

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6363 OF 2000

Queen's Mary Technical Institute

...Petitioner

V/s.

Shri Ajitkumar Jaiswal and Ors.

...Respondents

Mr. Anand Pai a/w. Mr. Vipul Patel, Mr. Rachit Bharwada i/by. M/s.
Haresh Mehta & Co., for the Petitioner.

Mr. Sanjay Kshirsagar, for Respondent No.1.

Mr. C.D. Mali, AGP for State-Respondent No.3.

CORAM : SANDEEP V. MARNE, J.

DATED : 14 DECEMBER 2023.

P.C. :

1) By this petition, the Petitioner-Management challenges the order dated 30 August 2000 passed by the Presiding Officer, School Tribunal, Pune allowing Appeal No.72 of 1998 filed by Respondent No.1 challenging the Order of termination dated 21 December 1996.

2) By Appointment Order dated 15 July 1993, Respondent No.1 was appointed as Instructor of Workshop Calculations in the Petitioner-Institute w.e.f. 15 September 1993. It is the case of the Management that the Respondent No. 1 was initially appointed for a period of one year tenure, which was later extended for a period of three years. When the extended period of appointment expired on 15 September 1996, the Petitioner-Management took a decision not to extend the tenure further and issued letter dated 21 December 1996 not to extend the tenure of his appointment. The letter does make reference to the enquiry being initiated against Respondent No.1. The decision to refuse extension of tenure is shown to have been taken by the Petitioner-Management without prejudice to its right to take action in respect of the enquiry that was initiated against the Petitioner. The Order dated 21 December 1996 became subject matter of challenge before the School Tribunal in Appeal No.72 of 1998. The Tribunal has proceeded to allow the Appeal and has set aside the Order dated 21 December 1996 with directions to the Petitioner-Management to reinstate Respondent No.1 as Instructor w.e.f. 21 December 1996 with full backwages.

3) This Court admitted the petition by Order dated 5 December 2000 and directed the Petitioner-Management to deposit the amount of backwages. Towards compliance with Order dated 5 December 2000, the Petitioner-Management has deposited amount dated Rs.1,49,411/- in this Court.

4) I have heard Mr. Pai, the learned counsel appearing for the Petitioner-Management, Mr. Kshirsagar, the learned counsel appearing for Respondent No.1 and Mr. Mali, the learned AGP appearing for Respondent-State.

5) Perusal of the Order passed by the School Tribunal would indicate that the Tribunal has proceeded to set aside the termination Order on the ground that the Enquiry Committee was not properly constituted under the provisions of Rule 36 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (**Rules of 1981**). The Tribunal has arrived at a finding that the Petitioner-Management constituted one man Enquiry Committee to enquire into the allegations of negligence against Respondent No.1. The Tribunal has arrived at the conclusion that the enquiry was not properly held as per the provisions of Rules of 1981.

6) However, letter dated 21 December 1996 would indicate that the enquiry was incomplete by the time decision was taken by the Petitioner-Management to discontinue the services of Respondent No.1. The decision to discontinue his services was not founded on the misconduct, but on the factum of expiry of tenure of his appointment. However, there appears to be a gap between the expiry of tenure of his

appointment and the date of issuance of the termination letter. The extended tenure of the appointment of Respondent No.1 ended on 15 September 1996. He was however continued in service till 21 December 1996, which may give rise to a presumption that there was a deemed extension. If the Management was to take a decision to terminate the services of Respondent No.1 on account of expiry of period of tenure, the termination letter ought to have been issued immediately after 15 September 1996. The Management however continued the services of Respondent No.1 till 21 December 1996. There is also a clear reference to conduct of enquiry against Respondent No.1 in the letter of termination. It is therefore difficult to delink the termination with the allegations of misconduct levelled against Respondent No.1 for which some sort of enquiry was instituted.

7) Thus, I have before me a case where the Management has proceeded to terminate the services of Respondent No.1 by citing a reason of expiry of tenure of appointment. The School Tribunal, on the other hand has construed the termination as being founded on misconduct and has set aside the same on account of failure to conduct proper enquiry as envisaged under the provisions of Rules of 1981.

8) There appears to be some degree of confusion as regards the reason for termination of services of Respondent No.1. as observed

above, there appears to be some link between termination and misconduct. At the same time, Respondent No. 1 was not a regular employee of the institute and his services were extended from time to time. There is no extension order beyond 15 September 1996. Even if Respondent No. 1 was to be reinstated by setting aside termination order in the year 1996 or 1997, there is no guarantee that his services would be continued. The employee has already succeeded before the School Tribunal. According to Mr. Kshirsagar, he attained the age of superannuation on 5 January 2010.

9) It is the Management's contention that the Institute is not even governed by the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977. In my view, considering the longevity of litigation that is pending before this Court, the said issue need not be gone into in the present case and can be left open to be decided in appropriate case.

10) In the light of this position, the issue is about the nature of relief that can be granted in the present petition. In my view, ends of justice would meet if the Respondent No. 1 is permitted to withdraw the amount of backwages deposited by the Petitioner- Management in this Court in pursuance of Order dated 5 December 2000 alongwith interest. Such amount would act as lumpsum compensation to be granted in

favour of Respondent No.1 in lieu of relief of reinstatement and backwages.

11) Accordingly, I proceed to pass the following Order :

(i)The Judgment and Order dated 30 August 2000 passed by the School Tribunal in Appeal No. 72 of 1998 is modified to the extent of direction for reinstatement and backwages. Instead, the Respondent No.1 is held entitled for lumpsum compensation in lieu of reinstatement and backwages. Towards such lumpsum compensation, Respondent No.1 is permitted to withdraw the entire amount deposited by the Petitioner-Management in this Court in pursuance of Order dated 5 December 2000 alongwith interest accrued thereon. Beyond the said amount of lumpsum compensation, Respondent No.1 shall not be entitled to claim any further amount from the Petitioner-Management.

12) With the above directions, the Writ Petition is disposed of. Rule is discharged. Civil Application does not survive. The same also stands disposed of.

SANDEEP V. MARNE, J.

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