

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6156 OF 2023

Bhagyodaya Bahu Uddeshiya Shikshan Sanstha Palsa Through Its
Secreary And Another

VERSUS

The State Of Maharashtra Through Its Social Welfare Department And
Others

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Advocate for the Petitioner : Mr. Deshpande Shantanu A.
AGP for Respondent/State : Mr. A.S. Shinde
Advocate for Respondent No.3 : Mr. Shivsamb N. Janakwade

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CORAM : S.G. MEHARE, J.

DATED : MARCH 14, 2024

PER COURT:-

1. Heard learned counsel for the petitioners, learned AGP for the State and learned counsel for respondent no.3.
2. The petitioner is the management of the school. Respondent No. 3 was its employee. However, after holding a departmental inquiry, his services were terminated. Respondent no.3 had impugned the termination before the School Tribunal at Latur. The learned Tribunal allowed the appeal and quashed and set aside the termination order dated 23.05.2011. Thereafter, the present writ petition has been filed.
3. The Management and employee entered into a compromise and produced the compromise terms before the Court. The learned AGP filed an affidavit objecting to clause (2) of the compromise terms.

4. The learned AGP has vehemently argued that by these settlement terms, the petitioner and respondent no.3 have modified the order of the Tribunal. The petitioner and respondent no.3 conveniently shifted the financial burden on the State for the enormous arrears of salary. He relied on the case of Educational Society, Tumsar and Others Vs. State of Maharashtra and Others, (2016) 3 SCC 512 and argued that the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'MEPS Act') provide that unless the Government is a participant of the departmental enquiry the financial burden should be imposed upon. In this petition, it was the management who initiated the departmental enquiry and terminated the services of respondent no.3. In such a situation, the Tribunal has no power to hold the Government responsible for paying the back wages.

5. Per contra, learned counsel for the petitioner vehemently argued that the Tribunal has specifically directed the Government to pay the back wages. He read clause (3) of the order of the Tribunal, which reads thus :

“3. The respondent No.1 to 3 are directed to reinstate the appellant with continuity of service and 75% backwages from the date of termination.”

6. Learned counsel for the petitioner interpreted this clause as the burden of back wages being imposed upon the Government. Therefore, their terms of compromise exonerating the management

from paying the back wages do not come in the way, and the Government cannot deny the law. He argued that in the case of Educational Society (supra), the learned Tribunal had consciously not issued any direction for the payment of back wages to the Education Department. Therefore, the ratio in that case would not apply to the case at hand. He relied on the case of The Education Officer Primary Zilla Parishad Nanded Vs. Baburao Ramrao Pawar and Others in Writ Petition No.10224 of 2022 decided by this Court on 27.07.2023. On the basis of the observations recorded by this Court in the said case, he has argued that the judgment of the Hon'ble Supreme Court in the case of Educational Society (supra) has been distinguished. However, this is not fact. This bench did not even refer to the said judgment in the said order. He has also argued that it is Government aided school. It is the duty of the Government to pay the salaries of the employees of private schools. Therefore, by mere settlement between the management and the employee, the Government cannot escape from liability, particularly in the direction of the learned Tribunal. In sum and substance, he would submit that the terms of the compromise are legally acceptable. The objections of the learned AGP should be dismissed, and the matter should be disposed of in terms of the settlement.

7. Learned counsel for respondent no.3/employee would submit that in view of the compromise, he has been reinstated in

services recently in the month of January. He has also supported the petitioners a little bit. However, finally, he stated that if respondent No.3 did not get his back wages, He would not be ready to compromise in the event of exonerating the Government.

8. In reply, learned counsel for the petitioners referred to Section 11 sub-section 3 of the MEPS Act and vehemently argued that the Tribunal could very well impose the liability upon the Government to pay the back wages. Therefore, the compromise may be accepted as it is.

9. Admittedly, the Government is not the party to the compromise. The simple question is, can the Government be financially burdened to pay the back wages for the acts of the management terminating respondent no.3. The second question would be, can the School Tribunal direct the Government to pay the back wages in any event. Sub-section 3 of Section 11 of the MEPS Act reads thus :

“(3) It shall be lawful for the Tribunal to recommend to the State Government that any dues directed by it to be paid to the employee, or in case of an order to reinstate the employee any employments to be paid to the employee till he is reinstated, may be deducted from the grant due and payable or that may become due and payable in future, to the Management and be paid to the employee direct.”

10. The words of sub-section 3 are very clear that it is lawful for the Tribunal to recommend to the State Government to pay the

dues of the employee. However, the Tribunal has no absolute power to impose the financial burden. It is the power of the Tribunal to solace the employee who has suffered financially. Sub-section 3 itself provided that such a payment should be conditional. The Government should release the back wages, but the back wages whatsoever paid shall be deducted from the grant due and payable or that may become due and payable to the management in the future. The words in sub-section 3 protect only two persons. Firstly the employees and secondly the Government. This section does not exempt management from paying back wages. The management, however, has to pay the back wages if the Tribunal orders it. The ratio laid down in the case of Educational Society (supra) is squarely applicable to the case at hand.

11. In view of the above discussion, the compromise is accepted on the condition that respondent nos.1 and 2 i.e. the Education Department shall pay the back wages after submitting the bill to respondent no.3 and pay the amount and thereafter deduct the said amount from the non-salary grant of the petitioner no.1/management.

12. Given the above, the writ petition is disposed of as compromised.

(S.G. MEHARE, J.)