Chhatrpati Shahu Shikshan Sanstha and Others Vs Presiding Officer, School Tribunal Amravati and Aurangabad Division and Others

Writ Petition No. 3309 of 1994

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Jan. 19, 2007

Acts Referred:
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 â€" Section 9

Citation: (2007) 3 BomCR 164 : (2007) 3 MhLj 414

Hon'ble Judges: B.P. Dharmadhikari, J

Bench: Single Bench

Advocate: S.P. Palshikar, for the Appellant; AGP for Respondent Nos. 1, 3 and 4 and Qazi, for the Respondent

Judgement

B.P. Dharmadhikari, J.
By this Writ Petition, the petitioners/employers challenged the judgment dated 17-2-1992 delivered by the

respondent No. 1 School Tribunal. The respondent No. 2 Employee was initially appointed in the year 1985-86 and his appointment was

approved by the Education Officer on 24-9-1985. In 1986-87 the respondent No. 2 was appointed in Junior College to teach Mathematics and in

1987-88 he was again given fresh appointment to teach Mathematics to junior college. It appears that the Deputy Director of Education however,

pointed out that on 24-8-1987 that the post occupied by the respondent No. 2 was reserved for backward class candidate and hence he was

given approval only for particular session i.e. 1986-87 and 1987-88. The approval for the session 1987-88 was given by communication dated

15-3-1988. In view of this approval the petitioners terminated the respondent No. 2 by order dated 2-4-1988. This was challenged by the

respondent No. 2 by filing appeal on 7-7-1989. There was delay in filing appeal and said delay has been condoned by the School Tribunal and

thereafter, the appeal came to be registered on 30-1-1990. The School Tribunal has allowed that appeal on 17-2-1992 and directed the

petitioners to reinstate the respondent No. 2 as probationer within 40 days and also directed them to pay him pay and allowances from the date of

termination till his reinstatement within a period of three months. The respondent No. 2 however, did not report for duty and he forwarded a

communication dated 13-5-1992 informing that he is in service of Municipal Council, Khamgaon as Administrative Officer (Education), from 13-

7-1990. He states that he wanted to continue as Administrative Officer and was not interested in joining the duties with the petitioners. He further

requested the management to finalize and arrange for payment of arrears of his salary from 1-5-1988 till 12-7-1990. The management thereafter

forwarded a letter to him and informed him to comply with the judgment of the School Tribunal and report for duties immediately. A copy of this

communication was also forwarded to the Deputy Director of Education and Education Officer. This communication has been replied to by the

respondent No. 2 and in the meanwhile on 1-12-1992 the Deputy Director of Education issued letter to petitioners to arrange for payment of

arrears of salary to respondent No. 2. There was some correspondence between the parties in this respect and ultimately on 14-10-1993 the

Education Officer (Secondary) i.e. the respondent No. 3 before this Court deducted amount of Rs. 78,988/- from the giants payable to the

petitioner and paid the said amount to the respondent No. 2. The petitioners have approached this Court in this background, contending that there

could not have been any such deduction and that the respondent No. 2 was not eligible to claim any arrears.

2. I have heard Advocate S.P. Palshikar, for petitioners, Advocate Qazi, for respondent No. 2 and learned AGP for respondent Nos. 1, 3 and 4.

3. Advocate Palshikar, has argued that the School Tribunal directed reinstatement in favour of the respondent No. 2 and ordered management to

pay him his arrears of salary from the date of termination till his reinstatement. He contends that as the respondent No. 2 never reported for work

and never joined the duties, the judgment of the School Tribunal did not come into force at all and the respondent No. 2 therefore is not eligible to

claim any amount on account of arrears of salary or backwages. He invites attention to the letter dt. 13-5-1992 forwarded by the respondent No.

2 in which the respondent No. 2 has expressly stated that he has been appointed as Administrative Officer from 13-7-1990 and that he was not

interested in joining back the services with the petitioner. He contends that as the respondent No. 2 never joined, there was no question of

reinstatement and therefore, there is no question of paying any arrears from the date of termination till reinstatement. Though this position was

pointed out to respondent Nos. 2 and 3, they have unilaterally effected the deductions of huge amount payable to the petitioner and the same had

been made over to the respondent No. 2 illegally. He therefore states that the said amount should be directed to be refunded to the present

petitioners by quashing and setting aside the communication dated 14-10-1993. He also states that the judgment dated 17-2-1992 may also be

quashed and set aside.

4. Advocate Qazi, appearing for respondent No. 2 states that the respondent No. 2 in his communication dt. 13-5-1992 has clearly stated that he

claimed arrears of wages from the date of termination i.e. 1-5-1988 till 12-7-1990. He contends that the respondent No. 2 got job on 13-7-1990

and hence wages from 13-7-1990 have not been claimed from the petitioners. He further invites attention to the order passed by the School

Tribunal to state that the School Tribunal has given direction to reinstate the present respondent No. 2 and also there is direction to pay him wages.

He therefore argues that in such circumstances there is no question of any recovery of wages from respondent No. 2.

5. It is also argued by the learned Counsel for petitioner that the School Tribunal was approached after delay of about 14 months and the said

delay has not been looked into by the School Tribunal while granting relief of backwages to the respondent No. 2. Advocate Qazi, has contended

that as the delay was intact condoned and the said order condoning the delay has not been challenged the argument is not legally unsustainable.

6. Learned AGP for respondent Nos. 1, 3 and 4 has contended that there was a direction in favour of respondent No. 2 by the School Tribunal

and School Tribunal has specifically given reasonable time of three months to petitioners to comply with it and failing such compliance, the

government was requested to deduct the amount from the amounts due and payable to the petitioners and to make it over to the respondent No.

2. He contends that accordingly the respondent No. 3 and 4 have acted in terms of the said judgment because the said judgment was never stayed

by any competent Court till 14-10-1993.

7. From the facts and arguments, it is apparent that the School Tribunal has granted relief of backwages to respondent No. 2 only because his

termination is found to be unsustainable. There is no separate discussion undertaken by the School Tribunal to find out whether the respondent No.

2 was entitled to claim backwages or not. The grant of backwages is therefore a mechanical act on the part of the School Tribunal and the same

cannot be sustained in view of the judgment delivered by the Hon"ble Apex Court in the case of U.P. State Brassware Corpn. Ltd. and Another

Vs. Udai Narain Pandey, and Haryana State Electronic Corporation v. Mamni 2006(II) CLR 1047.

8. In these circumstances, when the facts relevant for grant of backwages are looked into it is noticed that the respondent No. 2 has not

approached the School Tribunal within a period of 30 days as prescribed by Section 9 of the Maharashtra Employees of Private Schools

(Conditions of Service) Regulation Act, 1977. He has been terminated from 1-5-1988 as per the order dated 2-4-1988 and he filed appeal along

with application for condonation of delay some time in July, 1989. From record it appears that the School Tribunal condoned the delay and appeal

was directed to be registered on 13-1-1990, thus the appeal preferred u/s 9 has been registered for the first time on 13-1-1990. It is therefore

clear that for delay from 1-5-1988 till the filing of appeal i.e. July, 1989, the respondent No. 2 cannot blame the petitioner management. Not only

this but for subsequent period taken by the School Tribunal for conducting the proceedings which resulted in condoning the delay, again the

petitioner management cannot be blamed and the responsibility to pay wages for said period cannot be thrown upon the petitioners.

9. The respondent No. 2 got employment on 13-7-1990 i.e. within the period of six months from the date of registration of his appeal memo. It is

therefore apparent that only question before this Court is of grant of wages to respondent No. 2 for the period from the date on which appeal has

been registered till 13-7-1990 i.e. the date on which the respondent No. 2 got employment. Again as already mentioned above, there is nothing in

the judgment of the School Tribunal to record a finding that respondent No. 2 was without any source of income during this period. The burden to

show that he could not procure any alternate employment during this period was upon the respondent No. 2 and the respondent No. 2 has not

discharged it while conducting the appeal proceedings before the School Tribunal.

10. The School Tribunal has expressly directed the petitioners to reinstate the respondent No. 2 and to pay him wages for the period from the date

of his termination till his reinstatement. In order to claim wages, it was necessary for respondent No. 2 to report for duty. The respondent No. 2

has not reported for duties at all. On 13-7-1990 he got employment and he did not bring this fact to the notice of the School Tribunal. He could

have brought this fact to the notice of School Tribunal and could have further restricted consideration of his appeal only to his entitlement to claim

backwages from the date of his termination till 13-7-1990. However, for reasons best known to him, the respondent No. 2 did not choose this

course of action. For the first time on 13-5-1992 he communicated to petitioner management that he was not interested in joining, employment. It

is therefore, clear that the respondent No. 2 has not reported for duty even technically for a single day. In such circumstances, the judgment which

directs management to pay him wages for the period from date of his termination till date of his reinstatement has not come into force at all because

the respondent No. 2 has not reported for duty. In the circumstances, it is apparent that the respondent No. 2 could not have claimed any wages

for the entire period from 30-1-1990 to 13-7-1990.

11. Insofar as the role played by the respondent Nos. 3 and 4 is concerned, the respondent Nos. 3 and 4 have merely obeyed the directions

issued by the School Tribunal. The directions issued by the School Tribunal are dated 17-2-1993 and the respondent Nos. 3 and 4 have taken

action after about 20 months thereafter. It is to be noted that the petitioners also did not choose to challenge the judgment of the School Tribunal

till such action was taken by the respondent Nos. 3 and 4. The petition before this Court has been filed on 13-4-1994. It is therefore clear that the

respondent Nos. 3 and 4 cannot be blamed for effecting recovery from the grants payable to the petitioner in obedience to the directions of School

Tribunal. The action of respondent Nos. 3 and 4, challenged before this Court cannot be faulted with.

12. In the circumstances, it also becomes clear that though the respondent No. 2 was not eligible to claim salary, he has received salary for period

from the date of his termination onwards without joining duties of the petitioner. Advocate Palshikar, has contended that amount of Rs. 78988/-

paid by the respondent No. 4 to respondent No. 2 is till the date of judgment of the School Tribunal. However, I do not find any such material on

record. There is no return filed by the respondent Nos. 3 and 4 to point out period for which they have paid salary to the respondent No. 2. On

the contrary there is communication from respondent No. 2 in which he has stated that he is claiming salary only upto 12-7-1990.

13. In this situation and in view of the subsequent facts which have been brought on record, and which were not pointed out to the School Tribunal

by the respondent No. 2, the judgment of School Tribunal dated 17-2-1992 is partially modified. The declaration in relation to the termination of

service of respondent No. 2 as illegal is maintained as it is. The relief of reinstatement given by the School Tribunal along with direction to pay to

petitioner wages from the date of his termination till his reinstatement is hereby quashed and set aside. The order of School Tribunal is modified

accordingly. In view of this, the subsequent order dated 14-10-1993 is also quashed and set aside. But the petitioners are free to recover the

amount of Rs. 78988/- from the respondent No. 2 only in accordance with law.

14. Writ Petition is thus partly allowed. Rule is made absolute in the aforesaid terms with no order as to cost.