

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

WRIT PETITION NO.4917/2019

Panchashil Sikshan And Samajik Sewa Mandal, Kandali, Paratwada, through its
President Shri Shrikrushna Rajaramji Gawai and another

...Versus...

State of Maharashtra Through its Principal Secretary, Mantralaya, Mumbai – 32
and others

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

Court's or Judge's orders

Shri C.A. Babrekar, Advocate for petitioners
Mrs. M.A. Barabde, AGP for respondent nos.1 to 3
Shri D.P. Dapurkar, Advocate for respondent no.4

CORAM : AVINASH G. GHAROTE, J.

DATE : 27/03/2023

1. The petition challenges the judgment dated 03/04/2019 passed by the learned School Tribunal, Amravati, whereby the termination of the respondent no.4 has been set aside and a direction for reinstatement with full back wages was given.

2. Shri Babrekar, learned counsel for the petitioners seeks a remand of the matter, as according to him, since the petitioner was proceeded *ex parte*, the relevant material regarding the employment of the respondent no.4 and the fact that the respondent no.4 himself had resigned in the year 2014 itself could not be brought on record.

3. The contention is opposed by Shri Dapurkar, learned counsel for the respondent no.4 on the ground that the petitioner was set *ex parte* before the learned Tribunal, which is justified for the reason that even though the petitioner had appeared in response to the notice on the application for condonation of delay, the petitioner had filed its reply and the application was allowed in favour of the respondent no.4, the petitioner has intentionally not chosen to tender his appearance in the proceedings under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. It is, therefore, submitted that the situation is of the own making of the petitioner, for which nobody is blamed. It is also contended that in case the matter is to be remanded back, heavy cost needs to be imposed upon the petitioners.

4. No doubt, that the petitioner had appeared in response to the notice on the application for condonation of delay and was also served in the appeal, the fact remains that the petitioner did not participate in the proceedings. The reply to the application for condonation of delay filed on record indicates that the post which became vacant due to the so-called resignation of the respondent no.4 was filled in after due permission, advertisement and interview by appointing somebody. Though this position is controverted, however, that is a position, which needs to be looked into by the learned School Tribunal, considering which, the impugned judgment is

hereby quashed and set aside and the matter is remitted back to the learned School Tribunal, Amravati, however, subject to costs of Rs.60,000/- to be paid by the petitioner, as a condition precedent, to the respondent no.4.

5. The parties shall appear before the learned School Tribunal, Amravati on 01/04/2023 at 11:00 a.m. Upon the payment of the cost being accepted by the respondent no.4, the School Tribunal shall then proceed to fix a date and decide the matter within a period of three months from the said date. In case the cost is not paid or demonstrated to be paid, by 01/04/2023, the petition shall stand dismissed without further reference to the Court. The amount of Rs.2,00,000/-, deposited in this Court be transferred to the learned School Tribunal, Amravati and shall be deposited in an interest carrying account for a duration of the appeal.

6. The writ petition is allowed in the aforesaid terms and disposed of accordingly.

(AVINASH G. GHAROTE, J.)

Wadkar