

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

WRIT PETITION NO. 4276 OF 2021

Devanand s/o Gomaji Malame

vs.

The updesb Bahuuddeshiya Shikshan Sanstha and others

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

Court's or Judge's Orders.

Mr. P. S. Khubalkar, Advocate for petitioner.
Mr. H. S. Rahangdale, Advocate for respondent No.1.
Mr. N. R. Rode, AGP for respondent No.3

CORAM : MANISH PITALE J.

DATE : 23/09/2022

By this petition, the petitioner has challenged order dated 16/07/2021, passed by the School Tribunal, Nagpur, whereby an appeal filed by the petitioner was dismissed.

2. The service of the petitioner stood terminated by an order dated 21/12/2020 as a consequence of a communication dated 18/12/2020 issued by respondent No.3, to the effect that the petitioner had failed to acquire necessary qualification.

3. It appears that due to faulty legal advice and due to inadvertence, the petitioner ended up challenging the communication dated 18/12/2020 issued by respondent No.3 i.e. the Deputy Director of Education, Nagpur, as an order of termination of service, with the result that the actual order terminating the service of the petitioner issued by the respondent No.1 management dated 21/12/2020, was not challenged at all.

4. Be that as it may, the principal contention raised on behalf of the petitioner by Mr.Khubalkar, learned counsel, is that a perusal of the impugned judgment would show that in paragraph after paragraph the Tribunal has simply recorded the observations made by the Predecessor Presiding Officer when the application for interim stay was rejected. There is no independent application of mind on behalf of the Tribunal while passing the impugned order. It is submitted that if the matter is sent back to the Tribunal for proper consideration, it would be in the interest of justice. Additionally, it is submitted that this Court may consider making some observation about liberty to the petitioner to challenge actual order of termination of service dated 21/12/2020, by a properly instituted proceeding or

by way of amendment of the appeal that was already filed in the present case.

5. Mr.Rahangdale, learned counsel appearing for respondent No.1 management has submitted that this Court may pass appropriate orders in the matter.

6. Mr.Rode, learned AGP appearing on behalf of respondent No.3, submitted that when the petitioner failed to demonstrate that he was holding the necessary qualification, there was no question of there being any error on the part of respondent No.3, in withdrawing the approval granted to the appointment of the petitioner. It is submitted that on this short ground the present petition deserves to be dismissed.

7. Heard learned counsel for the parties and perused the material on record. There is substance in the principal contention raised on behalf of the petitioner that there is no independent application of mind on behalf of the School Tribunal while passing the impugned judgment and order. A perusal of the impugned judgment and order shows that the Tribunal has simply relied upon observations made by the Predecessor Presiding Officer when the application for stay filed by the petitioner was

rejected. There is a cursory observation that no new evidence was placed on record by either party. But, it is evident that observations made at the stage of rejection of application for stay, are the basis for dismissal of the appeal. The Tribunal was expected to apply its independent mind in respect of material available on record by considering the contentions raised on behalf of the petitioner. Therefore, it would be in the interest of justice that the matter is sent back to the Tribunal for consideration afresh.

8. It is also unfortunate that due to faulty legal advice or inadvertence, the petitioner did not challenge the order dated 21/12/2020, passed by the respondent No.1 management, which was the actual order of termination of service, even though it was issued as a consequence of the order/letter dated 18/12/2020 issued by the respondent No.3. In this situation, there is substance in the contentions raised on behalf of the petitioner that an opportunity may be granted to the petitioner to move an appropriate application for amendment of the appeal, so that the order of termination of service dated 21/12/2020 could be made subject matter of challenge.

9. In view of the above, the writ petition is partly allowed. The impugned order is quashed and

set aside. The matter is remanded to the School Tribunal for consideration afresh. The parties shall appear before the Tribunal on 10/10/2022. The petitioner is granted liberty to move an appropriate application for amendment of the appeal memo so as to raise challenge to the order of termination of service dated 21/12/2020, issued by respondent No.1 management. If such an application is moved within two weeks of the parties appearing before the Tribunal, the same shall be decided in accordance with law. Thereafter, the Tribunal shall take up the appeal for consideration. Opportunity shall be granted to the parties to place on record additional material/documents within stipulated period of time and thereafter, the appeal shall be disposed of in accordance with law.

10. Writ petition is disposed of in above terms.

JUDGE