

(2003) 04 BOM CK 0119

Bombay High Court

Case No: Letters Patent Appeal No. 228 of 2002 (W.P. No. 3720/97)

Shri S.L. Kalvitkar

APPELLANT

Vs

The Secretary/Chairman,
Mahatma Phule Education
Society, The Headmaster,
Mahatma Phule Technical High
School and Junior Vocational
College, The Deputy Director of
Vocational Education and The
State of Maharashtra

RESPONDENT

Date of Decision: April 7, 2003

Citation: (2003) 4 ALLMR 915 : (2003) 6 BomCR 141

Hon'ble Judges: C.K. Thakker, C.J; D.Y. Chandrachud, J

Bench: Division Bench

Advocate: R.N. Sanghavi and Javeed Hussein, for the Appellant; Shashi Jain and Desai, for the Respondent

Final Decision: Allowed

Judgement

C.K. THAKKER, C.J.

Admitted, Mr. Shashi Jain appears and waives service of notice of admission on behalf of the Respondents. In the facts and circumstances. the matter is taken up for final hearing today.

2. This appeal is filed against an order passed by the Presiding Officer of the School Tribunal, Bombay in Appeal No. 32 of 1995 dated 29th July, 1997 refusing relief of reinstatement of the appellant and confirmed by the Learned Single Judge in Writ Petition No. 3720 of 1997 decided on 10th June, 2002.

3. Certain facts are not in dispute. Admittedly, service of the appellant came to be terminated by the management by an order dated March 28, 1995. According to the appellant, the said order was illegal, contrary to law and was not in accordance with

the provisions of the Maharashtra Private Schools (Conditions of Service) Regulation Act, 1977 (hereafter referred to as "the Act"). The appellant, therefore, approached the School Tribunal.

4. After hearing the parties, the Tribunal recorded a finding in favour of the appellant and held that the order passed by the management against the appellant was illegal and contrary to law. Hence, the order was declared illegal and unlawful.

5. The next question which came up for consideration before the Tribunal was whether the appellant was entitled to reinstatement in service. In paragraphs 31 to 38, the Tribunal observed that ordinarily the Tribunal would have granted reinstatement in favour of the appellant once a finding was recorded that the action taken by the management was illegal and contrary to law.

According to the Tribunal, however, the appellant was not entitled to reinstatement because of "other reasons". Considering the facts and circumstances and discussing "other reasons", the Tribunal observed that the relationship between the management and the appellant had become strained beyond repairs. It was also stated that the appellant had obtained ex-parte interim order against the management. The said order had not been complied with by the management. The Tribunal also observed that the management had issued several memos even during the period when the litigation was going on. It was further stated that the appellant had made applications to the management on 11th July, 1995 and 12th July, 1995 expressing his intention to continue the work as per the order passed by the Tribunal, but the appellant was not allowed to resume duty. Keeping in mind the above circumstances, the Tribunal in paragraph 35 observed:

"This clearly shows that the Respondent Management was not inclined to abide itself by the order of this Tribunal because it was an ex parte order whereby interim relief was granted to the appellant."

The Tribunal also referred to a Contempt Petition taken out of the appellant. The Tribunal proceeded to observe that interest of student community ought to be taken into consideration. Taking into account all those facts, the Tribunal held that no reinstatement should be granted to the appellant. Accordingly the order of termination was declared illegal, but the Respondent-management was asked to pay compensation as per the operative part of the order.

6. Being aggrieved by that part of the order by which reinstatement was refused, the appellant approached this court by filing a writ petition. At the admission stage, this Court called for Records and Proceedings from the tribunal and also ordered respondents to continue the appellant-petitioner in service. That order was passed on June 18, 1997. When the matter came up for final hearing before the Learned Single Judge in June, 2002, i.e. after about five years of the above order, it was submitted on behalf of the appellant (petitioner before the Learned Single Judge) that because of ex-parte ad-interim order passed by the Court, he was continued in

service and "now the relations of the management are improved."

7. The Learned Single Judge, however, observed that when discretion was exercised by the Tribunal and reinstatement was not granted by the School Tribunal, it would not be appropriate to interfere with the said order. Accordingly, he dismissed the petition.

8. We have heard the Learned Counsel for the parties. The Learned Counsel for the appellant contended that when the Tribunal had recorded a finding in favour of the appellant and held that the action of termination of services of the appellant was illegal and contrary to law, it ought to have passed an order of reinstatement. For not following the normal rule of reinstatement, there must be valid, germane and cogent reasons. The Tribunal, no doubt, had observed that the relations between the appellant and the management were strained, no reasons, much less convincing reasons, have been recorded for departing normal rule of reinstatement. The Counsel stated that at one stage, the relations between the management and the appellant were not cordial, obviously because the services of the appellant were terminated and the appellant was constrained to approach the Tribunal. But thereafter, the relations were not strained. Moreover, after ex parte order passed by this Court, the appellant was actually reinstated and was continued till the petition was decided by the learned Single Judge. He further stated that there was nothing on record to show as to how the interest of the students had suffered.

9. We were taken by the Learned Counsel for the Respondents through the reasoning of the Tribunal and he also could not point out anything as to on what basis that Tribunal had recorded a finding that the interest of the students had suffered. It is true that several memos had been issued to the appellant by the management, but in such cases when services of an employee were terminated, such a course is not unknown. Regarding non-compliance of the order passed by the Tribunal by the management, in our considered opinion, the approach adopted by the Tribunal and reasoning weighed with it, cannot be said to be in accordance with law and hence cannot be approved. If the order was passed by a competent Court/Tribunal and the management disobeys such order, the said fact ought to have been considered against the management rather than in its favour. In the circumstances, in our view, the discretion not exercised by the Tribunal of granting reinstatement cannot be said to be based on well established principles. In our opinion, therefore, the order was liable to be quashed and set aside. Since the learned Single Judge has also committed an error in affirming that order, even the said order deserves interference.

10. For the reasons aforesaid, the Letters Patent Appeal deserves to be allowed and is accordingly allowed. The order passed by the School Tribunal refusing reinstatement of the appellant and confirmed by the Learned Single Judge is hereby quashed and set aside. The appellant is held entitled to reinstatement.

11. The Learned Counsel for the Respondents stated that as and when the appellant will report for duty, he will be allowed to join. The Learned Counsel for the appellant, under instructions of his client who is present in Court, stated that the appellant will report tomorrow. It is also clarified that the appellant is entitled to reinstatement with continuity in service, seniority, back wages and all other consequential benefits.

12. It is open to the management to take appropriate proceedings for getting grant and reimbursement from the Government in accordance with law.

13. The Letters Patent Appeal is accordingly allowed. In the facts and circumstances, however, there shall be no order as to costs.

Parties be given copies of this order duly authenticated by the Sheristedar/Personal Secretary.