

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12919 OF 2024

1. The Secretary Trustee,
Swami Vivekanand Shikshan
Samiti Through its Trustee
Mrs. Girija Sitaram Upadhyay
Shree Mahadev Upadhyay
Madhyamik Vidyalaya & Junior
College Arts/Commerce,
Hariyali Village, Vikhroli (E),
Mumbai – 400 083.

2. Shree Mahadev Upadhyay
Madhyamik Vidyalaya & Junior
College Arts/Commerce, through
Its Principal Mrs. Kanchan Bharat
Dubey Hariyali Village, Vikhroli (E),
Mumbai – 400 083.

} ...*Petitioners*

-Versus-

1. Mrs. Pushpa Prakash Bachhav
Aged about 51 years, Ex.Teacher
Shree Mahadev Upadhyay Madhyamik
Vidyalaya & Junior College Arts & Commerce,
R/at. Room No.103, Ambika Nagar,
Dhanraj Building, Pawar Complex, Belavali,
Badlapur (W) – 421 503.

2. The Education Inspector,
Education Department, Brihanmumbai
North Zone, New Administrative Building
No.2, 2nd Floor R. C. Marg, Chembur (E),
Mumbai – 400 071.

} ...*Respondents*

Mr. Arvind Ganpatlal Kothari, *for the Petitioners.*

Mr. J. H. Ramugade *with Mr. P. G. Chandeliya, for Respondent No.1.*

Ms. Tanu N. Bhatia, *AGP for Respondent No.2-State.*

CORAM : SANDEEP V. MARNE, J.

Judgment Reserved On : 8 April 2025.

Judgment Pronounced On : 16 April 2025.

JUDGMENT :

1) **Rule.** Rule is made returnable forthwith. With the consent of learned counsel appearing for rival parties, petition is taken up for final hearing and disposal.

2) The Petitioner-Management has filed this petition challenging the judgment and order dated 18 July 2024 passed by the Presiding Officer, School Tribunal, Mumbai allowing Appeal No.64/2023 filed by the First Respondent and setting aside the order of her termination dated 13 June 2023.

3) Petitioner No.1 is a Trust registered under the provisions of Maharashtra Public Trusts Act, 1950. It owns and manages Petitioner No.2-School, which is an aided school. Respondent No.1 claimed that she belongs to Hindu Mahadeo Koli (Scheduled Tribe) and on the basis of her tribe claim, she was appointed as Shikshan Sevak on 1 August 2002 in the Petitioner No.2-School against the post reserved for Scheduled Tribe category.

4) Respondent No.2 granted approval to the appointment of the First Respondent by order dated 1 January 2003 and the approval was also against the post reserved for Scheduled Tribe category. Petitioners issued letter dated 20 September 2013 to the Caste Scrutiny Committee for verification of Caste Certificate submitted by the First Respondent in view of G.R. dated 18 May 2013 and also in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (**Act of 2000**) and the Rules made thereunder. By order dated 30 June 2015, the Scrutiny Committee held that the First Respondent had not obtained proper Caste Certificate and accordingly cancelled the Caste Certificate of 1982, but granted liberty to her to obtain fresh Caste Certificate and submit the same to the Scrutiny Committee for verification. According to the Petitioners, the order dated 30 June 2015 was suppressed by the First Respondent.

5) It is also the case of the Petitioners that the First Respondent was habitually remaining absent. She also filed FIR on 10 April 2023 against the Ex-Principal and teacher falsely accusing them of abusing her with reference to her caste. She was issued a show cause notice dated 24 June 2022. By letter dated 13 June 2023, the Management terminated her services on the grounds of (i) failure to submit Caste Validity Certificate, (ii) absenteeism and (iii) lodging of false FIR by her. Respondent No.1 filed Appeal No.64/2023 before the School Tribunal, Mumbai challenging the termination order dated 13 June 2023. The Appeal was resisted by the Petitioners by filing reply. By judgment and order dated 18 July 2024, the School Tribunal has

allowed the Appeal and has set aside the termination order dated 13 June 2023 with further directions to the Petitioners to reinstate the First Respondent on the post of Assistant Teacher w.e.f. 13 June 2023 with all consequential benefits. The Petitioner-Management is aggrieved by the judgment and order dated 18 July 2024 passed by the School Tribunal and has accordingly filed the present petition.

6) I have heard Mr. Kothari, the learned counsel appearing for the Petitioner-Management, who would submit that the School Tribunal has erred in setting aside the termination of the first Respondent whose appointment itself was void. That she was appointed against the post reserved for ST category and despite repeated reminders, she failed to submit Caste Validity Certificate. He would submit that under the provisions of the Act of 2000 and the Rules made thereunder, it is mandatory for Respondent No.1 to produce Caste Validity Certificate. That under the GR dated 18 May 2013, her services are liable to be terminated on failure to submit Caste Validity Certificate within reasonable time. That the caste claim of the First Respondent was actually rejected by the Scrutiny Committee by order dated 30 June 2015, which order was suppressed by her. He would submit that her claim of belonging to ST category was the only reason why the First Respondent was appointed in the services of the School. That once the caste claim is not validated, termination of services is imminent. He would rely upon judgment of the Apex Court in Chairman and Managing Director FCI and Ors. Versus. Jagdish Balaram Bahira and Ors.¹

¹ Civil Appeal No. 8928 of 2015 decided on 6 July 2017.

7) Mr. Kothari would submit that the Respondent was otherwise remaining absent from services frequently and had also lodged false FIR against the Ex-Principal and Teacher under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. That she had failed to submit Caste Validity Certificate to prove her caste claim and on the other hand, was embroiling other teaching staff in false cases under the Atrocities Act. That the Management therefore rightly terminated her services. Mr. Kothari would submit that since the misconduct is otherwise admitted, there was no necessity of holding any enquiry.

8) Without prejudice to the above submissions, Mr. Kothari would submit that the Tribunal has grossly erred in granting all consequential benefits to the First Respondent as a result of setting aside her termination. That the First Respondent did not plead or prove that she was not gainfully employed during the period of her termination. That in absence of pleading and proof that the employee was not gainfully employed, it is not lawful for the Courts or Tribunals to award backwages. In support of his contentions, he would rely upon following judgments of the Apex Court in the case of Kendriya Vidyalaya Sangathan and another Versus. S. C. Sharma², P. Karupaiah (Dead) through Legal Representatives Versus. General Manager, Thruuvalluvar Transport Corporation Limited³ and Ramesh Chand Versus. Management of Delhi Transport Corporation⁴. He would pray for setting aside the order of the School Tribunal.

² (2005) 2 SCC 363

³ (2018) 12 SCC 663

⁴ Civil Appeal No. 4208 of 2023 decided on 5 July 2023.

9) *Per-contra*, Mr. Ramugade, the learned counsel appearing for Respondent No.1 would oppose the petition. He would submit that Respondent No.1 was unceremoniously thrown out of service without conducting any enquiry. That the termination was premised on allegations of misconduct of remaining unauthorisedly absent and lodging of FIR. That mere lodging of an FIR is not a misconduct. That the allegation of absenteeism needs to be proved in an enquiry, which was never held in the present case.

10) So far as the allegation of non-submission of Caste Validity Certificate is concerned, she would submit that the First Respondent was working with the school since the year 2002 and it was erroneous on the part of the School Management to terminate her services after 21 long years on the pretext of non-submission of Caste Validity Certificate. That the pretext of non-issuance and non-submission of Caste Validity Certificate was deliberately used because she had made a complaint to the Education Officer, who had sent a notice to her. In any case, she would submit that the First Respondent has now been issued Caste Validity Certificate on 7 June 2023. It is now established that Respondent No.1 belongs to ST category. Her termination is thus illegal and the Tribunal has rightly set aside the same. He would submit that once the termination is found to be illegal, consequential benefits of backwages must follow. He would accordingly pray for dismissal of the petition.

11) Rival contentions of the parties now fall for my consideration.

12) The Petitioner-Management has terminated the services of the First Respondent on three grounds of (i) failure to submit Caste Validity Certificate as per GR dated 18 May 2013, (ii) absenteeism and (iii) lodging of false FIR without following the guidelines under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

13) So far as the allegations of absenteeism and lodging of false FIR are concerned, admittedly no enquiry has been conducted against the First Respondent. Remaining unauthorisedly absent from duties by a permanent employee constitutes misconduct, which is required to be proved by conduct of departmental enquiry. In the present case, no enquiry has been conducted. Respondent No.1 has never admitted the alleged misconduct of absenteeism. Therefore, reliance by Mr. Kothari on judgments of Himachal Pradesh Road Transport Corporation and another Versus. Hukum Chand⁵, Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution Versus. Educational Appellate Tribunal and Another⁶, Biecco Lawrie Limited and Another Versus. State of West Bengal and Another⁷ and The Management of Messrs K.G. Khosla & Co. (P) Ltd. Versus. Ved Raj Bhalla⁸ is clearly misplaced. This is not a case involving admitted misconduct of absenteeism. First Respondent never admitted falsity in FIR lodged by her. Therefore it cannot be contended that the first Respondent admitted the allegations levelled against her. Therefore, her services could not have been terminated

⁵ (2009) 11 SCC 222

⁶ (1999) 7 SCC 332

⁷ (2009) 10 SCC 32

⁸ 1972 LIC 1475

without proving the misconduct by holding a departmental enquiry. The termination is therefore bad for non-holding of enquiry.

14) This leads to the main ground of termination i.e. failure to submit Caste Validity Certificate. There is no dispute to the position that the First Respondent was appointed against the post reserved for ST category. At the time of her appointment, she produced Caste Validity Certificate issued in the year 1982 certifying that she belongs to 'Hindu Mahadeo Koli' caste. After issuance of the GR dated 18 May 2013, it appears that the Petitioner-Management forwarded the case of the First Respondent for validity of her caste claim by letter dated 30 September 2013. The Caste Scrutiny Committee passed order dated 30 June 2015 holding that the Caste Certificate issued to the First Respondent was in the name of 'Mahadeo Koli', which was not in accordance as the caste appearing in Scheduled Tribes List, in which the included entry is 'Koli Mahadeo'. The Scrutiny Committee therefore confiscated First Respondent's Caste Validity Certificate of 1982 and cancelled the same. However liberty was granted to her to obtain fresh Caste Validity Certificate and submit the same for verification. It is Petitioner's case that the First Respondent suppressed order of the Scrutiny Committee dated 30 June 2015. Since the First Respondent failed to submit the Caste Validity Certificate, her services have been terminated by letter dated 13 June 2023.

15) Under the provisions of Section 10 of the Act of 2000, the employer is entitled to discharge the employee from services, who is appointed against a reserved post if the employee produces a false caste certificate. In the present case, the Caste Certificate of the First

Respondent issued in the year 1982 has been cancelled and confiscated by the Scrutiny Committee by order dated 30 June 2015. Since the very Caste Certificate of the First Respondent is cancelled, no serious flaw can be found in action of the Petitioner-School Management in terminating her services. Though the Scrutiny Committee had granted liberty to the First Respondent to obtain fresh Caste Certificate of 'Koli Mahadeo' and to submit the same for scrutiny, it appears that the First Respondent failed to do so. Till she was terminated, she neither secured fresh Caste Certificate nor submitted the same for validity. The Apex Court in *Chairman and Managing Director FCI and Ors. Versus. Jagdish Balaram Bahira and Ors.* (supra) has held that employer is entitled to terminate the services of employee appointed against reserved post once the caste claim is found to be false. In that sense, the services of the Respondent became liable for termination once it was discovered that the Caste Certificate issued to her in the year 1982 was cancelled and confiscated by the Committee by order dated 30 June 2015.

16) However, it appears that the First Respondent availed the liberty granted by the Scrutiny Committee in order dated 30 June 2015 belatedly and secured a fresh Caste Certificate dated 6 June 2023 certifying that she belongs to 'Koli Mahadeo' tribe. The Certificate is however obtained few days before termination of her services. The termination happened on 13 June 2023, whereas fresh caste certificate was obtained on 6 June 2023. The Certificate was then submitted for validity to the Scrutiny Committee and by order dated 9 October 2023, the Scrutiny Committee issued Certificate of Validity in respect of the caste claim dated 6 June 2023. The AGP was directed to take

instructions about the authenticity of Certificate of Validity and the Sub-Divisional Officer, Malegaon has certified vide letter dated 11 March 2025 that the Caste Validity Certificate is genuine. Thus, as of today the caste claim of the First Respondent has been upheld and it is proved that she belongs to 'Koli Mahadeo' Scheduled Tribe. Therefore, it can no longer be contended that her initial appointment is *ab initio* void. In that sense, even the first ground of her termination of failure to submit Caste Validity Certificate, no longer survives.

17) Thus, the termination of the First Respondent on three grounds of failure to submit Caste Validity Certificate, absenteeism and lodging of FIR is found to be erroneous. The First Respondent is thus entitled to the relief of reinstatement.

18) The next issue for consideration is whether the First Respondent is entitled to backwages while setting aside the termination order dated 13 June 2023. As observed above, till her services were terminated on 13 June 2023, the First Respondent had not produced the Caste Validity Certificate. She was granted liberty to obtain fresh Caste Certificate and to submit the same for validity on 30 June 2015. For eight long years, she did not take any steps for procuring Caste Certificate and get the same validated. In that view of the matter, it cannot be said that the Petitioner-employer committed a gross error in terminating her services. The employer has terminated the services under a bonafide belief that the First Respondent does not belong to scheduled tribe category. The Petitioners waited for 10 long years for the First Respondent to prove her caste claim. After waiting for 10 years, ultimate step of termination was required to be taken. It is only after the First Respondent was terminated that she thought of

securing a Certificate of Validity dated 6 June 2023. In my view, the First Respondent invited her termination on account of her own negligent conduct in not securing fresh Caste Certificate for over 8 long years and getting the same validated despite the liberty granted by the Scrutiny Committee. Considering these peculiar facts and circumstances of the case, I am of the view that the Management cannot be saddled with liability to pay 100% backwages to the First Respondent due to erroneous termination effected on 13 June 2023. She would get reinstatement with continuity of service.

19) Mr. Kothari has also contended that the First Respondent never pleaded absence of gainful employment nor has proved the same. His reliance on the judgment of the Apex Court in *Kendriya Vidyalaya Sangathan* (supra), *P. Karupiah* (supra) and *Ramesh Chand* (supra) is apposite.

20) In my view therefore award of 100% backwages is unwarranted in peculiar facts and circumstances of the present case. Instead, award of 25% backwages from the date of her termination till the date of her reinstatement would meet the ends of justice. The first Respondent is otherwise held to be entitled to continuity of service and would accordingly earn increments during the intervening period on notional basis. Continuity would also ensure that there is no break in service.

21) I accordingly proceed to pass the following order :

- (i) Judgment and order dated 18 July 2024 passed by the School Tribunal in Appeal No.64/2023 is modified only to

the limited extent of award of consequential benefits and backwages.

- (ii) Petitioner-Management shall reinstate the First Respondent in service within four weeks.
- (iii) The Petitioner-Management shall award 25% backwages to the First Respondent from 13 June 2023 till the date of her reinstatement, payment of which shall be made to the First Respondent within 8 weeks.
- (iv) The entire service from 13 June 2023 till the date of reinstatement shall be treated as continuous for all purposes such as eligibility, seniority, pay fixation, pension etc.

22) With the above directions, the petition is **partly allowed**. Rule is made partly absolute. There shall be no order as to costs.

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[SANDEEP V. MARNE, J.]