



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 4051 OF 2021

Sudhakar s/o Bhimagaud Billepillewar,  
Age 39 years, Occ. Service,  
R/o. Teli Galli-Inamdar Galli,  
Bhokar Tq. Bhokar, Dist. Nanded.

... **Petitioner**

VERSUS

- 1) The State of Maharashtra,  
Through its Secretary,  
Tribal Development Department,  
Mantralaya, Mumbai-32.
- 2) Project Officer,  
Integrated Tribal Development Project,  
Kinwat (Ekatmik Adiwasi Vikas  
Prakalp, Kinwat), Tq. Kinwat, Dist.  
Nanded.
- 3) Late Shankarrao Chavan Primary and  
Secondary Anudanit Adiwasi Ashram  
School, Diwasi (Bk.), Tq. Bhokar, Dist.  
Nanded, Through its Head Master.
- 4) Saibaba Pratishthan Bhokar,  
Through its President,  
C/o. Head Master, Late Late Shankarrao  
Chavan Primary and Secondary Anudanit  
Adiwasi Ashram School, Diwasi (Bk.),  
Tq. Bhokar, Dist. Nanded.

... **Respondents**

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Advocate for Petitioner : Mr. A.N. Nagargoje  
A.G.P. for Respondent nos. 1 & 2 : Mr. S.P. Joshi  
Advocate for Respondent nos. 3 & 4 : Mr. N.S. Kadam

**CORAM** : **MANGESH S. PATIL &  
SHAILESH P. BRAHME, JJ.**

**RESERVED ON** : **20.07.2024**  
**PRONOUNCED ON** : **25.07.2024**

**JUDGMENT : (SHAILESH P. BRAHME, J.)**

Rule. Rule is made returnable forthwith. Heard both the sides finally.

2. The petitioner has filed this petition under Article 226 of the Constitution of India, challenging order dated 23.08.2019 passed by respondent no. 2 Project Officer and consequential order dated 14.02.2020 passed by the same authority.

3. It is the case of the petitioner that he is an employee of respondent no. 3 Ashram School, which is run by respondent no. 4-institution. He was appointed as Kamathi from 09.02.2010 in the respondent no. 3 Ashram School and his services were approved by respondent no. 2-Project Officer. He was further granted approval by the respondent officer. According to him, he was rendering services continuously being a permanent employee. He was required to proceed on medical leave from 13.01.2014 to 31.05.2018 due to prolonged illness. After recovery he resumed the services from 01.06.2018. He filed an application on 01.06.2018 for sanctioning the medical leave. It was accompanied by medical certificates. He has not been paid from 01.06.2018 despite his representations.

4. Respondent no. 2-Project Officer called upon headmaster vide letter dated 05.07.2019 to submit an explanation as to how the petitioner was absent for five to six years without leave. The explanation was submitted by the management on 02.08.2019. Thereafter the impugned letter dated 23.08.2019 was issued by respondent no. 2-Project Officer stating that the services stood terminated for absenteeism without permission. By further impugned letter dated 14.02.2020 it is reiterated that the petitioner was unauthorisedly absent for four years which culminated into termination of his services and he was allowed to resume illegally by the management.

5. The learned advocate for the petitioner submits that respondent no. 2-Project Officer has no jurisdiction to declare that the services of the

petitioner were terminated. Both impugned letters are arbitrary and without any sanctity of law. The learned advocate would submit that the respondent-management has not undertaken any disciplinary action against the petitioner and therefore the termination of services is in violation of the rules and also the principles of natural justice.

6. The learned advocate Mr. Kadam appearing for respondent nos. 3 and 4 supports the petitioner.

7. The learned A.G.P. Mr. Joshi would repel the submissions of the petitioner relying on the affidavit in reply. He would submit that provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules 1981 (hereinafter referred to as 'Act and Rules' for the sake of brevity) are applicable to the Ashram School in question. As per Rule 16(3) of the Act and Rules, the petitioner was absent for more than three years and by implication of statutory fiction, he was deemed to have abandoned the services. He would further submit that the absenteeism of the petitioner is without any application for leave or medical certificate. He would, therefore, submit that the petitioner and the management are in collusion and he was illegally permitted to resume the duties.

8. We have heard the rival submissions of the parties. It can not be disputed that respondent no. 3 Ashram School is regulated by the Act and Rules. The petitioner was absent from 13.01.2014 to 31.05.2018. He was permitted to resume the duties from 01.06.2018. He is a permanent and approved employee of respondent nos. 3 and 4. In case of unauthorized absenteeism, a mechanism is provided by Rule 16(3) of the Act and Rules, which is as follows:

“16(3) In the case of a permanent employee who, without sufficient cause, fails to apply for leave within 7 days from the date of absence, it shall be treated as breach of

discipline and he shall be liable for suitable disciplinary action after due inquiry. A permanent employee who is absent from duty [without leave continuously for a period exceeding three years], shall be deemed to have voluntarily abandoned his services.”

9. It is up to the management to undertake disciplinary action in case of unauthorized absenteeism. The management has not preferred to conduct enquiry. No notice was issued to the petitioner calling upon him to explain absence. The inference of abandonment of the service cannot be drawn unless procedure is followed by the management.

10. Thus abandonment of service of any employee working in school is not automatic. The respondent no. 2-Project Officer should not have drawn inference of abandonment of service, more so when the management is supporting the petitioner.

11. This Court had an occasion to interpret Rule 16 (3) in the matter of **Sant Kabir Shikshan Prasarak Mandal and another Vs. Azhar Azizurraheman Khan and others; (2016) DGLS (Bom) 326**, in which the learned Single Judge has interpreted the rule. The same view is reiterated in the matter of **Magasvargiya Shikshan Sanstha and anr. Vs. Bhausahab Sonaji Kakade and others; 2020 (1) Mh.L.J. 742**.

12. The contract of service is between the employee and the management. The officers of the Education Department or Tribal Development Department cannot abort services. It is the prerogative of the management to conduct disciplinary enquiry or to terminate the services of an employee. The learned advocate for the petitioner has rightly submitted that both impugned orders are without jurisdiction.

13. The petitioner was absent from 13.01.2014 to 31.05.2018. He is not entitled to receive salary for that period. He was permitted to join the duties

from 01.06.2018. If he has rendered continues service thereafter, he is entitled to receive the salary, if there is no any other impediment. In that view of the matter, we find both the letters in question are unsustainable.

14. We, therefore, pass following order:

A) The impugned letters dated 23.01.2019 and 14.02.2020 issued by respondent no. 2-Project Officer are quashed and set aside.

B) Respondent no. 3 shall submit the salary bills of the petitioner from 01.06.2018 to respondent no. 2 within two weeks, if not submitted already. The proposals of salary bills shall be processed by the respondent no. 2 within four weeks thereafter.

C) Respondent no. 2-Project Officer shall also provide D.C.PS. number to respondent no. 3.

15. Rule is made absolute in above terms.

**( SHAILESH P. BRAHME, J.)**

**(MANGESH S. PATIL, J.)**

mkd/-