



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

Writ Petition (WP) No. 2985 of 2022

Shri Prabhu Rajaramji Shaikshanik and Sanskruti Sanstha Shankarpur,
through its Secretary and others

Versus

The Presiding Officer, Additional School Tribunal, Chandrapur and
others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Manish Shukla, Advocate h/f Shri S.P.Bhandarkar,
Advocate for the petitioners.

Shri Deepak Thakare, Addl.G.P. for the respondent nos.
1 and 4.

Shri S.B.Tiwari, Advocate for the respondent no.2.

CORAM : ANIL S. KILOR, J.

DATED : 30th OCTOBER, 2023.

Heard.

2. The respondent no.2 herein approached to the School Tribunal challenging his termination vide letter dated 14th December, 2012. It is the case of the petitioner Management that as the respondent no.2 was continuously absent for three years, it was treated as abandonment of the service of the respondent no.2 and accordingly, he was terminated.

3. Thereupon, the learned School Tribunal passed the judgment and order dated 29th October, 2021 allowing the appeal and thereby setting aside the termination order dated 14th December, 2012 with direction to the Petitioner-Management to reinstate the respondent no.2 with continuity of service. Further the liberty was granted to the Management to initiate disciplinary inquiry against the respondent no.2 on the charge of unauthorized absence as per M.E.P.S. Rules. The said judgment and order dated 29th October, 2021 passed by the School Tribunal, Chandrapur in STC Appeal No. 2 of 2013, is under challenge in this writ petition.

4. The only issue involved in this petition is that whether the absence of respondent no.2 can be considered as unauthorised absence or it amounts to abandonment of the service of the respondent no.2.

5. The learned Tribunal while considering the factual aspect of the matter and while examining the above referred question has held as under :

18. I have carefully gone through the pleading and documents relied by the parties. Record shows that vide order dated 14.10.2006, the appellant was transferred as Headmaster from Masal school to Rajiv Gandhi Vidyalaya, Sonapur. The appellant is relieved on some day and he also joined on same day in the Sonapur school as per joining report dated

14.10.2006. However, according to the appellant, he joined in the Sonapur school in the month of November-2006. It is contended by the appellant that he served at Sonapur school till 01.05.2007. According to respondent management the appellant served till the end of academic session 2006-07. However, dispute regarding exact dates of joining and service is not relevant for the purpose of deciding this appeal.

19. According to the appellant, summer vacation was started on 02.05.2007. However, when he went to the school at Sonapur on 24.05.2007, there was lock to the school. This fact was intimated to the officers of Education Department. On 15.06.2007 after summer vacation when the appellant went to Sonapur school again there was lock. The appellant was told that the charge of Headmaster was handed over to another teacher.

20. Record also show that the appellant challenge the transfer order before the Hon'ble High Court vide Writ Petition No. 2852/2007. Vide order dated 20th September, 2007 the appellant was allowed to withdraw the petition to adopt, the alternate remedy. Accordingly, the appellant filed Civil Suit in the Court of Civil Judge Sr.Dn challenging the transfer order as well as for release of salary. The said suit was subsequently transferred from Chandrapur to the Court of C.J.S.D. Warora. Record also shows that the learned Civil Judge Sr.Dn. passed interim order below Exh.-05 in Spl.C.S.No.169/2008 and respondent management was directed to re-transfer to the appellant from Sonapur school to any other aided school of the management. Record also shows that management challenged the said order vide Misc. Appeal No. 58/2008 and the Hon'ble District Judge, Warora vide order dated 04.05.2009 allowed the

appeal and set aside the order of Trial Court dated 30.07.2008 passed below Exh.-05.

21. Record shows that respondent management issued notice dated 20.10.2007 to the appellant informing him that he is unauthorizedly absent and he was directed to resume the duty immediately at Sonapur school. Again on 22.07.2008 the respondent management issued notice to the appellant informing him that he is unauthorizedly absent and there is no any order of any Court in his favour and he was directed to resume his duty within three days. Then the impugned termination order dated 14.12.2012 was issued by the respondent management.

22. The counsel for the appellant taken me through some documents more specifically that the letter issued by the Education Officer, Zilla Parishad, Chandrapur dated 22.02.2007 on the complaint of the appellant. The letter dated 22.02.2007 shows that due to the transfer of the appellant, the salary of the appellant from the month November, 2006 could not be released. Hence, the management was directed by the Education Officer to re-transfer to the appellant on his original post. The respondent management was also directed to submit the compliance report. But, respondent management has not complied the same. Hence, the appellant had to challenge the transfer order.

23. The counsel for the appellant further argued that after the order dated 30.07.2008 passed by learned C.J.S.D. Warora below Exh.-05 whereby respondent management was directed to transfer the appellant from any other aided school of the management. The appellant approached to the Education Officer, Chandrapur vide application dated 08.08.2008 for compliance of said order. The Education Officer vide order dated 04.09.2008 directed to respondent

management to comply the order of civil Court within three days, but same was not complied and no steps were taken by the management to allow the appellant to join his duty. Therefore, according to the counsel for the appellant this shows the adamant the approach of the respondent management to harass the appellant as he made the complaint and challenged the transfer order of the management.

24. The counsel for the appellant also argued that the appellant also moved application on 09.08.2008 and intimated how he was prevented to sign muster role in the school of Masal and how the appellant requested to allow him to join in Masal school in compliance of order passed by the Civil Court below Exh.-05. The counsel for the appellant also invited my attention towards the representations moved by the appellant on 03.05.2009, 07.11.2009, 03.11.2012 to how how the appellant was harassed and not allowed to join although he was ready to join at the Sonapur school. The letter issued by respondent no.5 on 11.11.2009 on the compliant of the appellant shows that the respondent management was directed to allow the appellant to join in the Sonapur school.

6. From the above referred observations, I do not find any error committed by the learned School Tribunal in holding that it was a case of absenteeism and not abandonment of the service. Accordingly, the learned School Tribunal has rightly granted liberty to the petitioner-Management to conduct departmental inquiry on the ground of unauthorized absenteeism.

7. In the circumstances, I do not find any merit in the present writ petition. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]