

(2017) 01 BOM CK 0200

In the Bombay High Court

Case No : 244 of 2007 IN WRIT PETITION NO 3798 of 2006

Bhimrao Prabhusingh Rathod

APPELLANT

Vs

The Presiding Officer, School Tribunal, Amravati Division, &
Ors.

RESPONDENT

Date of Decision : 24-01-2017

Acts Referred:

[Maharashtra Employees of Private Schools \(Conditions of Service\) Regulation Act, 1977](#), [Section 9](#), [Section 9\(1\)\(a\)](#) - Right of appeal to Tribunal to employees of private schools. - Right of appeal t

Citation : (2017) 01 BOM CK 0200

Hon'ble Judges : B.P. Dharmadhikari, Swapna Joshi

Bench : DIVISON BENCH

Advocate : S.P.Kshirsagar, Nitin Rode, S.V. Sohoni

Judgement

1. The 1993 termination of appellant is an issue and therefore efforts were earlier made to decide the matter finally. It appears that it was dismissed in default on 2.12.2015 and restored. In this situation, we directed the parties to be ready for final hearing whenever matter is next listed.

2. By placing reliance upon the judgment of the Hon'ble Apex Court reported at (2013) Vol.10 SCC 324: (Deepali Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others), Adv.Kshrisagar submits that reinstatement results in restoration of position prevailing on the date of termination and, as such, wages after such restoration and continuity of service after that date, must automatically follow. He also places reliance upon the judgment of the Hon'ble Apex Court reported at (2000) Vol. 8 SCC 532: (State Bank of India vs. Chandra Govindji), to urge that when School Tribunal dismissed the Appeal in default and restored it after condoning the delay, the fact that Appeal was dismissed in default, could not have been used against the appellant to deny either back wages or continuity. He submits that in absence of regular Presiding Officer at Amravati, the Appeal was taken up at Aurangabad and could not be attended to

by the appellant.

3. Adv. Sohoni for respondent nos. 2 and 3 Management as also the learned A.G.P. for respondent no.4 Deputy Director of Education and respondent no.1 School Tribunal, are strongly opposing any intervention by this Court. They invited our attention to the facts of the matter, to urge that law as relied upon is not relevant. They submit that School Tribunal had stayed the order of termination on 28.5.1993 and the appellant had joined duties on 7.6.1993 and then remained absent unauthorizedly after 20.1.1995. Thus, he did not attend his duties and also proceedings before the School Tribunal. The Appeal was, therefore, dismissed on 2nd April, 1997.

4. The judgment delivered by learned single Judge on 2nd July, 2007 is pressed into service, to show that appellant was running two Deaf & Dumb Schools and was busy in managing the affairs of the same. After the schools were required to be closed down, he became aware of his service and attempted to join back. Then he came to know that his Appeal before the School Tribunal was dismissed and sought its restoration.

5. The basic facts are not in dispute. The services of present appellant, who claims to have joined employment on 1.7.1983 as Junior Clerk, were terminated on 7.5.1993. He approached the School Tribunal in Appeal No. 79/1993, u/s. 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and sought interim relief. The School Tribunal on 28.5.1993 granted him that relief. He was allowed to join during the pendency of the Appeal on 7.6.1993. After joining back, he worked upto 20.1.1995 and then did not remain present. The learned counsel for the Management has submitted that as the appellant absconded, various notices/communications were sent to him to join back, but he did not respond. Adv. Kshirsagar disputes this.

6. The School Tribunal has dismissed Appeal No.79/1993 in default on 2.4.1997. It appears that Misc. Application No.24/2003 was moved by the appellant seeking condonation of delay for period from 1.5.1997 to 12.9.2003 and vide order dated 9.12.2004, the School Tribunal, Amravati, condoned that delay. This order condoning the delay was not questioned by the Management. The Appeal was then taken up for hearing and vide judgment and order dated 19th April, 2006 the School Tribunal has allowed the Appeal. The operative part of the judgment reads as under :

"1) The appeal filed by appellant under the provision of Section 9(1)(a) of the MEPS Act, 1977, challenging the illegal termination dated 07.05.1993, is allowed on the following terms :

a) It is declared that the termination order dated 07.05.1993 is illegal and quashed and set aside.

b) The question of reinstatement does not arise as appellant is in service vide an interim stay dated 28.5.1993 onwards. If during the pendency of appeal the

appellant is prevented from joining duty, he may be allowed to join to his duties from the date on which he will approach the respondent nos.1 and 2 with request to allow him to join his duties on the post of Junior Clerk.

c) It is declared that the appellant is not entitled for the relief of continuity in service on account of latches on his part for prosecuting the appeal which was dismissed on his default till the period he rejoins to his duty vide this judgment.

d) The appellant is held as also not entitled for grant of backwages till the date of this judgment because of his latches in prosecuting the appeal which was dismissed in default on account of his fault.

e) No order as to costs.

2) Copy of this order be sent to Respondent No.3 i.e. Deputy Director of Education, Amravati Division, Amravati for information and necessary action."

7. Aggrieved by denial of backwages and continuity, the employee (present appellant) approached the learned single Judge of this Court in Writ Petition No.3798/2006. The Management did not assail even above order. Vide judgment dated 2nd July 2007, the learned single Judge has dismissed the petition. In paragraph 6 of the judgment, the learned single Judge has found that petitioner never executed interim or final orders passed by the School Tribunal and reason therefor was his his preoccupation in running two Deaf & Dumb Schools. This Court therefore found that he had no time to look after his job and duties.

8. It is this judgment which has been questioned in the present L.P.A.

9. The School Tribunal itself has found that question of reinstatement did not arise as appellant was already reinstated vide order dated 28.5.1993 onwards. The backwages are to be granted for the period subsequent to termination till the Tribunal orders reinstatement. Hence reinstatement was ordered on 28.5.1993 and appellant joined the duties on 7.6.1993. Thus, period for which the backwages could have been awarded was from the date of termination i.e. from 7.5.1993 till the date of joining i.e. 7.6.1993. The wages after 7.6.1993 qualify as current wages as appellant was expected to work and earn his salary. He accordingly earned it till December, 1994.

10. The case of Management is, appellant did not report after 20.1.1995. In other words, he absconded. The present appellant is disputing it. The School Tribunal has not gone into that aspect of the matter at all. As appeal was dismissed in default, was required to be restored after condoning the huge delay, the School Tribunal found it not proper to grant appellant the relief of either continuity or backwages.

11. In present matter, we are not required to go into the aspect of backwages as the appellant has filed a pursis giving up the claim for wages till he joined services after final judgment of School Tribunal. He claimed that he would be satisfied if continuity of service is granted. Grant of continuity is opposed by the

Management because of conduct of appellant. According to Management, he absconded and was looking after his other business and, as such, he was gainfully employed and was earning regularly. After considering as many as 24 documents which the Management has filed before this Court (learned single Judge), the learned single Judge has accepted that case and denied continuity and back wages to the appellant. Whether appellant was running such schools and whether he absconded, all are disputed issues which need to be decided in accordance with law by a competent authority. In normal circumstances, it was open for the management to proceed against the appellant departmentally and to declare him a deserter and to impose punishment upon him. Such a punishment, if imposed, would have substituted the order of termination as 7.5.1993 from its date. That would have also enabled the appellant to challenge that order of punishment. The punishment obviously would have been imposed in accordance with the principles of natural justice.

12. In the present matter, the conclusion that appellant was running two Deaf and Dumb Schools was arrived at on the basis of documents, that too while exercising supervisory jurisdiction. Thus indirectly, there is a finding of "misconduct" on part of appellant .

13. We, therefore, find that interest of justice can be met with by directing the respondent no.4Deputy Director of Education, to consider the plea of Management that appellant absconded after 20.01.1995 and did not report back for duties and whether he made efforts to join the duties only after his two Deaf and Dumb schools were closed down.

14. The parties are directed to appear before that authority on 20.2.2017. The authority shall give the Management as also the employee, necessary opportunity to produce relevant material on record and thereafter find out the correct position. Depending upon it, it shall also decide whether the appellant has made out a case for grant of continuity.

15. Needless to mention that as appellant has given up his prayer for wages for entire period of alleged absence from duties, the grant of continuity will not result in conferring any monetary benefits upon him. The continuity, if granted, shall be only for the purposes of computing seniority and pension.

16. With these directions, we partly allow the L.P.A. and dispose it of. No costs. Certified copy expedited.