



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7460 OF 2007

- . Marathwada Shikshan Sanstha
Nanded, through it's President
Dr. Janardhan S/o Ganpatrao Wadekar,
Age 75 years, Occu: Medical Practioner,
R/o Shivaji Chowk, Nanded .. Petitioner

Versus

1. Taterao S/o Apparao Deshmukh,
Age 56 years, Occu: Not known,
R/o Manjula Nivas, Freedom Fighter's Colony,
Near Pournima Nagar, Nanded, Dist. Nanded
2. The Education Officer, (Secondary)
Zilla Parishad Nanded
3. The Deputy Director of Education,
Latur Division Latur
4. Dr. Suresh S/o Govindrao Sawant,
Head Master of Rajarshi Shahu Vidyalyaya,
Vasant Nagar, Nanded .. Respondents

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Advocate for Petitioner : Mr. Sunil V Warad, ,
AGP for Respondent / State: Mrs. M. L. Sangit
Advocate for Respondent No.1:
Mr. Eknath G. Irale & Mr. R. D. Biradar
Advocate for Respondent No.4: Mr Ram B. Deshpande

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WITH

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WRIT PETITION NO. 6712 OF 2009

- . Marathwada Shikshan Sanstha, Nanded
Through its President
Dr. Janardhan Ganpatrao Wadekar,
Age 78 years, Occu: Pensioner,
R/o Vazirabad, Nanded .. Petitioner

Versus

1. Taterao s/o Apparao Deshmukh,
Age 57 years, Occu: Service,
R/o Manjula Niwas, Freedom Fighters Colony,
Near Pournima Nagar, Nanded, Dist. Nanded
2. The Education Officer (Secondary)
Zilla Parishad, Nanded .. Respondents

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Advocate for Petitioner: Mr. Warad Sunil V.
Advocate for Respondent No.1: Mr. Eknath G. Irale &
Mr. R. D. Biradar
AGP for Respondent / State: Mrs. M. L. Sangit

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WITH

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WRIT PETITION NO. 7687 OF 2009

- . Marathwada Shikshan Sanstha, Nanded
Through its President
Dr. Janardhan Ganpatrao Wadekar,
Age 78 years, Occu: Pensioner,
R/o Vazirabad, Nanded .. Petitioner

Versus

1. Taterao s/o Apparao Deshmukh,
Age 57 years, Occu: Service,
R/o Manjula Niwas, Freedom Fighters Colony,
Near Pournima Nagar, Nanded, Dist. Nanded
2. The Education Officer (Secondary)
Zilla Parishad, Nanded
3. Suresh s/o Govindrao Sawant,
Age 49 years, Occu.: Service,
Rajarshi Shahu Vidyalaya,
Vasant Nagar, Nanded .. Respondents

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Advocate for Petitioner: Mr. Warad Sunil V.
Advocate for Respondent No.1:
Mr. Eknath G. Irale & Mr. R. D. Biradar

AGP for Respondent / State: Mrs. M. L. Sangit
 Advocate for Respondent No.3: Mr Ram B. Deshpande

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WITH

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WRIT PETITION NO. 1395 OF 2010

- . Dr. Suresh S/o Govindrao Sawant,
 Age 49 year, Occu. Service – Head
 Master, Rajarshi Shahu Vidyalaya,
 Vasant Nagar, Nanded .. Petitioner
 (Ori. Respondent No.4)

Versus

1. Taterao S/o Apparao Deshmukh,
 Age 57 year, Occu. Service, R/o
 Manjula Niwas, Freedom Fighter
 Colony, Near Pournima Nagar,
 Nanded
2. Marathwada Shikshan Sanstha,
 Through its President,
 Dr. Janardhan Ganpatrao Wadekar,
 Age 78 year, Occu. Pensioner,
 R/o Vazirabad, Nanded
3. The Education Officer, (Secondary)
 Zilla Parishad, Nanded .. Respondents
 (No.1 – Ori. Appellant, No.2
 & 3 – Ori. Respondent nos.1
 & 3)

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Advocate for Petitioner: Mr. Deshpande Ram B.

Advocate for Respondent No.1:

Mr. Eknath G. Irale & Mr. R. D. Biradar

Advocate for Respondent No.2: Mr. S. V. Warad

AGP for Respondent / State: Mrs. M. L. Sangit

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CORAM : ARUN R. PEDNEKER, J.

DATE : 12th DECEMBER, 2023

ORAL JUDGMENT:

1. Heard all the petitions together.

2. In Writ Petition No.6712 of 2009 arises out of interlocutory order of the tribunal, whereby the termination of Mr. Taterao Apparao Deshmukh (Mr. T. A. Deshmukh) was challenged by Mr. T. A. Deshmukh. Writ Petition No.6712 of 2009 is filed by the Management challenging the preliminary issue of maintainability of the appeal which was framed and was held against the Management. The interim order of the tribunal having merged with the final order of the tribunal, the Writ Petition No.6712 of 2009 does not survive for consideration and is disposed of accordingly.

3. Writ Petition No.7460 of 2007 is filed by the Management and it arises out of appeal no.60 of 2006, wherein the appeal filed by the employee – Mr. Taterao Apparao Deshmukh, who was terminated from the service from the post of In-charge Headmaster was allowed. The said appeal filed by the employee was allowed and that Mr. T. A. Deshmukh was directed to be reinstated in service on the post of In-charge

Headmaster. The management challenged the order passed by the school tribunal in Writ Petition No.7460 of 2007, wherein the following interim order was passed dated 21.07.2008 as under:-

"1. ...

2. ...

3. Order impugned in this petition is passed by the Presiding Officer, School Tribunal, Latur on 31-10-2007, whereby appeal presented by respondent no.1 herein raising challenge to the order of his termination dt. 23-12-2004 came to be allowed and the order of termination is quashed and set aside. However, the learned Presiding Officer of the tribunal has directed the institution to reinstate respondent no.1 against the post of 'incharge Headmaster' alongwith consequential benefits. Challenge raised by the employee is in respect of termination of his services. It was alleged that the management without following the procedure prescribed under the rules has dispensed with services of employee. It is contention of the employee / respondent no.1 herein that while his services were brought to an end, he was officiating as Headmaster and as such he is entitled to be reinstated as Incharge Headmaster. It is to be noted that if a person is directed to officiate the post of Headmaster, it cannot be said that he has been regularly promoted to the said post. Order directing reinstatement of

employee as 'incharge Headmaster' prima facie, is not sustainable.

4. Employee / respondent no.1 herein had approached this court by presenting Writ Petition No.3492/04 requesting the court to issue a writ directing the management to promote him to the post of Headmaster. Request was also made in the said petition to direct the officials of Education department to grant approval to promotion as Headmaster after submission of such proposal in the event of issuance of the directions contained in prayer clause 'B'. Writ Petition came up for hearing before this court and this court by order dt. 3-2-2006 rejected the same. It was brought to the notice of the court that services of teacher / respondent no.1 herein have been dispensed with. It was also brought to notice that remedy in the matter of promotion is provided under section 9 of the Maharashtra Employees of Private Schools Act which is required to be resorted to. It also transpires from record that another employee has been regularly appointed to the post of Headmaster and his services have been approved by the Education Officer, however, subject to result of appeal which was presented by respondent no.1 herein before the school tribunal.

5. Considering all these relevant aspects and considering the fact that holding of post of 'incharge Headmaster' does not in any way create entitlement in the employee to seek reinstatement as 'incharge Headmaster', if at all respondent no.1 has any grievance in respect of his

supersession, he may resort to the remedy available in law and agitate his grievance before the appropriate forum. Direction contained in the impugned order to reinstate respondent no.1 as 'Incharge Headmaster' is not sustainable and, therefore, the impugned order is required to be stayed to the extent of direction contained in para no. 3 of the order directing the management to reinstate respondent no.1 as 'incharge Headmaster'. Impugned order is stayed to the extent specified above. Payment of backwages would be subject to decision that would be rendered in the matter."

4. A detailed interim order dated 21.07.2008 was passed by this court indicating that the employee cannot be reinstated in service on the post of In-charge Headmaster as the employee was not regularly promoted to the post and, as such, to that extent, the direction of the tribunal was stayed.

5. The learned counsel appearing for the employee - Mr. T. A. Deshmukh submits that he would have no objection that if he is reinstated back on the post of Assistant Teacher on the basis of which being the seniormost person he was holding the post of In-charge Headmaster.

6. The learned counsel appearing for the employee, on instructions of his client, who is present in the court submits that the order be modified to the extent that he being appointed to the post of Assistant Teacher with all consequential benefits in terms of the order dated 31.10.2007.

7. Mrs. M. L. Sangit, learned AGP submits that she is supporting the judgment of the school tribunal and that final order passed by the school tribunal be maintained.

8. In view of the submissions of the employee, clause 3 of the order dated 31.10.2007, passed by the School Tribunal, Latur is modified to the extent that the respondents no.1 and 2 are hereby directed to reinstate the appellant – Mr. T. A. Deshmukh, on the post of Assistant Teacher. With the above modification keeping the entire remaining order as it is, the order passed by the school tribunal stands confirmed. Remaining part of the order remains intact. In view of the same, Writ Petition No.7460 of 2007 is accordingly disposed of.

9. **Writ Petition No.7687 of 2009:-** In view of the submission made by the learned employee – Mr. T. A. Deshmukh in Writ Petition No.7460 of 2007, the Writ Petition No.7687 of 2009 can be disposed of by setting aside the impugned order dated 09.10.2009 and by passing appropriate orders. Writ Petition No.7687 of 2009 is filed challenging the order passed by the tribunal dated 09.10.2009, wherein the tribunal in appeal no.3 of 2009 has held that the order dated 23.12.2004 of promotion of Mr. Suresh Govindrao Sawant (Mr. S. G. Sawant) on the post of respondent no.2 school issued by respondent no.1 i.e. the management superseding the right of the appellant is declared illegal and it is quashed and set aside. The said order was made subject to the decision in the writ petition No.7460 of 2007.

10. In view of the employee – Mr. T. A. Deshmukh, in Writ Petition No.7460 of 2007 accepting the post of the Assistant Teacher, the present Writ Petition No.7687 of 2009 is disposed of by upholding the order dated 23.12.2004 of promotion of Mr. S. G. Sawant.

11. In view of disposal of Writ Petition No.7460 of 2007 and Writ Petition No.7687 of 2009, Mr. T. A. Deshmukh would be entitled to all the consequential benefits as Assistant Teacher and the benefits to the post of Assistant Teacher with effect from his date of termination considering his seniority.

12. Mr. T. A. Deshmukh would be entitled to the backwages on the post of Assistant Teacher from 23.12.2004 to 28.02.2009 (date of superannuation).

13. In the event, the management failed to pay within forty (40) days, the Education Officer is directed to make the payment, however, the Education Officer will be entitled to withhold the grants of the respondent – school and pay it directly to the appellant from the amount of arrears of salary.

14. Writ Petition No.1395 of 2010 challenges the same order as in Writ Petition No.7687 of 2009. As such, no further order is required and the same order is applicable in Writ Petition No.1395 of 2010. The Writ Petition No.1395 of 2010 stands disposed of.

15. Respondent No.3 to act in accordance with the order passed subject to the modification as above.

16. All the exercise to be done within three (03) months.

17. Rule is made partly absolute / discharged in above terms in respective matters accordingly.

18. All the writ petitions stand disposed of accordingly.

[ARUN R. PEDNEKER, J.]

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