

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

WRIT PETITION NO.5799/2016

Mahendra s/o Nanaji Moon,
aged about 51 years, Occ. Nil,
r/o Adarsh Nagar, Near Trilokya
Buddha Vihar, Hinganghat, Tq.
Hinganghat, Dist. Wardha.

.....PETITIONER

...V E R S U S...

1. The State of Maharashtra through
its Secretary, Department of Education
and Sports, Mantralaya, Mumbai-32.
2. Director of Education,
Directorate, Pune.
3. Deputy Director of Education,
Nagpur Division, Nagpur.
4. The Education Officer (Secondary),
Zilla Parishad, Wardha.
5. The Secretary,
Saraswati Gramin Shikshan Sanstha,
Bodkha (Paikmary), Tq. Samudrapur,
Dist. Wardha.
6. The Head Master,
Saraswati Vidyalaya,
Dhondegaon, Tq. Samudrapur,
Dist. Wardha.

...RESPONDENTS

Mr. S. D. Chande, Advocate for petitioner.
Ms H. Jaipurkar, A.G.P for respondent nos. 1 to 4.
Ms Ritu Jog, Advocate with Mr. A. C. Dharmadhikari, Advocate for
respondent nos. 5 and 6.

CORAM:- AMIT BORKAR, J.

DATED :- 11.07.2022

ORAL JUDGMENT

This petition is filed by a teacher who has failed before the school tribunal in an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, challenging his termination. The appeal has been dismissed on the ground that the formation of the school committee was not in accordance with the provisions of the Act and Rules and the resultant appointment of the petitioner is, therefore, illegal. By this petition, the petitioner has challenged the said order.

2. According to the petitioner, the tribunal was not justified in dismissing the appeal on the ground of the improper constitution of the school committee. According to him, the defect was formal and would not affect the validity of the petitioner's appointment.

3. Ms Jog learned Advocate for respondents nos. 5 and 6 submitted that the petitioner had initially challenged his termination dated 22.08.2006 by Appeal No. STC 32/2006. The

said appeal was unconditionally withdrawn on 24.07.2007. She invited my attention to the pursis filed by the petitioner, which reflects that the petitioner is withdrawing the appeal due to unavoidable circumstances. While passing the order of withdrawal, the school tribunal recorded satisfaction with the contents of the pursis. Therefore, according to her, the order of termination having been merged with the order of withdrawal of the appeal, the fresh appeal challenging the order of termination was itself not maintainable.

4. As a rejoinder, Mr. Chande, learned Advocate for the petitioner, submitted that the Education Officer (Secondary), by order dated 13.10.2010, directed the management to reinstate the petitioner. The management had challenged communication dated 13.10.2010 before this Court by Writ Petition No.5193/2010. This Court, by order dated 25.04.2011, directed the tribunal to decide the appeal filed by respondent nos. 3 to 11. Therefore, according to Mr. Chande, a communication dated 13.10.2010 furnishes a fresh cause of action in favour of the petitioner.

5. I have considered the submissions made on behalf of both parties. It is not in dispute that the order of termination is

dated 22.08.2006. It is also not in dispute that the petitioner had filed an appeal bearing STC No. 32/2006 challenging the order of termination. It is also not in dispute that the said appeal was unconditionally withdrawn by filing pursis dated 24.07.2007. Therefore, the result of the withdrawal of the appeal would be that the petitioner would be precluded from filing a fresh appeal challenging the order of termination dated 22.08.2006. Therefore, in my opinion, the appeal, which is the subject matter of the present petition, was not maintainable.

6. Insofar as contention raised on behalf of the petitioner that this Court in Writ Petition No.5778/2011 challenging the order of rejection of preliminary objection remanding the matter back to the School Tribunal is concerned, in my opinion, the said judgment of this Court dated 16.01.2014 proceeds on the basis that this Court in *Sadhana Janardhan Jadhav Vs. Pratibha Mahila Mahamanda and Ors.*¹ had taken the view that the school tribunal should not dispose of an appeal on the preliminary issue but should finally decide all issues at the final hearing stage. This Court had not adjudicated upon the dispute of maintainability of the appeal filed by the petitioner after withdrawing the appeal in the earlier round of litigation. Therefore, in my opinion, the

¹ 2013 (2) Mh.L.J.484

remand by this Court in Writ Petition No.5778/2011 would not help the petitioner.

7. The next contention raised on behalf of the petitioner is furnishing fresh cause of action in view of the order passed by this Court on 25.04.2011. It needs to be noted that the challenge in the said petition was to the order dated 13.10.2010 directing the management to reinstate the petitioner and other teachers. The said objection was challenged by the management where the petitioner, along with other teachers, was the respondent. This Court passed an order directing the tribunal to decide the appeal of respondent nos. 3 to 11 therein. Being unaware of the fact that the petitioner had already withdrawn the appeal, there was no appeal pending; in law, such an order would enure to the benefit of those teachers whose appeals were pending before the school tribunal. The said liberty cannot and does not create any right in favour of the petitioner to institute a fresh appeal once the earlier appeal was withdrawn unconditionally by the petitioner.

8. Respondent no.4 has filed a reply stating that the petitioner's proposal has been submitted to the Government through the Director of Education (Secondary and Higher

Secondary), Pune, with a request letter for absorption. Therefore, it is made clear that dismissal of the present petition would not come in the way of the State Government considering the petitioner's proposal in accordance with the law.

9. In the result, I pass the following order.

The writ petition is dismissed.

The State Government shall dispose of the petitioner's proposal as stated in paragraph 17 of the reply within three months from today without being influenced by the observations made in the present order.

Rule is discharged.

JUDGE

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