

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14251 OF 2022

Arjun Bharmu Pituk

... Petitioner

Versus

Sharada Shikshan Prasarak Mandal and Ors.

... Respondents

WITH

INTERIM APPLICATION NO. 596 OF 2024

IN

WRIT PETITION NO. 14251 OF 2022

Bharmu Subrao Patil, The President, Sharada
Shikshan Prasarak Mandal and Anr.

... Applicants

In the matter between :

Arjun Bharmu Pituk

... Petitioner

Versus

Sharada Shikshan Prasarak Mandal and Ors.

... Respondents

.....

Mr. Vinayak Kumbhar i/b. Ms. Ashwini Bandiwadekar, Advocate for the
Petitioner.

Mr. Avinash Belge, Advocate for Respondent No.1.

Smt. V.S.Nimbalkar, AGP for Respondent No.3-State.

Mr. Suresh Pakale, Senior Advocate a/w. Mr. Nilesh Desai for Intervenor in
IA/596/2024

CORAM : R. M. JOSHI, J.

DATED : 28th AUGUST, 2024.

P.C. :

- 1.** Interim application No. 596 of 2022 is filed by Bharmu Subrao Patil and Udaykumar Bhagwantraro Deshpande claiming themselves to be President and Secretary, respectively of Sharada Shikshan Prasarak

Mandal, Yashwant Nagar, Post : Date, Taluka : Chandgad, Kolhapur, to join as party to this petition.

2. In the beginning, it is necessary to take note of the fact that this application has been filed in a Writ Petition which is instituted in the year 2022 for taking exception to the order passed by the School Tribunal dated 09.06.2020 passed in Appeal No. 10 of 2019. By this order the School Tribunal has rejected the appeal filed by the petitioner employee. From the impugned order, it can be seen that this is a case of termination of service of the petitioner for want of approval to his post by the Education Officer. One more issue was involved in the said appeal was as to whether the Head Master of the School had Authority to issue such termination letter. According to learned Senior Counsel for the applicants one more issue arose in the said appeal as to the legality of the appointment of the petitioner.

3. The applicants have filed application for intervention by claiming that they are office bearers of Sharda Shikshan Prasarak Mandal. The application is filed essentially with the submissions that respondent Nos. 1 and 2 are not Chairman and Secretary of the said Sanstha. In the entire application except for contending as to how the applicants are the office bearers of that institution, and managing affairs of the trust and others have no authority to represent trust there is absolutely no whisper about

anything with regard to the petitioner, as to whether he was appointed, not appointed, terminated etc.

4. Learned Senior Counsel for the applicants initially has drawn attention of this Court to the contentions of the application which takes exception to the respondent Nos. 1 and 2 being shown as office bearers of the said educational institution and trustees of the trust. Apart from this, the documents filed along with application are referred to which pertain to change reports and proceedings before the Charity Commissioner. Learned Senior Counsel for the applicants submitted that the educational institution has not been represented before the Tribunal for want of notice to the present applicants. It is his further submission that for want of any opportunity being given to the educational institution, the correct facts were not brought to the notice of the Tribunal. He challenges the *locus standi* of the respondents to represent the Trust. During the course of the arguments it is submitted that the petitioner was appointed initially as a peon and thereafter he was wrongfully promoted as Assistant Teacher. It is also submitted that, in fact, petitioner had resigned from the service of the school as a peon. He, however, does not dispute the fact that the petitioner was originally appointed as a peon and the said appointment was made after following due process of law. It is alleged against one of the respondents that by receiving gratification from petitioner the record

has been fabricated in order to facilitate him to get favourable order from the Tribunal. He further alleged that the proposal sent to the Education Officer was not through the proper channel i.e. through the official Trustees of the Trust but the same was sent by the respondents. Though such submission is made, observations made by the Tribunal in the impugned order relying upon the say filed by the Education Officer indicates that the proposal was sent to the Education Officer for the regularization of the services of the petitioner and the said proposal was rejected on merit.

5. Owing to reason for termination and in view of the settled position of law by the Judgments of the Hon'ble Supreme Court as well as this Court rendered from time to time, since there cannot be termination of an employee of the school only for the reason of grant of approval to the post by Education Officer, a question arises before this court as to whether in a dispute between the two fractions of the trust, can an employee be made to suffer. It was specifically asked by the court to counsel for applicants, whether the applicants / Educational Institution is ready to deposit the salary of the applicant in this Court, so that the contentions of the applicants can be heard by giving further opportunity. Learned Senior Counsel appearing for the applicants on instructions resisted to the said suggestion claiming that the petitioner was never appointed and was never

terminated from service and hence question of depositing any salary does not arise.

6. Though it is sought to be argued that the petitioner was never appointed and was not an employee and that there was a fabrication of record by the respondents in the Petition in order to facilitate the petitioner to take favourable order from the Tribunal, this Court finds no whisper in this regard in the application filed for intervention. The intervention application only speaks about the *locus standi* of the respondents to represent the Trust/educational institution. Nothing had prevented applicants to make those averments in application and they chose not to raise those contention, but now it is argued that time may be given to the applicants to file appropriate application as well as to bring evidence on record to indicate that the petitioner was not employee and that he was never terminated from service. In the facts of the case and as applicants do not wish to show their bona fides even to deposit salary of petitioner (without it being permitted to be withdrawn,) this Court is unable to accept such submission to give further time to the applicants, more particularly, in view of the fact that here is an employee who has filed petition two years back seeking challenge the impugned order.

7. Moreover, even in application there is nothing indicated to show as to how the applicants could not get knowledge with regard to the proposal

sent to the Education Officer through the Head Master and termination of petitioner by him. There is no allegation in the entire application against the head master of the school. As against this, the observations made by the learned Tribunal in the impugned order are candid to the effect that there was a proposal sent to the Education Officer. This fact has been confirmed by the Education Officer himself by submitting a reply before the Tribunal. Thus, there is no substance in the contention of the applicants at this stage, that this is a case of creation of false record as sought to be alleged. In any case the petitioner/employee cannot be made to suffer for the tussle between two groups of the trust claiming control of affairs of trust.

8. In the considered view of this Court, this application is not bona fide but an outcome of the dispute between two fractions of the Trust. Needless to say that such fight cannot be permitted to affect to an employee adversely, who is seeking justice from the Court and has been out of the employment from January 2019.

9. This Court therefore finds that the present application sans merit and hence deserves to be dismissed with cost. The court however refrains itself from imposing any cost. Interim Application stands dismissed.

10. Now petition is heard. Learned counsel for both sides are heard extensively.

11. Perused contentions of petitioner, impugned order and relevant documents.

12. Learned counsel for the petitioner has drawn attention of this Court to the order of termination dated 31.01.2019. Perusal of the said order shows that sole reason for termination is failure on the part of the Education Officer to grant approval to the post held by the petitioner. It is settled position of law that the grant of approval by the Education Officer is not a condition precedent to a valid order of appointment. In this regard a reference can be made to the judgment of Full Bench of this Court in case of St. Ulai High School and Anr vs. Devendra Prasad Jagannathe Singh, reported in 2007 (1) Mh.L.J. wherein it is held that :

“13 (iii) Neither the MEPS Act, 1977, nor the Rules framed thereunder mandate the grant of approval by the Education Officer as a condition precedent to a valid order of appointment. The requirement of approval which relates to the disbursal of grant in aid is a matter between the management and the State and want of approval will not invalidate an order of appointment”.

Thus there cannot be any termination of service for want of such approval.

13. The learned Tribunal while passing impugned order though has considered the said position of law, however, has eventually rejected the appeal, which is an error of law committed by the Tribunal. Apart from this, the Tribunal has observed that the Head master had no authority to

terminate the services of the petitioner but in spite of recording such finding ultimately upheld the termination. Once it is held that person who has issued order of termination lacks such authority, termination must be held to be illegal. Petitioner, therefore, has made out a case for causing interference in the impugned order. As a result of this, Writ Petition deserves to be allowed.

14. As far as back wages are concerned, there is no statement made by the petitioner before the Court at first instance about he being not gainfully employed. The Hon'ble Supreme Court in case of **Ramesh Chand versus Management of Delhi Transport Corporation reported in 2023 LiveLaw (SC) 503** in paragraph 7 has held thus :

7. The only question before us is whether the Labour Court was justified in denying relief of back wages. In the case of National Gandhi Museum v. Sudhir Sharma, this Court held that the fact whether an employee after dismissal from service was gainfully employed is something which is within his special knowledge. Considering the principle incorporated in Section 106 of the Indian Evidence Act, 1872, the initial burden is on the employee to come out with the case that he was not gainfully employed after the order of termination. It is a negative burden. However, in what manner the employee can discharge the said burden will depend upon on peculiar facts and circumstances of each case. It all depends on the pleadings and evidence on record. Since, it is a negative burden, in a given case, an assertion on oath by the employee that he was unemployed, may be sufficient compliance in the absence of any positive material brought on

record by the employer.

Thus law is now settled to say that to seek back wages, an employee is duty bound to make such statement on oath or otherwise before court at first instance. It is only thereafter onus will shift upon employer to prove otherwise. In absence of such statement being made by petitioner before Tribunal, no back wages can be granted.

15. As a result of this, Petition stands allowed partly in following terms:-

1. Appeal No. 10 of 2019 stands allowed.
2. The order of termination dated 31.01.2019 is set aside.
3. Petitioner is directed to be reinstated in service but without basic wages.

(R. M. JOSHI, J.)