

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11378 OF 2024

The President / Secretary,
Chhatrapati Shahu Institutes of Business
Education and Research Trust, Kolhapur & Anr. .. Petitioners

Versus

Chidanand Nagappa Rajangali & Anr. .. Respondents

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- Mr. Umesh H. Pawar, Advocate for Petitioners
- Mr. Rahul Khot, Advocate for Respondent No. 1
- Mr. Y.D. Patil, AGP for State

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 08, 2025

P. C.:

1. Heard Mr. Pawar, learned Advocate for Petitioners; Mr. Khot, learned Advocates for Respondent No. 1 and Mr. Patil, learned AGP for State.

2. Present Writ Petition challenges the order dated 06.02.2024 passed by Presiding Officer, School Tribunal, Kolhapur Region, Kolhapur in Appeal No. 45 of 2019 only to the extent of directing Petitioners - Education Institution to pay salary and backwages to Respondent No. 1 from the date of his alleged termination upto the date of his resumption on duty. Petitioner No. 1 is the Educational Institution, Petitioner No. 2 is the Headmaster of school in which Respondent No. 1 was employed for 20 years before his alleged

termination. Respondent No. 1 is 57 years old today and therefore at the request of Mr. Khot, learned Advocate for Respondent No. 1, present Writ Petition is taken up for hearing forthwith. Respondent No. 2 is the Education Officer (Secondary) Zilla Parishad, Kolhapur.

3. Impugned order dated 06.02.2024 is appended at page Nos. 78-89, Exh. "C" of Petition. By virtue of the said order, four specific directions have been passed on allowing the Appeal filed by Petitioner before the learned School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "**MEPS Act**"). Appeal was filed by Respondent No.1 employee against the decision of termination dated 06.03.2018 passed by Petitioners. While allowing the Appeal, learned School Tribunal held that the decision dated 06.03.2018 was illegal and therefore quashed and set aside the same while directing Petitioners to immediately reinstate Respondent No. 1 on the same post within 30 days, pay full backwages for the entire period along with all allowances, continuity of service and other benefits as applicable.

4. Mr. Pawar would submit that Respondent No. 1 has been reinstated by Petitioners but the Petitioners are aggrieved with the directions pertaining to grant of full backwages along with continuity of service and other benefits to Respondent No. 1 and hence present Petition is filed. He would submit that Respondent No. 1 failed to

perform his duties assigned to him as Petitioners had directed him to perform night duty on and from 01.03.2018. He would submit that admittedly between 01.03.2018 and 05.03.2018, Respondent No. 1 intermittently attended his duty in school but from 06.03.2018 he did not come on duty. He would submit that therefore Petitioner No. 1 was constrained to issue four notices to Respondent No. 1 calling upon him to resume his duty which he failed to comply. He would submit that Petitioners issued notices dated 06.03.2018, 16.03.2018, 31.03.2018 and final notice on 02.04.2018 calling upon Respondent No. 1 to resume his duty but Respondent No. 1 failed to adhere to any of the said notices.

4.1. He would fairly submit that only on 06.04.2018, Respondent No. 1 did tendered an apology to Petitioner No. 2- Headmaster of the School which is appended at page No. 67 of Petition. He would submit that according to Respondent No. 1 for the first time he informed the management of the school that he was suffering from piles and fissures for which he was taking treatment from Dr. Dilip Shamrao Manjrekar due to which he was unable to attend his duties and persuaded the management of Petitioners to consider his reply favourably.

4.2. He would submit that learned School Tribunal has not considered the fact that Respondent No. 1 did not serve and work in

the school during the period of his absence until the date of his reinstatement and therefore he is not entitled to any backwages as directed by the School Tribunal. He would submit that Respondent No. 1 has not stated that he was not gainfully employed so as to entitle him to receive full backwages under the impugned order. He would submit that the apology letter dated 06.04.2018 was replied to by Petitioner No. 2 stating that if Respondent No. 1 did not tender his apology, they will not allow him to resume duty in future. That letter dated 25.06.2018 is appended at page No. 74 of the Petition. Perusal of the said letter *prima facie* shows that Petitioners were ready and willing to accept Respondent No. 1 in their services and had called upon him to resume his duty.

4.3. In that view of the matter, he would submit that direction for payment of full backwages for the period from the date of termination till the date of reinstatement is harsh when Respondent No.1 on his own volition did not resume his duty with the Petitioners' Institution. Hence he would persuade the Court to consider the plea of Petitioners to the extent of rejecting grant of full backwages along with continuity in service to Respondent No. 1 and interfere with the impugned order dated 06.02.2024 on the above count.

5. ***PER CONTRA***, Mr. Khot, learned Advocate for Respondent No. 1, the principal contesting Respondent would submit that Respondent

No. 1 was employed with Petitioners' Institution for more than 20 years and sometime in January 2018, he suffered from a severe bout of illness due to piles and fissures for which he took medical treatment. In this regard, he would persuade the Court to consider the documentary evidence and material annexed to the Petition by Petitioners themselves from page No. 36 onwards till page No. 43.

5.1. He would submit that appended thereto are the medical records of Respondent No.1 beginning from 21.01.2018 and thereafter. He would submit that the blood report of Respondent No. 1 appended at page No. 38 would *prima facie* show that Respondent No. 1 had a very low count of Haemoglobin - 5.5 as against normal range of 13.5-18 for males due to which he became anaemic and physically very weak. That apart he would submit that on *prima facie* reading of the Haemoglobin report appended to the Petition, it would show that Respondent No. 1's RCB count, PCV count, MCV count, MCH count and MCHC count had all deteriorated to such a level that Petitioner was not in a normal state to perform his work.

5.2. He would submit that the record *prima facie* shows that due to the medical condition of fissure in Ano with spasm and external piles / hypertrophied anal papilla, bleeding / prolapsing internal piles, abscess / fissure in ano, Respondent No. 1 had to undergo sphincterolysis and barron band legation / selerotherapy in Tamboli Hospital, Taluka

Miraj, Sangli. He would submit that necessary medical papers are all appended to the Petition itself. That apart he would submit that it is Respondent No. 1's case that Petitioner No. 2 had given night duty to Respondent No. 1 despite his fragile medical condition leading to Respondent No. 1 not being able to resume his duty after 06.03.2018. He would submit that on 18.03.2018 Respondent No. 1 had given medical leave application which is denied by Petitioners. He would submit that despite the said Application having been given to Petitioners, they denied grant of medical leave to Respondent No. 1.

5.3. Next he would submit that on 06.03.2018, Petitioners did not allow Respondent No.1 to sign the muster despite he having attended duty on that date. He would submit that in this view of the matter when Respondent No. 1 was not allowed to resume his duty, he had no option than to file the Statutory Appeal before the learned School Tribunal for challenging the termination order passed by Petitioners dated 06.03.2018.

5.4. He would submit that the reason given by learned School Tribunal in the order dated 06.02.2024 is *prima facie* in relation to the facts of the present case and the provisions of the applicable law. He would submit that only after a thorough analysis of the facts and applicable law, the learned School Tribunal has given cogent reasons with respect to the action on the part of Petitioners of terminating

Respondent No.1's services as illegal and therefore no interference is called for in the impugned order dated 06.02.2024.

5.5. To the extent of submissions made by Mr. Pawar that Respondent No. 1 has not affirmatively stated that he was not in gainful employment during the period when he was ousted, he has drawn my attention to the averments made in the Application dated 07.05.2018 by Respondent No. 1 categorically stating that he was denied to sign the muster on 06.03.2018 for which he was asked not so attend the school and he has categorically stated therein that apart from the said job, there was no other means of livelihood for him to survive and take care of himself, his wife and two children. Hence, he would submit that the impugned order be upheld by the Court and the present Petition be dismissed.

6. I have heard both the learned Advocates appearing for the respective parties and with their able assistance perused the record of the case.

7. At the outset it is *prima facie* seen that Respondent No. 1 was duly appointed against the sanctioned post of Peon in the institution of Petitioners and he served the said institution for more than 24 years. He had joined the school as a Peon in the year 1994. Insofar as the present controversy is concerned, it is seen that admittedly

Respondent No. 1 was suffering from piles and fissures in respect of which he had to undergo operation resultantly leading to drop in his Haemoglobin count to 5.5 which is very low as compared to the normal range for males which is between 13.5 to 18. In that view of the matter, medical condition of Petitioner was such that he was unable to carry on his duty and he therefore filed Application seeking medical leave which was denied by the Petitioners. It is seen that Petitioners thereafter compelled Respondent No. 1 to do night duty. The material placed on record *prima facie* indicates that Respondent No. 1 attended the night duty intermittently between 01.03.2018 and 05.03.2018 despite his medical condition and treatment that he was undertaking. However because of the fact that Respondent No. 1 did not perform his entire duty for the first five days of March 2018, on 06.03.2018 when Respondent No. 1 came on duty and went to sign the muster roll, he was denied entry into the premises of Petitioners' School and was not allowed to sign the muster. Thereafter it is seen that Petitioners have given 4 show-cause-notices to Respondent No. 1 culminating with the notice dated 02.04.2018. However Respondent No. 1 immediately tendered his apology by letter dated 06.04.2018 which was not only acknowledged by Petitioners but in reply thereto by their letter dated 25.06.2018, Petitioner No. 2 - Headmaster informed Respondent No. 1 that he shall be allowed to resume duty

provided he would tender a written apology to the School. These facts have been considered by the learned School Tribunal while determining the illegal termination of Respondent No. 1 by Petitioners.

8. On perusal of the letter dated 25.06.2018 which is appended at page No. 74 of Petition, it is clearly seen that Petitioners informed Respondent No. 1 to attend services in the school subject to he tendering a written apology. The context of the said letter dated 25.06.2018 in Marathi language would *prima facie* shows that Petitioners already accepted resumption of Respondent No. 1 back in their school on he furnishing the written apology. This letter is addressed by the school to Respondent No.2 i.e. Education Officer (Secondary) Zilla Parishad, Kolhapur. This letter gives an impression that the school has taken Respondent No. 1 in its service and allowed him to resume duty but unfortunately that was not the case. The school did not allow Respondent No. 1 to attend his duty resultantly leading to filing of Appeal on 29.06.2018 before the learned School Tribunal. In that view of the matter, letter dated 25.06.2018 assumes significance as *prima facie* it appears that the school tried to mislead the Education Officer also.

9. From the record of the case, it is seen that the school while not allowing Respondent No. 1 to sign the muster roll and resume his duty has illegally terminated his services. Being defiant the school has

contested the proceedings before the Presiding Officer of the School Tribunal and in that view of the matter, when the decision has gone against the Petitioners, Petitioners now cannot come to this Court and raise a plea that Respondent No. 1 did not work during the intervening period and therefore he would not be entitled to backwages with all benefits. The reasons returned by the learned School Tribunal in its order dated 06.02.2024 while answering the issues framed therein are such that they would not call for any interference by this Court. Reasons given in paragraph Nos. 12 to 27 of the order dated 06.02.2024 are cogent and therefore upheld.

10. In support of his case, Mr. Pawar has referred to and relied upon the following decisions:-

- (i) *Osmanabad District Swatantra Sainik Samiti & Anr. v. Jagannath Pandurang Kshirsagar & Anr.*¹;
- (ii) *Loknete Aamdar Kailaswasi Mangalsing Nimji Rajput @ Thansing Jibhau Shikshan Prasarak Mandal, Sindkheda & Anr. v. Education Officer (Secondary), Zilla Parishad, Dhule & Ors.*²;
- (iii) *Allahabad Bank & Ors. v. Avtar Bhushan Bhartiya*³

10.1. I have perused the said decisions. *Prima facie* the facts in all the three cases are not close to or similar to the facts in the present case.

In fact, the facts of the present case are such that the School Tribunal

1 2016(3) Mh.L.J. 181

2 2016(2) Mh.L.J. 54

3 (2022) 13 SCC 202

has correctly interfered by passing the order dated 06.02.2024. It is seen that in the decisions which are relied upon, the termination of the concerned employees were either for misappropriation of money or foodgrains from the School or for long absenteeism without intimation or for disciplinary purpose wherein enquiry was held by the employer. Such is not the case before me insofar as the Respondent No.1 is concerned. In that view of the matter, reliance placed by Mr. Pawar on the above three citations do not apply to the facts and circumstances of the present case and are clearly distinguishable and are therefore not considered.

11. In view of the above observations and findings, impugned order dated 06.02.2024 is upheld and confirmed. Resultantly Petition fails.

12. Though Mr. Pawar persuades me to consider reducing the backwages to the extent of 50%, however in the facts of the case which are delineated herein above, I am not inclined to accept the said request either primarily on the ground that for no fault of Respondent No. 1, he was kept away from his duty when he could not remain present due to a medical condition which was informed to the School and because the School had claimed to have taken him back on duty. It is only when the School Tribunal passed the order dated 06.02.2024 after a hiatus of 5 and 1/2 years, Petitioners now reinstated the Respondent No. 1. *Prima facie* I find that Respondent No. 1 was never

at fault since his initial absence during the month of March 2018 was in view of his deteriorated health condition which ought to have been considered by the management of Petitioner school. Hence, the request made by Mr. Pawar to reduce the amount of backwages granted to Respondent No. 1 by the learned School Tribunal is rejected.

13. It is directed that in view of the advance age of Respondent No. 1 who is of 57 years, Petitioners are directed to ensure that the entire amount of full backwages along with all other benefits shall be paid over to him as directed by the impugned order along with simple interest at the rate of 12% thereon by Petitioners' within a period of (4) four weeks from today failing which Respondent No. 1 shall be at liberty to take out appropriate proceedings against the Petitioners. The headmaster of the School- Petitioner No.2 is specifically directed to take cognizance of this order which shall be informed to him by the Advocate for Petitioner and he shall take immediate steps for computation of the entire arrears amount within one week from today and process the same for making the payment to Respondent No.1 as directed herein above.

14. With the above directions, Petition is dismissed.

[MILIND N. JADHAV, J.]