



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 9260 OF 2024

1. Jivan Shikshan Prasarak Mandal,
Beed Through President
Govind Narayan Sarode
Age. 65 years, Occ. Retired
R/o. Adarsh Nagar Beed, District Beed.
2. Late Bhai Udhavrao Patil
Madhyamik Vidyalaya, Pimpalgaon
Tq Dist Beed
Through Head Master. ..Petitioners

VERSUS

1. Suresh Bhagwan Patole
Age. 47 years, Occ. Nil
R/o. Sambhajnagar Nagar Road, Beed,
District Beed
2. The Education Officer (Secondary)
Zilla Parishad, Beed. ..Respondents

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Advocate for the Petitioners : Mr. Kamlakar Suryawanshi
AGP for Respondent/State : Mr. Rajdeep D. Raut
Advocate for Respondent No.1 : Mr. N.L. Jadhav

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CORAM : ROHIT W. JOSHI, J.
DATE : 19th AUGUST, 2025

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.
2. The petitioner no.1 is educational institution and a public trust registered under the Maharashtra Public Trusts Act, 1950. It runs petitioner no.2 school. The petitioners are aggrieved by judgment and

order dated 09.07.2024 passed by the learned Presiding Officer, Latur in Appeal No.20 of 2023 filed by respondent no.1 challenging the order of termination of his service dated 07.09.2021. The learned School Tribunal has quashed and set aside the order of termination dated 07.09.2021 and directed the petitioners to reinstate respondent no.1 in service on the post of Assistant Teacher with continuity and full back-wages.

3. Learned advocate for petitioners states that respondent no.1 was working as a LIC Agent and therefore, he was never attending the school. He states that in view of aforesaid, the charge sheet was framed against respondent no.1 in accordance with the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ('M.E.PS. Act' for short) and the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 ('M.E.PS. Rules' for short). He contends that apart from willful absenteeism, three other charges with respect to misbehavior were also levelled against respondent no.1. Learned advocate for petitioners states that after holding inquiry, service of respondent came to be terminated vide order dated 07.09.2021. Learned advocate contends that petitioners after being served with the notice by the learned Tribunal, appeared before the Tribunal. He submits that since Education Officer was not served for inordinately long period, the

matter was posted from time to time for taking appropriate steps for effecting service on the Education Officer. He refers to the order sheet dated 20.06.2024 and points out that initially, the matter was adjourned for filing say i.e. reply to the appeal. However, subsequently the order sheet shows that the appeal was posted for final arguments. The next date in the matter is mentioned as 08.07.2024. Learned advocate for petitioners states that the matter was not on board on 08.07.2024 and judgment was passed by the learned Tribunal on 09.07.2024.

4. Per contra, learned advocate for respondent no.1 states that despite having entered appearance in the matter in November 2023, the petitioners did not file written statement in the appeal. Since the petitioners did not contest the appeal, the learned Tribunal has decided the appeal on the basis of terms in the memorandum of appeal and other material on record. He contends that the management has not conducted any inquiry in the matter and has created false record to show that the inquiry was conducted. He justifies the order passed by the learned Tribunal stating that since inquiry was not conducted, the only conclusion could be that the termination order had to be set aside and reinstatement was necessary to be ordered. He thereafter justifies the direction for payment of back-wages pointing out that the affidavit of respondent no.1 was filed on record before the learned Tribunal

stating that he was not gainfully employed ever since the date of his termination. He contends that no material to the contrary was placed on record by the management and the management also did not file any counter affidavit to dispute the contention in the said affidavit.

5. With respect of inquiry, learned advocate for petitioners states that respondent no.1 was all the while working as a LIC Agent. He has drawn attention of this Court to judgment dated 10.01.2019 passed by the Division Bench of this Court in Writ Petition no.1305 of 2018. The subject matter of the said petition was with respect to the payment of subsistence allowance to him from 26.08.2016 till 23.06.2018. The said petition was disposed of directing the Education Officer to consider the documents relied by both parties and take a decision as to whether petitioner would be entitled to claim subsistence allowance for the said period. It will be pertinent to mention that the claim of petitioner for subsistence allowance was denied on the ground that he was working as LIC Agent at the relevant time and was also not present at the headquarter. The Education Officer has given a report vide covering letter dated 05.07.2021 stating that at the relevant time, respondent no.1 was working as a LIC Agent and was also not present at the headquarter.

6. The applicant/respondent had approached the learned Tribunal with specific contention that his services are terminated without

holding any inquiry. The petitioner/management and the headmaster of the school although arrayed as respondents in the matter did not choose to controvert the allegations by filing written statement. There is nothing to suggest that the charge sheet is served upon the respondent/teacher.

7. Although the petitioner i.e. management and headmaster did not file written statement in the appeal, a copy of alleged charge-sheet is filed along with the present petition. Perusal of documents produced on record by the petitioner/management will demonstrate that the charge sheet was framed without issuing any statement of allegations to respondent no.1. A detailed procedure for conducting inquiry is prescribed under the M.E.P.S. Rules. Rule 36 provides that in case where the management decides to hold inquiry against a teacher, it shall authorize the Chief Executive Officer to communicate the statement of allegations to the teacher concerned and demand a written explanation from him with respect to said allegations within a period seven days from the date of receipt of statement of allegations. The statement of allegations are required to be sent by registered post acknowledgment due. Rule 36 (2) provides that in case the Chief Executive Officer is not satisfied with the reply, if any, he shall place the same before the management which in turn shall take a decision as necessary inquiry shall be conducted or not. Thus in view of Rule 36

(1)(2), the first step towards initiation of inquiry is to issue the statement allegations. The management can initiate inquiry against the teacher only if the Chief Executive Officer is not satisfied with the reply furnished by the teacher and place it before the management. This is the first safeguard provided to the teacher under statutory rules.

8. In the case at hand, admittedly statement of allegations has not been issued. It appears from the record that management directly issued charge sheet dated 10.09.2016. The charge sheet placed on record in the present petition does not indicate that any statement of allegations was issued to respondent no.1. The petition is also absolutely silent in that regard. Since statement of allegations which is the 1st step in Departmental Enquiry is not issued, the entire inquiry is vitiated. Likewise, perusal of the alleged charge sheet also does not demonstrate that any documents were attached with the same.

9. Thus issuance of charge-sheet is not proved; assuming that it was issued, it is without issuing statement of allegations, which is a mandatory prerequisite and alleged charge-sheet was also not accompanied with any document or list of witnesses. The so-called enquiry even if conducted is therefore completely vitiated.

10. So far as the relief for reinstatement with continuity of service is granted by the learned Tribunal in favour of respondent no.1, it needs to be mentioned that although the petitioners were served in the matter

and entered appearance in the month of November 2023, they have chosen not to contest the appeal. The only explanation offered is that Education Officer was not served and the matter was being adjourned from time to time for the purpose of only the respondent to take steps for effecting service on the Education Officer. In the considered opinion of this Court, that cannot be a ground for not filing written statement in the appeal.

11. Normally, in case where inquiry is found to be defective, liberty is granted to the management to conduct fresh inquiry from the stage at which the defect creeps in the inquiry. However in present case, the statement of allegations itself was not issued. The inquiry was initiated in September 2016 by issuing charge sheet i.e. almost before a period eight years from now. The respondent/management was also lethargic in contesting the appeal on merit. In such circumstances, it is not deemed appropriate to grant leave to the management to conduct fresh inquiry. The judgment passed by the learned Tribunal with respect to reinstatement in service along with continuity and all consequential benefits is therefore maintained.

12. As regards the back-wages, it is well settled that on termination being set aside, an employee is entitled for relief of reinstatement with full back-wages. However, if it is established that the employee was working elsewhere, the relief of back-wages can be denied or the

percentage of back-wages can be determined based on the income derived by the employee while working elsewhere after termination of service. It is also well settled that the burden of proving that the employee was gainfully employed elsewhere is on the management. The employee, as has been held by the Hon'ble Apex Court in the case of *Deepali Gundu Surwase vs Kranti Junior Adhyapak & Ors* reported in *(2013) 10 SCC 324* is only required to file an affidavit stating that he was not gainfully employed after termination of his services while the appeal was pending. In the facts of present case, respondent has filed such affidavit. Perusal of affidavit will demonstrate that respondent no.1 has made omnibus statements that he was not gainfully employed elsewhere from 07.09.2021 i.e. the date of termination of service and thereafter. It will be pertinent to reiterate that in the inquiry in respect of subsistence allowance which was conducted by Education Officer pursuant to the direction issued by this Court, it was found that respondent no.1 was working as LIC Agent. The respondent no.1 in his affidavit ought to have stated something about his working as LIC Agent. Perusal of affidavit filed by respondent no.1 will demonstrate that the same is completely silent with respect to his working as LIC Agent. Learned advocate for respondent no.1 had during course of hearing admitted that report of Education Officer is not challenged by him in order to claim subsistence allowance for the

period upto 23.06.2018.

13. In view of aforesaid, in the considered opinion of this Court, it will be appropriate in the interest of justice that the matter is remanded back to the learned School Tribunal for deciding the issue with respect to payment of back-wages afresh.

14. The petition is therefore partly allowed. The judgment and order dated 09.07.2024 passed by the Presiding Officer, School Tribunal, Latur in Appeal No.20 of 2023 is maintained to the extent the order of termination dated 07.09.2021 is quashed and also with respect to directions to reinstate respondent no.1 in service on the post of Assistant Teacher in Late Bhai Udhavrao Patil Madhyamik Vidyalaya, Pimpalgaon along with continuity in service and other consequential benefits. However, the direction for payment of back-wages is quashed. The matter is remanded back to the learned Tribunal to decide the issue of back-wages afresh.

15. The parties shall appear before the learned Tribunal on 15.09.2025. Parties to note that separate notice for appearance will not be issued. The learned Tribunal is requested to decide the issue of back-wages, as early as possible and in any case before 31.12.2025. The petitioners shall be at liberty to file written statement with respect to prayer for back-wages. Both parties will also be entitled to lead evidence in this regard, if they so desire. The respondent/management

will not seek unnecessary adjournments in the matter.

16. The learned Tribunal shall consider as to whether liability of back-wages, if awarded, can be fastened on the State Exchequer. The respondent no.3/Education Officer shall cause appearance in the matter in order to advance submissions in this regard.

17. Learned AGP to communicate this order to respondent no.3/Education Officer.

18. Rule is made partly absolute in above terms.

[ROHIT W. JOSHI J.]