :

“The respondent No.3 – Education Officer (Primary), Zilla Parishad, Gondia, is directed to treat the petitioner as having been reinstated in service and superannuated on 30/06/2013. The prayer for grant of back wages is rejected. At the same time, the respondent No.3 is directed to take steps to ensure that the petitioner is given pensionary benefits and all terminal benefits by treating him as having been reinstated in service and superannuated on 30/06/2013 and to process the papers and disburse such benefits to him in accordance with law.”