



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

WRIT PETITION NO. 3196/2021

(PRATIBHA SHIKSHAN PRASARAK MANDAL, AKOLA & ANOTHER **VERSUS** THE STATE OF
MAHARASHTRA & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri B.G. Kulkarni, counsel for the petitioners.
Shri A.J. Gohokar, Assistant Government Pleader for the respondent nos.1 and 2.
Shri S.S. Ghate, counsel for the respondent no.3.
Shri Raju Kadu, counsel for the respondent no.4.

CORAM : NITIN W. SAMBRE AND VRUSHALI V. JOSHI, JJ.

DATE : MARCH 27, 2025

P. C.

Heard the learned counsel for the parties.

The petitioner no.1, a society registered under the Bombay Public Trust, 1950, is seeking directions to the respondent nos.1 and 2 to release the salary receivable by the respondent no.4 from the date of termination i.e. November 30, 2015 till his absorption as a surplus employee on March 14, 2017 in view of the order passed by the University and College Tribunal on December 05, 2016. Further, a prayer is made for issuance of directions to the Joint Director, Higher and Technical Education, Amravati to sanction and release 50% of the salary payable to the respondent no.4 for the period from November 30, 2015 to March 14, 2017.

2. The facts necessary for deciding the writ petition are as under :-

The petitioner no.2-Madhukarrao Pawar Arts College, Murtizapur (for short, 'the College') and one Gulamnabi Azad Arts, Commerce College, Barshitakli is managed by the petitioner no.1-Pratibha Shikshan Prasarak Mandal (for short, 'the Society'). In view of the sanctioned strength of the teachers after following due process, the respondent no.4 was issued an appointment order on April 10, 2012 stating that such appointment is until further orders which was honoured by the respondent no.4 by joining his duties on the same date. The appointment of the respondent no.4 was from VJ/NT category. Accordingly, the respondent no.4 was shown to be at Serial Number 48 in the common Seniority List of both the colleges from NT category. It appears that the services of some of the employees including the respondent no.4 came to be terminated. Amongst other, one Preeti Bansidhar Ingle, who was similarly placed like that of the respondent no.4, preferred Appeal No.A-1/2013 against the petitioner no.1-Society before the University and College Tribunal, Nagpur. The Tribunal allowed the said appeal *vide* the judgment dated December 09, 2015 thereby setting aside the termination order directing the payment of full backwages. It appears that thereafter, the petitioners served an order of termination to the respondent no.4, who in turn preferred an appeal being A-3/2016 before the University and College Tribunal, Nagpur. The said appeal came to be allowed whereby the termination of the respondent no.4 was held to be illegal with direction to treat him to be deemed reinstated on the post of Assistant Professor in Music. Since there was no post vacant, the respondent no.4 was directed to be declared surplus and was ordered to be absorbed. It is further claimed that the respondent no.4 would be entitled for 50%

back wages. Consequent upon the aforesaid order of the Tribunal, the respondent no.4 was directed to be absorbed *vide* order dated March 09, 2017 passed by the Joint Director of Higher Education. The petitioners accordingly sought release of the salary of the respondent no.4 for the period from November 30, 2015 to March 13, 2017.

3. Shri B.G. Kulkarni, learned counsel for the petitioners would invite the attention of this Court to the appointment order, the order of approval and the fact that the termination was pursuant to reduction in the number of sanctioned posts. According to him, even if the Tribunal had ordered the payment of back wages to the extent of 50%, the Court is required to be sensitive to the fact that such payment is not required to be paid by the petitioners as even otherwise the respondent no.4 would have been declared surplus on the date of termination of the respondent no.4. According to him, the petitioners cannot be blamed for non-payment of salary of the respondent no.4 as his appointment was on the sanctioned post and in such an eventuality, even if he would not have been terminated and he would be declared surplus, the salary of the respondent no.4 should have been burdened on the respondent-State Authorities in view of the position of law. He would further urge that in such an eventuality, it is the responsibility of the respondent-State Authorities to pay the salary of the respondent no.4 and the same cannot be claimed from the petitioner no.1-Society.

4. As against above, the counsel for the respondents would submit that it is the responsibility of the petitioners to pay the salary of the respondent no.4 for the period of termination till he was declared

surplus in view of the illegal act on their part. Once the services of the respondent no.4 were approved, the procedure that the petitioners should have adopted is the submission of the proposal for declaring the respondent no.4 surplus which they have failed to do. It is claimed that instead of taking recourse to the aforesaid proposal, the petitioners have proceeded to terminate the services of the respondent no.4, which order of termination was set aside by the Tribunal in its judgment. That being so, it is claimed that the writ petition is liable to be dismissed.

5. We have considered the rival submissions.

6. It is not in dispute that the appointment of the respondent no.4 was initially on April 10, 2012 on a clear vacancy that too after following the due process of law. The appointment was from the reserved category and the services of the respondent no.4 were accordingly approved. After the approval, it appears that the salary of the respondent no.4 was paid from the State Exchequer. If there was a reduction in the sanctioned strength of the teachers, the option left with the petitioners in such an eventuality was to submit a proposal to the respondent-State Authorities seeking declaration of the services of the respondent no.4 to be surplus which they have failed to do. Rather, they appear to have taken recourse to an unknown procedure of terminating the services of the respondent no.4 and that too without following the due process of law.

7. The respondent no.4 by that time had secured the permanency in the services. As a sequel of above, he was constrained to approach the Tribunal and the Tribunal in Appeal No.A-3/2016 has proceeded to allow the same with following observations :-

“11. I have already recorded the finding that the services of the appellant were terminated improperly and the finding would definitely lead to the order of reinstatement of the appellant, but there is a constraint. There are only 8 posts and all 8 posts are filled in and there is no post available to the appellant for reinstatement. There cannot be two persons on the same post. The Tribunal has no power of creating any supernumerary post at all. In view of this, it can be directed that the appellant should be deemed to be reinstated on the post of Assistant Professor in Music in the college of the respondent no.1. Since the college has declared the appellant as surplus, it is for the Joint Director and University to take necessary steps for absorption of the appellant, the appellant being surplus. The respondents no.1, 2, 4 and 5 shall take steps for declaration of appellant as surplus and thereafter for absorption as and when a vacancy may arise, as per G.R's. that may have been issued from time to time. In the circumstances, the appeal is partly allowed. It is ordered that the impugned termination order of the appellant is quashed and set aside. However, instead of reinstatement he is directed to be deemed reinstated with further direction to respondents no.1, 2, 4 and 5 to proceed with his case for his posting elsewhere as surplus teacher as per the G.R's. holding the field. The appellant shall be entitled to 50% of the back wages. No order as to costs.”

Consequent upon abovereferred directions, the respondent-Joint Director has absorbed the services of the respondent no.4 *vide* order dated March 09, 2017 in another aided college.

8. The fact remains that since the termination of the respondent no.4 by the petitioners was already held to be illegal, it is rightly pointed out by the Assistant Government Pleader and the counsel for the respondent no.4 that the responsibility to pay his salary was that of the petitioners only and not of the respondent-State Authorities. Appropriate support can be drawn in such an eventuality from

paragraph 10 of the Apex Court judgment in *Educational Society Tumsar & Others Versus State of Maharashtra & Others* [2016(2) ALL MR 947 (S.C.)], which reads thus :-

“10. Insofar as present case is concerned, we are of the opinion that it is not necessary to go into the issue as to whether Government Resolution dated 14.03.1978 is no more valid or whether provisions of the Act or Rules are contrary to the aforesaid Resolution and, therefore, would govern the field. For the reasons recorded hereinafter, we find that the manner in which action was taken by the appellants against respondent No.4 and the findings of the Tribunal thereupon, it is the appellants who are obligated to pay the back wages to respondent No.4. We find that in the peculiar facts of the present case, the School Tribunal consciously put the burden of paying back wages of respondent No.4 upon the appellant school authorities. It may be worth noting that an aided school is bound to follow the dictat of the relevant provisions of applicable rules etc. for conduct of Departmental enquiries and termination of services of an employee present thereto. In the instant case, the concerned rules are Maharashtra Employees Private School Rules, 1981 (hereinafter referred to as the 'Rules') and the concerned provisions applicable were the Act, 1977 (which came into force from 20.03.1978, as noted above). The School Tribunal while holding the termination to be illegal gave a specific finding to the effect that appellant No.2, who initiated the enquiry, was not lawfully empowered to do so without the decision of the Enquiry Committee being supported by the Managing Committee. Issues No.1 and 2 framed in this behalf were specifically decided against the appellants. It was further found that no Enquiry Committee as per the Rules was constituted. The findings of the School Tribunal are also to the effect that the mandatory provisions of law were not followed. It is, therefore, a case where appellants acted without jurisdiction and without adhering to the provisions of the Act and the Rules. Had the provisions of Rules been followed, that would have initiated participation of the representatives of the Government in the decision making process right from decision to initiate the enquiry to the dismissal of

respondent No.4. This would have led to a situation where the State Government/Education Officer would have given its imprimatur to the entire proceedings including order of termination of respondent No.4. Had termination order been set aside under such circumstances, it would have amounted to setting aside the order of the Government making the Government responsible for payment of back wages, as the act of termination, found ultimately illegal, would have been with the blessings of the Government/Education Officer. However, in the present case, what is found is that the State Government/ Education Officer had no role to play in passing the order of termination and the school authorities acted without jurisdiction thereby transgressing their powers to terminate. Specific findings to this effect are recorded by the School Tribunal. For these reasons, even when Education Officer was impleaded as a respondent in the appeal filed by respondent No.4, the School Tribunal consciously did not give any direction for payment of these back wages by the Education Department.”

9. The liability was determined against the petitioners in view of the fact that the termination of the respondent no.4 was an illegal act on their part and no role could have been attributed to any of the respondents. In this view of the matter, the submissions made by the counsel for the petitioners that since the respondent-State Authorities had approved the services of the respondent no.4 in the petitioner no.2-College managed by the petitioner no.1-Society, they are liable to pay the salary of the respondent no.4 for the period mentioned in the prayer clause, cannot be accepted. The petitioners have acted illegally in the matter of termination of the services of the respondent no.4 and as such they themselves need to be made liable for payment of such salary to the respondent no.4.

10. That being so, in our opinion, no case is made out for causing interference in the extraordinary writ jurisdiction. The writ petition thus fails and stands dismissed. No costs.

(VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

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