



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6029 OF 2022 WITH
CA/15147/2022 WITH CA/4263/2023
IN WP/6029/2022

Shivshankar Sevabhavi Sanstha Jamathi
Bk.through Its Secretary And Another
VERSUS
Virendra Prabhakar Bhise And Another

Mr. V. J. Dhage, Advocate for the Petitioners
Ms. U. N. Jadhao, Advocate for Respondent No. 1
Mr. S. N. Kendre, AGP for Respondent No. 2

CORAM : R. M. JOSHI, J
DATE : APRIL 28, 2025

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.
2. At the outset, learned Counsel for Petitioner seeks amendment to the Petition and documents annexed therewith to screen the name of minor/alleged victim wherever is appearing.
3. Leave granted. Amendment be carried out forthwith.
4. This Petition takes exception to the order dated 12.04.2022 passed by the School Tribunal, Latur

in Appeal No. 33/2019 whereby the Respondent is directed to be reinstated in service with continuity and full back wages with other consequential benefits since 23.03.2017.

5. The facts which led to the filing of this Petition can be narrated in brief as under:

Petitioner is the Educational Institution duly registered under the Maharashtra Public Trusts Act. Respondent No. 1 came to be appointed on 20.06.2011 after following due procedure of law. Education Officer extended the approval to his appointment on 30.04.2012 against clear and vacant post on probation for a period of two years. In the year 2015-16, Petitioner No. 2 — School has received 20% grant from Government.

6. It is the case of the Petitioners that there was allegation against Respondent in respect of his behavior towards girl students and complaints were received to that effect. It is further claimed that show cause notices were issued to the Respondent No. 1 on 09.08.2017 & 23.11.2017. Petitioner alleges that Respondent No. 1 remained absent unauthorizedly but falsely claimed to have been terminated from service

orally. Accordingly, he filed Appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 before School Tribunal claiming that his services are terminated from 14.07.2017. Petitioner appeared before the School Tribunal by filing written statement and specifically claimed that services of the Respondent No. 1 are not terminated. The other facts including issuance of notice etc are placed on record before the Tribunal. Learned Tribunal after hearing both sides passed impugned order holding that there is otherwise termination of the Respondent No. 1 and he was directed to be reinstated in service with full back wages and continuity with consequential benefits.

7. Learned Counsel for Petitioners submits that Respondent No. 1 has adopted novel method of claiming oral termination to avoid any action against him. According to him, the Tribunal has committed error in not taking into consideration the show cause notices issued to the Petitioner, which indicates that this is not case of otherwise termination. He drew attention of the Court to the correspondence and complaints on

record which according to him shows that to avoid action, false claim of termination has been raised. According to him, since there was no termination of services with effect from 23.03.2017. It is his submission that considering the pleadings and the documentary evidence on record, Tribunal ought not to have held that there is oral termination and directed reinstatement with back wages. To support his submissions, he placed reliance on following judgments: *Pepsu Road Transport Corporation vs. Rawel Singh, 2008 AIR SCW 2099, Satish Motors Ltd., Aurangabad vs. Syed Ashrafali Syed Maqсадali, 2017(1) Mh.L.J. 194 & Bharatiya Seva Acharya Education Society, Nagpur and Another vs. School Tribunal, Nagpur and others, 2014(2) Mh.L.J. 879.* Without prejudice to his contention, it is his submission that grant of reinstatement by the Tribunal would not take away right of the Management to take disciplinary action against Respondent No. 1.

8. Per contra, learned Counsel for Respondent No. 1 supported the impugned order by contending that the pleadings as a whole need to be considered and the pleading clearly indicate that services of the

Respondent No. 1 were terminated on 23.03.2017 to avoid conduct of an enquiry against Petitioner. It is his submission that if the Respondent No. 1 was remaining absent or had committed any other misconduct, it was incumbent on the part of the Management to initiate enquiry against him and that in no circumstance oral termination is permissible in law. It is his submission that the Tribunal has taken into consideration the evidence on record and also the statement made by Respondent No. 1 on oath about he being not gainfully employed and, therefore, the order of reinstatement with back wages cannot be interfered with.

9. There is no dispute about the fact that the Respondent No. 1 was engaged in the services of the Petitioner/School by following due process of law and his appointment had received approval from the Education Officer. Since there is a word against word, Respondent No. 1 claims oral termination and Petitioner refutes the same, the Court is required to taken into consideration overall attending circumstances in order to accept or reject the rival contentions. Here in this case the Respondent No. 1 has claimed termination of

his services with effect from 23.03.2017 orally. Whereas the Petitioner claimed that Respondent No. 1 has absented himself from duty and that there is no termination. In this regard, it would be relevant to take into consideration the factum of show cause notices for alleged absenteeism and complaint from girl students being issued against Petitioner. However, in spite of such serious allegations admittedly no enquiry is conducted. Nothing had precluded the Management to issue charge-sheet and conduct enquiry against Respondent No. 1 in accordance with Act and Rules. Instead, Management simply claims that Respondent No. 1 did not attend duties.

10. Though there is communication appearing on record from Management seeking permission from Education Officer for suspension of the Respondent No. 1, in fact no suspension order has been issued against him. This fact also goes contrary to the defence taken by Petitioner before Tribunal. Here in this case there were allegations against Respondent No. 1 on the basis of complaints received from the girl students so also absenteeism etc, an enquiry was must before

termination. There is no enquiry conducted nor even order of suspension came to be issued against him.

11. Learned Tribunal has taken into consideration the entire evidence on record and has held that there is oral termination of services of Respondent No.1. On the basis of the material on record the view taken by the Tribunal is plausible one. In exercise of writ jurisdiction, it is not open for this Court to take different view and substitute the same to the one taken by Tribunal.

12. In so far as the order of grant of back wages is concerned, the Respondent No. 1 has filed affidavit before the Tribunal specifically contending that he has not been gainfully employed during the relevant period. Once such statement is made, the burden shifts upon the Employer/Management to prove that the employee is gainfully employed during this period. There is absolutely no evidence on record led by the Management to show gainful employment of Respondent No. 1. In such circumstance, no fault can be found with the order of Tribunal granting back wages to Respondent No.1.

13. Since the findings recorded by the Tribunal are based on evidence on record so also are consistent with the position of law, this Court finds no perversity therein in order to cause interference. In the result, Petition stands dismissed. Pending civil application(s) stands disposed of.

(R. M. JOSHI, J.)