

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8300 OF 2018
WITH
WRIT PETITION NO. 11836 OF 2016

Saraswati Education Societies, Rajesh Yadavrao ... Petitioners
Tasgaonkar (Trustee) & Anr.

Versus

Sau Shakala Vaibhav Koshti & Ors. ... Respondents

Mr. Avinash H. Fatangare a/w. Ms. Archana S. Shelar i/b. Vishakha
V. Pandit for the petitioners.

Ms. Shalaka V. Koshti, respondent no. 1 appears in person.

Mr. C.D. Mali, AGP for the State/respondent nos. 2 and 3.

CORAM: G. S. KULKARNI, J.
DATED: 14 February, 2023

P.C.

- 1.** Heard learned counsel for the petitioners and respondent no. 1 who appears in person.
- 2.** These are two petitions, which assail orders passed by the School Tribunal, Pune.
- 3.** Writ Petition No. 11836 of 2016 challenges the judgment and order dated 21 April 2016 passed by the learned Presiding Officer, School Tribunal, Pune on respondent nos. 1's appeal, being Appeal No. 50 of 2015, whereby allowing the appeal, the termination order dated 12 August, 2015 passed by the petitioners against respondent no. 1, is declared to be illegal and the same is

quashed and set aside, with a further direction to the petitioners to reinstate respondent no. 1 with all consequential benefits. The operative part of the order is required to be noted, which reads thus:

"ORDER

Appeal is allowed as under:

- 1. The impugned termination order dated 12/08/2015 by respondent nos. 1 and 2 is hereby declared void and same is quashed and set aside.*
- 2. The respondent nos. 1 and 2 are hereby directed to reinstate the appellant along with all consequential benefits.*
- 3. No order as to costs.*
- 4. The Respondent nos. 1 & 2 is hereby directed to comply the above order within a period of one month from today."*

4. Writ Petition No. 8300 of 2018 challenges a further order dated 6 April, 2018, which is in the nature of a clarificatory order in regard to the operative part of the order dated 21 April, 2016 (supra), clarifying as to what would be the consequential benefits which would be entitled to respondent no. 1. A clarification is issued to the effect that the petitioners are directed to reinstate respondent no. 1 along with all consequential benefits, i.e. full back wages in a Diploma College and not in Degree College.

5. The facts of the case are: Respondent no. 1 is qualified as B. Pharmacy (Higher Second Class) of the year 1999. In response to an advertisement issued by the petitioners in the daily Loksatta dated 25 May, 2006, she applied to the petitioner-institution, by her application dated 31 May, 2006 for

appointment on the post of a 'full time Lecturer'. On being selected, she was issued an appointment order dated 9 June, 2006 as a full time lecturer in the petitioners' Yadavrao Tasgaonkar Aushadhnirman Shastra (Diploma College) which was not a degree college. She resumed duty on 8 August, 2006 on a probation period. While in service, respondent no. 1 with due permission from the petitioners, obtained her post graduate degree, i.e., M. Pharmacy degree. On 8 August, 2011 she resumed duty on the post held by her.

6. Respondent no. 1 had completed her 9 years of service with the petitioner-institution and had acquired the status of a deemed permanent employee in terms of Section 5(2)(a) of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 (for short "**MEPS Act**"). She also worked as an in-charge Principal of the Diploma College. She also discharged duties as an External Examiner, from time to time. It appears that when all such duties were discharged by her, lawfully holding post of a full time Lecturer, she was issued an order dated 28 July, 2015 whereby she was transferred from the Diploma College to the petitioners' Degree College. She resisted the transfer contending that Diploma College is an independent institute, which is a school within the meaning of MEPS Act, whereas, the Degree College would be completely different institution governed by the Maharashtra Public Universities Act, 2016, hence she could not have been transferred from the Diploma College to the Degree College. She accordingly

made an application dated 31 July, 2015 requesting the petitioners not to transfer her from the Diploma College to the Degree College.

7. It appears that the petitioners had an objection in regard to such representation/conduct of respondent no. 1 in her protest objecting to her transfer from the Diploma College to the Degree College, consequently the petitioners in a brazenly illegal manner, issued to respondent No.1 a termination order dated 12 August, 2015, in gross breach of the principles of natural justice, i.e., without holding an enquiry in terminating a permanent employee. In the aforesaid circumstances, respondent no. 1 approached the School Tribunal by the appeal in question (Appeal No. 50 of 2015) assailing her illegal termination, which came to be filed on 4 September, 2015. By the impugned judgment and order passed by the School Tribunal, respondent no. 1's appeal has been allowed, against which the petitioner-institution is before the Court.

8. Learned counsel for the petitioners in assailing the impugned order has limited submissions. The first submission is that the School Tribunal had no jurisdiction to enquire into an issue in regard to the transfer of respondent no. 1 from Diploma College to Degree College. It is submitted that the law in that regard is clear referring to the decision of the co-ordinate Bench of this Court in *President, Shri Saraswati Education Society, Akola & Anr. vs. Vinayak*

*Bhagwan Karodade & Ors.*¹ and the decision of the Supreme Court in *Rajneesh Khajuria vs. Wockhardt Ltd. & Anr.*². Learned counsel for the petitioners would next submit that the petitioners are willing to reinstate respondent no. 1 in the Degree College and not in the Diploma College. It is submitted that the basic grievance of the petitioners is on the observations as made in paragraph 14 and 15 of the impugned order regarding the transfer of respondent no. 1 from Diploma College to Degree College, which according to the petitioners, ought not to have been made.

9. On a query made to the learned counsel for the petitioners as to whether in the facts and circumstances of the case, such controversy whether was not required to be delved by the School Tribunal, considering the stand of the petitioners that the termination came to the issued, for the reason that respondent no. 1 had not joined her transferred place of postings? The learned counsel for the petitioners is not in a position to throw any light on this position as to whether it was permissible for the petitioners to transfer an employee from the Diploma College to the Degree College, when both the institutions are covered by different laws and different set of rules, namely, an employee of a private school is governed by the provisions of MEPS Act and employee of a Degree College would be governed by the provisions of the Maharashtra Public Universities Act and the rules and regulations framed

1 2006(5) Mh. L.J. 431

2 (2020) 3 SCC 86

thereunder. It appears to be not in dispute that the Degree College is affiliated to the Mumbai University.

10. On the other hand, respondent no. 1 has supported the impugned order by contending that as rightly observed in the orders passed by the School Tribunal, her termination was bad and illegal.

11. Having heard the learned counsel for the petitioner and respondent no. 1, who appears in person, in my opinion, the contentions as urged on behalf of the petitioners are totally untenable. It was certainly imperative for the School Tribunal to consider the reasons for which respondent no. 1 was terminated. The reasons for termination appeared to be quite unjustified which are simplicitor for a reason that respondent no. 1 objected to her illegal transfer to the Degree College under the transfer order dated 28 July, 2015 issued by the petitioner. It is in such context, it was necessary to consider that the two institutions were covered under different laws. The observations made by the School Tribunal as objected by the petitioners were certainly necessary and imperative in the facts and circumstances of the case.

12. However, the fact remains that the appeal of respondent no. 1 is allowed by granting reinstatement to the post she was holding when she was sought to be terminated, namely, the post of Lecturer in Diploma College. There is nothing on record to suggest that respondent no. 1 was issued any fresh

appointment order insofar as the Degree College was concerned and therefore, the legal character of her appointment as a Lecturer at all material times has continued to subsist, which was recognized by the School Tribunal, while passing the impugned order.

13. This apart, in adjudicating the appeal, what was most imperative for the School Tribunal was to consider as to whether the termination was legal and valid and whether termination order was passed in the manner recognized by law. The Tribunal has undertaken such enquiry and had made categorical observations that the petitioners had acted in total breach of the principles of natural justice, as respondent was not heard before the termination order was passed. No enquiry was conducted. Thus, by all standards, the termination was highhanded and illegal. The operative part of the order indicates that what has been remedied by the School Tribunal is to set aside the illegality of such unreasonable and illegal termination as imposed on respondent no. 1. In any event, as seen from the effective orders passed by the School Tribunal, it is clear that there is no adjudication in regard to the transfer which has taken place. The adjudication was in regard to the illegal termination, which is also clear from the issues framed, which are required to be noted:

Sr. No.	Points	Findings
1.	Does appellant prove that the order by respondent nos. 1 & 2 dated 12/08/2015 amounted as otehrwise termination and it is illegal and liable to be quashed and set aside?	... In the affirmative

2.	Whether Respondent nos. 1 and 2 prove that appellant is disqualified for the post of Lecturer	 In the negative
3.	Whether appellant is entitled for the relief claimed	... In the affirmative
4.	What order?	... As per final order

14. Thus, the contentions as urged on behalf of the petitioners referring to the two decisions would not assist the petitioners in any manner whatsoever.

15. Insofar as Writ Petition No. 8300 of 2018 is concerned, the clarificatory order dated 6 April, 2018 has been assailed on the same contentions that the said order in effect amounts to School Tribunal interfering in the transfer. Perusal of the said order indicates that the operative part of the judgment and order as rendered on respondent no. 1's appeal, has been clarified, namely, that respondent no. 1 is reinstated on her original post, i.e. on the post of a Lecturer in the Diploma College with all consequential benefits, including back wages. In my opinion, considering the nature of the order, there is nothing to indicate that the same is in any manner contrary to whatever was adjudicated and ordered by the School Tribunal in allowing respondent no. 1's appeal vide judgment dated 21 April, 2016.

16. Before parting it needs to be observed that this is a gross case in which the petitioner-institution for reasons which are far from bonafide, has caused harassment to respondent no. 1 in acting in a extremely highhanded manner.

The record is replete with such material. The petition in fact is required to be dismissed with exemplary costs and by making an order awarding a special compensation to be paid by the petitioners to respondent No.1 for causing her unwarranted suffering. However, I refrain from doing so by sounding a word of caution that the petitioner in its pursuit of imparting education, ought not to indulge into such illegal actions and shall strictly adhere to the fair procedure which would be required to be adopted in matters dealing with its teaching and non-teaching staff. The proceedings are parted with a hope that wiser sense shall prevail with the petitioners. Such observations are required to be made as it is easier for an employer to use its dominant position to cause a suffering to an employee and that the employee litigates. In these situations, the prejudice to an employee can be irreparable whereas for the employer it may amount to a momentary satisfaction. No employee of a bonafide management can be left to be exploited and suffer.

17. For the above reasons, both the petitions are totally without merit. Both the petitions are accordingly rejected. The petitioners are directed to permit respondent no. 1 to forthwith resume duties and grant all benefits as ordered by the School Tribunal, when she approaches the petitioner-institution along with the copy of this order.

18. At this stage, learned counsel for the petitioners prays for stay of the order. The request as made by the learned counsel for the petitioners on the facts of the case stands rejected.

G. S. KULKARNI, J

Corrected as per order of speaking to minutes dated 20 September, 2023.