



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7807 OF 2024

The Secretary Jijau Bahu Uddeshiya Shikshan Prasarak Mandal
And Another

VERSUS

Vilas Ashokrao Shinde And Another

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Advocate for the Petitioner : Mr. Syed Masood Chand

Advocate for Respondent no.1 : Mr. R. I. Wakade

AGP for Respondent no.2 : Mr. K B Jadhavar

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : July 25, 2024

PER COURT :-

1. Not on board. Mentioned. Taken on board.
2. The Petitioners have impugned the judgment and order dated 19.1.2024 passed by the School Tribunal, Latur in appeal no.10 of 2022, by which the appeal filed by respondent no.1 has been allowed and Petitioners are directed to reinstate him with continuity of service and back wages.
3. Respondent no.1 herein was appointed on the post of Primary Teacher in the year 2013 against clear and vacant post. On completion of the probation, respondent no.1 is given permanent appointment. Appointment of the respondent no.1 has been duly approved by the Education Officer. However, on account of family dispute between respondent no.1 and head master of the school, he has been ill-treated. During Covid 19 Pandemic, schools remained closed from March 2020 onwards.

In June, 2020 when partial attendance of the employees was permitted under Government orders, respondent no.1 was restrained to sign the muster roll although he continued to conduct online classes. Respondent no.1 was assured permission to sign the muster roll, however, later on petitioner no.2 resiled from her assurance. Respondent no.1 made several complaints to the Education Authorities. They issued directions to permit respondent no.1 to sign the muster roll. In spite of such directions, petitioner no.2 did not allow respondent no.1 to sign the muster roll and restrained him from work in the school. Consequently respondent no.1 filed appeal before the school Tribunal under section 9 of the MEPS Act with the plea of otherwise termination dated 15.6.2020.

4. Petitioners denied contentions of respondent no.1, by filing reply to the appeal and pleaded that the respondent no.1 had no interest in teaching the students. He made false complaints to the Education Officer only with intention to create the record. Respondent no.1 was never restrained from signing the muster roll or attend the school. However, he voluntarily remained absent from the school and failed to perform his duty. Respondent no.1 is in fact interested in property of appellant no.2 and by various means troubling her. Present proceeding is filed in collusion with other family members, who are litigating together against petitioner no.2.

5. The Tribunal, after considering rival pleadings framed issues and recorded evidence. Consequently, passed the impugned order directing reinstatement of respondent no.1 with continuity of service and back wages.

6. Mr. M.C. Sayed learned advocate appearing for petitioners submits that, in fact, respondent no.1 employee voluntarily abandoned the duty. He was not interested in job but, in the property of petitioner no.2, who is his parental aunt. He would submit that the Tribunal was under obligation to frame necessary issues. In support of his contentions, he relies upon the judgment of this Court in case of **Rajiv Shikshan Sanstha through its President at and Post Shegoan (B), Tq. Warora, Dist. Chandrapur vs. State of Maharashtra and others reported in 2004 (2) ALL MR 910**. According to him, in absence of framing of issues as indicated by this Court, the entire proceeding would vitiate and matter will have to be remanded back to the tribunal.

7. Per contra, Mr. R.I. Wakade, learned advocate appearing for the respondent no.1/employee would submit that, in the present case, there is no denial to appointment and approval to services of respondent no.1. It is also not in dispute that termination was not preceded by the inquiry or show cause notice or even no principles of natural justice were followed. Petitioners have not placed material to justify otherwise termination. Tribunal has rightly framed the points for consideration and after elaborate discussion on each and every point, rendered findings in support of final conclusion. Therefore no fault can be found in such order.

8. Having considered the submissions advanced and after going through the documents submitted before this

Court, it is apparent that respondent no.1 was appointed in the year 2013 on the post of 'Assistant Teacher' against clear and vacant post. His services were duly approved by the Education Officer. After confirmation of the service, permanent approval is granted. There is hardly any dispute as regards to validity of the respondent no.1's appointment and approval granted by the Education Officer. Therefore, no specific point for consideration on this aspect was framed. Petitioners/Management while denying case of respondent-employee simply asserts that respondent no.1 voluntarily abandoned services and failed to sign the muster roll or join the duty. Admittedly, no show cause notice was ever issued to the employee nor any inquiry was initiated for alleged misconduct or unauthorized absence. In case employee fails to attend the duty without any reason, Management would have definitely issued him show cause notice. The Management has not filed on record the muster roll to show actual period when he was unauthorizedly absent in the school. No particulars of such absence are provided in the reply filed by the Management. The Tribunal has elaborately discussed the aforesaid aspects in the impugned order. It is a matter of record that respondent no.1 and head master of the school are relatives and some family disputes are pending in Civil Court since 2021. It is apparent that enraged by family dispute, Head Master of School prevented respondent employee from attending the school. The family dispute is given colour of service dispute.

9. It is trite that once the employee is appointed by following due process of law and assumes permanency, his services cannot be terminated without following the due process of law as contemplated under MEPS Act and Rules.

10. In the present case, respondent/employee has proved otherwise termination contrary to the prescribed procedure. The School Tribunal has accordingly recorded the findings and directed reinstatement with continuity of services and back-wages.

11. So far as reliance of the learned advocate appearing for the petitioners on the judgment of this Court in case of *Rajiv Shikshan Sanstha* (supra), this Court held that the Tribunal is required to consider preliminary points and decide the same before the appeal proceeds. Three preliminary points suggested as to whether the school was recognized school, whether the appointment of the concerned teacher was in terms of section 5 of the MEPS Act and thirdly appointment has been approved by the Education Officer in pursuance of the provisions of the Act.

12. In the present case, from the pleadings of the parties, it is apparent that, none of such issue arises for consideration. No dispute is raised on behalf of the petitioners as regards to appointment of Respondent no.1 and his approval. Therefore, the law laid down in the aforesaid judgment is not applicable in the facts of the present case. It is clear from the impugned order that necessary points for consideration were framed and detail findings are recorded

based on the evidence tendered into service. Hence, no case is made out to cause interference in the impugned order in exercise of writ jurisdiction of this Court. Writ petition stands dismissed. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

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