



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9338 OF 2022

Smt. Aruna Segga Gavit

VERSUS

The President, Jay Hindala Mata Tribal
Education Society, Dharnat and Others

- Mr. V. D. Hon, Senior Advocate i/by Mr. A. V. Hon, Advocate for the Petitioner
- Mr. S. S. Deshmukh, Advocate for Respondent Nos. 1 to 3
- Mr. N. D. Raje, AGP for Respondent No. 4/State

CORAM : R. M. JOSHI, J

DATE : MARCH 12, 2025

PER COURT :

1. This Petition takes exception to the judgment and order passed by the School Tribunal, Nashik dated 14.07.2022 in Appeal No. 07/2017 whereby the School Tribunal has refused to grant reinstatement of the Petitioner in the services and instead, has directed payment of compensation.

2. The facts, as they appear from the record, can be narrated in brief as under:

The Petitioner was appointed initially as an Assistant Teacher in Respondent No. 2/School on 14.06.1986. It is thereafter on 13.06.2001 after

acquiring requisite qualification i.e., B.Ed, she was appointed on clear vacant post of Assistant Teacher for the period of two years on probation from 13.06.2001 to 13.06.2003. Respondent No. 2/School started receiving 100% grant from academic year 1999. The Petitioner claims to have continuously worked with Respondent No. 2/School from 2001 to 2008, however, the Respondent Management failed to send proposal of Petitioner for approval to the Education Officer. It is the grievance of the Petitioner that the Management has transferred her from grant-in-aid school to non grant school in the year 2008, where she worked till year 2016. It is further claimed that the said School was closed and Petitioner was again transferred to School at Ghogalpada. Petitioner claims that from September, 2013 she was not allowed to resume her original post and thereby claims to have been terminated from services. There is specific averment that the Headmaster has restrained the Petitioner from signing the muster roll. It is also specifically claimed that no transfer order was received by the Petitioner. Since the Petitioner claim herself to be dismissed from service, Appeal came to be filed under Section 9 of the Maharashtra

Employees of Private. Schools (Conditions of Service) Regulation Act, 1977 (for short 'the Act') before the School Tribunal.

3. The Respondent Management appeared before Tribunal and by filing reply denied the contentions of the Petitioner before the Tribunal. It was the case of the Respondent Management that the appointment of the Petitioner was not made against clear and permanent vacant post. It is also alleged that the letter of appointment of the Petitioner is suspicious and bogus. There is further denial by the Respondent about the school at Amlan being the school run by the Respondent.

4. The School Tribunal while passing the impugned order has observed in paragraph 20 of the judgment that the Respondent Management has admitted the factum of appointment of the Petitioner and approval thereof by the Education Officer. Further finding is recorded that the Petitioner was working in the schools of the Respondents Management till date of her approval to Ghogalpada School on 15.01.2012. The School Tribunal however went on to observe that the initial appointment of the Petitioner was not following due procedure of

law and hence, six months salary was directed to be paid by way of compensation to the Petitioner. As the Petitioner is denied reinstatement in service with full back wages and continuity of service, this Petition is filed.

5. Learned Senior Counsel appearing on behalf of Petitioner has contended that from time of appointment of Petitioner, Petitioner has been discriminated and harassed. It is his grievance that the Petitioner was transferred frequently from the aided school to unaided school only with a view that the Management gets an opportunity to employ the person of their choice. It is submitted that there is evidence on record so also undisputed that on 13.06.2001 she was appointed on probation for a period of 2 years from 13.06.2001 to 30.04.2003. It is contended by referring to Section 5 of the Act that after completion of the period of probation the Petitioner is deemed to have been confirmed in the service. It is his submission by referring to the documents on record that the order of transfer dated 01.08.2012 was never issued to the Petitioner and for the first time the said order has

been dispatched by Management on 24.02.2024. Thus, according to him, evidence on record is sufficient to indicate that the Petitioner was not transferred at the relevant time but she was not allowed to join the duties. By referring to Section 9 of the Act, it is his submission that the said dismissal is otherwise dismissal and hence, Tribunal was within his jurisdiction to grant reinstatement, however, the same has erroneously been not granted. It is his further submission that the Petitioner has worked with Respondent Management for more than 10 years and that by dismissing the Appeal and not granting reinstatement, she is denied the continuity of service so also the retiral benefits which she would be entitled too.

6. Learned Counsel appearing for contesting Respondents vehemently opposed the Petition. It is the his submission of that conduct of the Petitioner herself disentitles her from the relief of reinstatement which has been rightly rejected by the Tribunal. In this regard, he has tried to seek assistance of the record which according to him

indicates that it was the Petitioner who was not joining her duties and, therefore, could not have claimed termination of her services. It is his submission that in order to invoke power to grant reinstatement, the case of the Petitioner ought to have been covered by Section 9 of the Act and since she have been failed to make out said case, no fault can be found with the order passed by the Tribunal of dismissing Appeal and granting compensation.

7. From the pleadings and material evidence on record, it can be said that the Petitioner was initially appointed in the Respondent Management School with effect from 14.06.1986 as Assistant Teacher. She admittedly had acquired qualification of B.Ed on 02.05.2001. It is immediately thereafter by order of appointment dated 13.06.2001 on probation for a period of two years from 13.06.2001 to 30.04.2003. It is no ones case that before completion of period of probation, her services are terminated for want of satisfactory performance. Thus, admittedly she has completed the period of probation, thus her case is covered by Section 5(2) of the Act which contemplates

that in case the probation period does not come to an end permanently and by specific order, the employee/teacher is deemed to have been confirmed.

8. Apart from this, there is finding recorded by the School Tribunal with regard to the appointment of the Petitioner being duly approved by the Education Officer by letter dated 14.02.2007. The School Tribunal however on the ground that the initial appointment of the Petitioner was not by following due process of law, has refused to grant relief. This finding recorded by the Tribunal is perverse for the reason that once it is admitted that the Petitioner was appointed on probation and such appointment was duly approved on completion of two years of service, she is deemed to be confirmed in the service. Apart from this, provision of Section 5(1) of the Act obliges the management of private school to fill in every permanent vacancy; as soon as possible, by appointment of duly qualified person. There is no dispute that employee is duly qualified to be appointed to permanent vacancy. This coupled with the fact that she has issued order of appointment on probation, more than sufficiently demonstrate that the appointment of

employee is against vacant post and after due process. In absence of management having succeeded to prove otherwise, findings recorded by Tribunal are not sustainable.

9. Petitioner has claimed that she is permanent from services by not allowing him to report for duty and permitting her to sign muster roll. In this regard, there is specific averment in the Appeal memo which is supported by the material documentary evidence on record. As against this, when it is the case of the Respondent Management that the Petitioner was transferred by order dated 12.08.2012 and that she did not join the duties, documentary evidence on record indicates otherwise. Document shows that the alleged letter dated 12.08.2012 was posted on 24.02.2014. Thus, there is no reason to believe that the Petitioner was ever issued with any transfer order and that she was not allowed to report. Thus, this is a case of otherwise termination duly covered by Section 9 of the Act. In view of above discussion, there can be no other option but to set aside the illegal termination and grant reinstatement the Petitioner into service with

continuity of service.

10. As far as the grant of back wages is concerned, this Court has made specific query to the learned Senior Counsel appearing for the Petitioner as to whether there is any statement made before the Court of first instance about the Petitioner being not gainfully employed. He was unable to point out any such averment. It is settled position of law that employee is required to plead and substantiate before the Court of first instance that he was not gainfully employed during intervening period. In this regard, reference can be made to the judgment of Hon'ble Supreme Court in case of Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and another, (2013) 10 SCC 324 has culled out propositions with regard to payment of back wages. It would be useful to make reference of the same which reads as under :-

38.1 In cases of wrongful termination of service, reinstatement with continuity of service and backwages is the normal rule.

38.2 The aforesaid rule is subject to the rider that while deciding the issue of backwages, the adjudicating authority or the court may take into consideration the

length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3 Ordinarily, an employee or workman whose services are terminated and who is desirous of getting backwages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full backwages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

In view of law laid down by the Hon'ble Supreme Court, it is clear that in case of wrongful termination of service, the workman would be reinstated with continuity of service and back wages. The same is

however with a rider that the workman is required to either plead or at least make a statement before the adjudicating authority that he was not gainfully employed or was employed on lessor wages during the intervening period. Once the workman makes such statement, the onus would shift upon the employer to show that the workman was gainfully employed in order to deny back wages. The observation made by the Hon'ble Supreme Court in aforestated judgment indicates that there is a shift in the view in respect of grant of back wages. Earlier in case of any termination being held as illegal, re-instatement in service with back wages was a rule. However, now a rider is added thereto whereby the workman is required to plead or make a statement before the Court at first instance that he was not gainfully employed. The nature of burden on the workman would not be so strict that he is called upon to prove by leading positive evidence that he was not gainfully employed. Since it would not be possible to prove negative and hence statement made by workman is accepted by Court and such statement is believed to be *bona fide*. The workman is expected to make all material disclosures related to issue of gainful

employment, which has bearing on determination of back wages. Since the employee remain has failed to make statement about not gainfully employed before Court of first instance, the question of grant of any back wages does not arise.

11. As a result of above discussion, Petition is partly allowed. Impugned judgment and order passed by the School Tribunal, Nashik dated 14.07.2022 in Appeal No. 07/2017 is quashed and set aside. Appeal No. 07/2017 filed before the School Tribunal is partly allowed. The termination of the Petitioner is held to be illegal. Respondent Management is directed to reinstate the Petitioner in service with continuity of service but without back wages. Any unpaid salary as claimed by the Petitioner be paid within eight weeks, if not already paid.

12. Petition stands disposed of in above terms.

(R. M. JOSHI, J.)