

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3734 OF 2022
WITH
CIVIL APPLICATION NO.2930 OF 2023
IN WP/3734/2022

Uttam S/o Kondiba Bhujbale
Age- 45 years, Occ :- Service as Physical Education Teacher,
R/o C/o. Manik Madhyamik Vidyalay Chikhali,
Tq. Kinwat, Dist. Nanded.

..PETITIONER

-VERSUS-

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Latur Division, Latur.
3. The Education Officer (Secondary),
Zilla Parishad, Nanded.
4. Kai. Manikrao Guruji Samajik Vikas Sanstha
Kathkalamba, Tq. Kinwat, Dist. Nanded
Through its Secretary.
5. Manik Madhyamik Vidyalay,
Chikhali, Tq. Kinwat, Dist. Nanded
Through its Headmaster
6. Shri Govind Shesherao Wakore
Age – 48 years, Occu. Service,
R/o Chikhali, Tq. Kinwat, Dist. Nanded.

..RESPONDENTS

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Advocate for Petitioner : Mr.A.V. Indrale
AGP for Respondent Nos.1 to 3 : Mr. S.G. Karlekar
Advocate for Respondent No.4 : Mr. K.J. Ghute Patil
Advocate for Respondent No.6 : Mr.Vivek Dhage

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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.**

DATED : 29th MARCH, 2023.

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. For the sake of brevity, the Petitioner is referred to as the Petitioner/Uttam. Respondent no.6 is referred to as the original Appellant/Govind.
3. Considering the order that we are passing, it is not necessary to advert to all the submissions advanced by the respective sides. Suffice it to say that it is an admitted position that the original Appellant Govind is senior to the Petitioner Uttam. Govind was appointed in 2001 and Uttam was appointed in 2002.
4. The original Appellant Govind was terminated by the Management, vide order dated 05.12.2007 w.e.f. 05.01.2008. He approached the learned School Tribunal, Latur in Appeal No.74 of 2007 under section 9 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977. The appeal was initially decided by the Tribunal by judgment dated 29.12.2008. The termination order was quashed and set aside. The respondents preferred writ petition no.747 of 2009 and 748 of 2009. The two petitions were decided by an order of quashing the judgment of the Tribunal and the matter was remanded for a fresh consideration.
5. By judgment dated 26.10.2009, the appeal was allowed and the termination of the appellant Govind was quashed and set aside.

He was granted reinstatement with full back wages and cost of Rs.5,000/-. The Management preferred Writ Petition No.249/2010. By judgment dated 03.09.2010, the learned Single Judge partly allowed the writ petition and set aside the order granting back wages. The Management as well as the petitioner Uttam and the original appellant Govind filed three Letters Patent Appeal Nos.271 of 2010, 269 of 2010 and 1 of 2019. By judgment dated 27.03.2019, the appeals filed by the Management and Uttam were dismissed. Appeal filed by Govind was partly allowed. The order of the learned Single Judge taking away the back wages, was set aside and full back wages were granted.

6. The Management thereafter approached the Hon'ble Supreme Court in Miscellaneous Application No.1579 of 2020. The delay was condoned. Application for restoration of the S.L.P. was allowed. The S.L.P. was restored. The Miscellaneous Application was disposed of by recording the compromise between the parties vide memorandum of agreement dated 11.02.2020. The appellant Govind agreed to waive entire back wages from the date of termination till his reinstatement on 11.02.2020. However, Govind has still not received his salary.

7. When the issue of approval to the appointment of Govind cropped up, the matter travelled to the Education Officer (Secondary). The petitioner Uttam is under an impression that the reinstatement of Govind is likely to lead to his removal from service. Govind is Bachelor in Physical Education and B.Ed. Uttam is B.Ed. and is presently working as Physical Instructor. Govind was also working as a Physical Instructor. Nevertheless, termination of Govind was not the reason for recruiting Uttam since Govind was working as a Physical Instructor from 2001 and Uttam was working in

the same capacity from 2002.

8. Respondent Govind's reinstatement with continuity and back wages is naturally on the earlier position that he occupied. Govind has compromised before the Hon'ble Supreme Court only to the extent of waiving the entire back wages. It does not call for a debate that, when the employee has succeeded against his termination and is granted reinstatement with continuity, he stands restored in the position from which he was terminated. His status has to be restored, including his seniority as his termination no longer exists in the eyes of law. Once such termination is quashed and set aside, the order of termination does not survive. Such reinstatement would also mean that there is no break in service on account of termination since Govind was granted continuity in service. Naturally, Govind had to return, by way of reinstatement, on the post from which he was terminated and by maintaining his seniority. All teachers below him are bound to be relegated by one serial number.

9. It appears from the record that now this school has only one post of Physical Instructor. After reinstatement, though Govind has acquired the B.Ed. qualification, he is presently deployed as a physical instructor.

10. It is informed that a teacher namely M.M. Baswade, B.A. B.Ed., teaching Marathi, is to retire on 31st March, 2023. His post would, therefore, be vacant upon his superannuation. The said post will have to be filled in and for which the Education Officer will have to take call.

11. At the cost of repetition, we record that it is undisputed that Govind is senior to Uttam and the reinstatement of Govind would

restore his seniority, which he occupied earlier. For example, if Govind was at sr. No.2 and Uttam was at sr. No.5, the termination of Govind would create a vacancy. Naturally, Uttam would progress by one position and he would stand at sr.no.4. However, if Govind is reinstated, he would acquire his original position in the seniority list and those below him would be pushed down by one serial number. Uttam would then be relegated to sr. No.5 (this is just an illustration).

12. In view of the above, the reinstatement of Govind would normally not impact Uttam as it is nobody's case that Uttam was recruited in place of Govind after his termination. However, if the Education Officer notices that one post has become surplus, the junior most teacher in the entire list will have to be declared surplus, save and except, a person belonging to the reserved category.

13. The learned A.G.P. submits that the impugned order clearly indicates the seniority list and Govind is at sr. no.1 having been appointed on 18.06.2001. Admittedly, Uttam was appointed on 28.06.2002.

14. It is the grievance of Uttam that when the impugned order was passed, he was not given an opportunity of hearing. So also, the Education Officer would be wrong in concluding that if Uttam becomes surplus, liberty to pay his salary would lie on the shoulders of the Management, since this is a 100% grant-in-aid institution. Rule 26(2)(iii) reads as under :-

"26. Retrenchment on account of abolition of posts.-

(1) -----

(2) -----

(iii) *The employees from aided schools, whose services are proposed to be terminated shall be absorbed by the Education Officer in the case of Primary and Secondary Schools or by the Deputy Director in the Case of Higher*

Secondary School and Junior Colleges of Education. The order of absorption of such employees shall be issued by registered post acknowledgment due letter, and till they are absorbed, the Management shall not be permitted to effect retrenchment on account of any reasons mentioned in sub-rule(1),"

15. In view of the above, this petition is partly allowed only for the reason that Uttam was not heard when the impugned order was passed. We clarify that the appointment of Uttam is not actually co-related with the appointment of Govind. Both are independent appointments at the relevant time. But, if there is an issue of any surplusage, the juniormost employee will have to be declared surplus.

16. The Education Officer, respondent no.3 shall cause a hearing on this issue on 10th April, 2023 at 12.00 noon in his chamber. The petitioner Uttam, original appellant Govind and the Management before us, would appear at 12.00 noon on the said date in the office of the Education Officer. There would be no separate notice to be issued and the litigating parties to this proceedings are put to notice of the said hearing.

17. After the hearing is concluded, the Education Officer would pass an order, on or before 15th May, 2023. The petitioner – Uttam, appellant Govind and Management before us, would participate in the said hearing and none would make an attempt to delay the hearing in the matter. Needless to state, the Education Officer shall keep in mind that in the event of any employee being surplus, such employee shall be the junior-most employee amongst those in the list of employees, save and except, a candidate from the reserved categories.

18. Since the post of Shri M.M. Banswade, B.A. B.Ed., teaching Marathi subject, would be vacant on account of his retirement on 31.03.2023, the Education Officer would consider the overall seniority list, of course, after the inclusion of the appellant Govind in the seniority list by considering his seniority from the date of his appointment and the junior-most teacher amongst these teachers, would be person who would be declared surplus. The vacancy that may occur due to the retirement of Shri Baswade, would not be filled in by the Management by selecting a candidate from the public at large, until the decision of the Education Officer.

19. In view of the above, civil application would not survive and stands disposed of.

20. Rule is made partly absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

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