



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 7215/2023

Udaram Kashiram Kapgate, aged
about 56 years, Occ. Service, r/o
Virshi, post Virshi, Tq. Sakoli,
District Bhandara

.... **PETITIONER**

// VERSUS //

1. The Education Officer
(Primary), Zilla Parishad,
Bhandara
2. Adarsha Bahu Uddeshiya
Mandal, Bhandara, through its
Secretary Manoj Wadibhasme,
r/o Ambedkar Ward, Bhandara
3. Sant Dnyaneshwar Mauli Prathmik
Shala Earlier Mahesh Prathmik
Shala, Jambhora, Tq. Mohadi
District Bhandara, through its
Headmaster.
4. State of Maharashtra, through its
Secretary, Department of Sports and
School Education, Mantralaya,
Mumbai - 400032
(Amended as per Court's Order
dated 24/06/2024)

.... **RESPONDENTS**

Mrs. R.D. Raskar, Advocate for petitioner.
Shri R.S. Khobragade, Advocate for respondent No. 1.
Shri S.R. Charpe, Advocate for respondent Nos. 2 & 3.
Shri A.V. Palshikar, AGP for respondent No. 4.

CORAM : **AVINASH G. GHAROTE AND**
 SMT. M.S. JAWALKAR, JJ.
DATE : **19/10/2024**

JUDGMENT (PER: SMT. M.S. JAWALKAR, J.)

- (1) **Rule.** Rule made returnable forthwith.
- (2) Heard finally by consent of learned Counsel
appearing for the parties at the stage of admission.
- (3) The petition seeks to quash the communication dated
01/08/2023 (page 106) passed by the respondent No.1, refusing
to grant approval to the petitioner to the post of Assistant
Teacher.
- (4) Facts in nutshell are as under :

Petitioner came to be appointed as an Assistant
Teacher on 30/12/1997. There was proposal for age relaxation

sent to the Deputy Director of Education. The Deputy Director of Education vide letter dated 24/05/1999, permitted the Education Officer to relax the condition of age, subject to conditions mentioned in the permission and he came to be appointed as Assistant Teacher. The respondent No.2 i.e. the Management of the School issued charge-sheet to the petitioner. The petitioner came to be terminated from service on 02/11/2004. The termination was challenged by the petitioner before the School Tribunal. The School Tribunal allowed the appeal and directed respondents to reinstate the petitioner vide judgment and order dated 17/07/2013. The respondent No.2 challenged the said judgment of the School Tribunal by filing Writ Petition No.5362/2013. This Court by order dated 07/04/2015, remanded the matter to the School Tribunal. After remand, vide judgment dated 31/07/2015, School Tribunal dismissed the appeal. The said judgment was challenged by the petitioner by filing Writ Petition No.1623/2016. During the pendency of this petition, an application came to be filed by the petitioner to respondent No.2-

Society requesting to reinstate the petitioner in the school on terms and conditions mentioned by the petitioner in application dated 14/12/2022. By this application, petitioner has undertaken that he will not claim any arrears of salary from 29/11/2004 till date, from the Management. After reinstatement, he would submit the proposal of VRS within three months. After submission of VRS, Management shall co-operate to process the paper of pension from the concerned Department. Accordingly, by passing resolution, he was directed to join at “Bhrushund Uccha Prathmik Shala, Bhandara”. Accordingly, joint compromise pursis by petitioner and respondent Nos.2 and 3 i.e. Management and School came to be filed on 23/02/2023. As per terms of compromise, it is stated that respondent Nos.2 and 3 have already cancelled the termination order of the petitioner and he is reinstated on 01/01/2023. He will get all the benefits of continuity of service for the purposes of pension and other pensionary benefits. He will not claim any arrears from the Management or its school. It is made clear in the said

compromise term that the reinstatement is subject to the decision of the Education Officer regarding the approval, Management is not taking any responsibility of the petitioner, so far as the salary of the petitioner is concerned. Three months after reinstatement, the petitioner shall apply for voluntary retirement and respondent Nos.2 and 3 shall prepare the pension case of the petitioner and shall send the same to respondent No.4- Education Officer. In view of this joint pursis, petition stands disposed of in terms of the settlement.

(5) The petitioner seeking relief by way of this petition for direction to the Education Officer to consider the proposal for grant of approval of the petitioner as an Assistant Teacher w.e.f. 01/01/2023 and release all consequential benefits of service. It is also prayed that the communication dated 01/08/2023 by the Education Officer to the Secretary of the Management, thereby rejecting the proposal in respect of petitioner be quashed and set aside.

(6) Learned Assistant Government Pleader for Education

Officer opposed the petition on the ground that termination of the petitioner was the result of serious allegation and charges against the petitioner. After conducting due enquiry, his services came to be terminated on proven charges.

(7) Our attention is drawn to the order passed by the School Tribunal, wherein, there is finding that petitioner failed to prove that impugned termination order dated 29/11/2004 is illegal, and also recorded a finding that the initial appointment of the petitioner itself is illegal and it is in violation of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act and Rules. The compromise is entered into between the petitioner and respondent Nos.2 and 3. The Education Officer was not party/signatory to the said compromise pursis. Finding in respect of initial appointment itself, as in violation of Section 5 of the Maharashtra Employees of Private Schools (Conditions Of Service) Regulation Act will remain as it is. As such, the decision of the respondent No.1- Education Officer, not to grant approval is perfectly justified.

(8) It is also contention of the learned Assistant Government Pleader that it will be highly inappropriate, unfair and unjustified to make expenditure of public exchequers money on the employee who was charged with misconduct of obtaining the employment fraudulently. These charges are duly proved and termination is upheld by the judicial order. The compromise between petitioner, Management and School for the payment of pension or salary or retiral benefit would be from the public exchequer money, which is not permissible at any cost.

(9) Learned Counsel for petitioner vehemently argued that the order passed by the School Tribunal merged into the compromise terms and, therefore, she is entitled for approval on the basis of compromise terms. She has placed reliance on Supreme Court on **Words and Phrases**, wherein, Merger judgment is explained as under:

“ Merger-Judgment. An expression merger of judgment, order or decision of a court or forum into the judgment, order or decision of a superior forum is often employed, as a general rule the judgment or order having been dealt with by a superior forum and having resulted in confirmation, reversal or modification, what merges is

the operative part i.e., the mandate or decree issued by the court which may have been expressed in appositive or negative form. S. Shanmugavel Nadar v. State of T.N. and another. (2002) 8 SCC 361."

(10) However, in our considered opinion, the doctrine of merger will arise only when the judgment or order of the subordinate Court having being dealt with by the superior forum and having resulted in confirmation reversal or modification. Here, the filing of compromise pursis cannot be said to be that the High Court has dealt with the judgment and order passed by the School Tribunal, which would result in confirmation, reversal or modification.

(11) The learned Counsel for petitioner relied on order passed in Civil Application No. 15280/2017 in Writ Petition No. 2284/2013 dated 15/03/2019, passed by this Court Bench at Aurangabad, which in fact, not supporting to the petitioner. The said application is filed for restoration of writ petition with the grievance that the Management is not acting upon compromise. The Court held that the applicant, original appellant would be at liberty to execute the judgment of the School Tribunal (wherein it

was in favour of the appellant) or the compromise deed as the case may be, by initiating appropriate proceedings for execution of the said order under Section 13 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act. It is also contention of the petitioner that departmental enquiry was on bogus charges and that is the only reason on which the Management felt the need to reinstate an employee like the petitioner by scrapping all the charges levelled against the petitioner. In fact, in our considered opinion, there is no resolution taking back the termination or exonerating petitioner from the charges. However, it appears that his request for reinstatement is considered only on the basis of application made by the petitioner, wherein, he has undertaken not to claim any arrears against Management and would take VRS after three months of reinstatement. Most important aspect is that Education Officer was not the party to this compromise. Petitioner's application is considered only on the basis of his request in application, wherein, he has undertaken not to claim any arrears

against Management and would take VRS after three months of reinstatement. As such, these terms are not binding on the Education Officer and we also find substance in the contention of the Education Officer that in view of the finding recorded by the School Tribunal, which is not set aside by any order of the superior Court would hold the field. In this background, there cannot be any approval for continuity of service of twenty years nor pensionary benefits without performing any work during that period cannot be sustained in the eye of law. As such, there is no merit in the petition. Accordingly Writ Petition stands dismissed. Rule discharged. No order as to costs.

(SMT. M.S. JAWALKAR, J.)

(AVINASH G. GHAROTE, J.)

Jayashree..