

(2012) 11 BOM CK 0125

In the Bombay High Court

Case No : Criminal Writ Petition No. 241 of 2012

Dattatraya and Another

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 21-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 34, 420, 463, 464, 465

Citation : (2013) 3 ABR 1332 : (2013) ALLMR(Cri) 914

Hon'ble Judges : Sunil P. Deshmukh, J; A.H. Joshi, J

Bench : Division Bench

Advocate : A.A. Nimbalkar, holding for Mr. V.D. Salunke, for the Appellant; V.A. Shinde, Assistant Public Prosecutor for Respondent No. 1-State and Mr. S.S. Mahindrakar, holding for Mr. R.J. Nirmal, for the Respondent

Final Decision : Allowed

Judgement

A.H. Joshi, J.—Rule. Rule is made returnable forthwith. Heard by consent. Heard both sides. Perused the record.

2. For convenience, the petitioner No. 1 and Respondent no. 2 are referred to with their name.

3. Dattatraya Kamble (petitioner No. 1) was promoted by the management as Head Master by order dated 7.1.2009. The Education Officer approved the said promotion by order dated 1.4.2009.

4. Dattatraya Jadhav (Respondent No. 2) had challenged the said promotion by filing appeal, being appeal No. 12 of 2009 before the School Tribunal, Aurangabad. In the said appeal, he had raised against Dattatraya Kamble, the pleas of fraud, fabrication of documents etc. which he has again raised in the F.I.R. subject matter of challenge in present writ petition.

5. The contentions raised by Dattatraya Jadhav (Respondent No. 2 herein) as appellant before the School Tribunal were that:-

(a) Dattatraya Jadhav (Respondent No. 2) the Appellant before Tribunal had entered the employment of the school run in the name of Dr. Babasaheb Ambedkar Vidyalaya, on 17.5.1988.

(b) Dattatraya Kamble (present petitioner No. 1) who was respondent No. 3 before the School Tribunal had entered employment on 1.10.1988 which is after the date of entry of Dattatraya Jadhav.

(c) Therefore, Dattatraya Kamble was junior to the appellant Dattatraya Jadhav, and therefore while Dattatraya Kamble was promoted, wrongly/illegally appellant Dattatraya Jadhav was superseded.

(d) The fact that appellant Dattatraya Jadhav was senior was not only suppressed by Dattatraya Kamble, but he also forged and fabricated the seniority list to couch his false claim.

(e) The forgery was done in seniority list by Dattatraya Kamble wherein he has entered false dates of entry of Dattatraya Kamble and Dattatraya Jadhav in employment.

6. The appeal No. 12 of 2009 was decided by the School Tribunal by the judgment and order dated 29.10.2009 and the appeal was dismissed. Dattatraya Jadhav is aggrieved by said judgment and he has approached this court and has filed a writ petition which is admitted.

7. During pendency of writ petition filed by Dattatraya Jadhav (Respondent No. 2), on 3.1.2011 he has filed a Criminal Case bearing No. 2 of 2011 in the court of Judicial Magistrate, First Class, Nilanga. In that case, the learned Magistrate, F.C. Shirur Anantpal passed order on 14.2.2011 and directed the police to take cognizance u/s 156(3) of the Code of Criminal Procedure. Thereupon, offence was registered as Crime No. 116 of 2011 on 5.12.2011 in Shirur Anantpal Police Station in District Latur for offences under Sections, 463, 464, 465, 467, 471 and 420 read with Section 34 of the Indian Penal Code.

8. Petitioners have approached this court for quashing said First Information Report and Crime No. 116 of 2011 dated 5.12.2012.

9. In report registered as Crime No. 116 of 2011, Dattatraya Jadhav has alleged against present petitioners/accused acts of fraud, forgery and fabrication of record. Relevant averments contained in the complaint/FIR read as follows:-

(quoted from pages 26/27 of petition paperbook)

10. It is evident that grievance of Dattatraya Jadhav-the complainant, is about illegal supersession and forgery done by the accused persons for that purpose.

11. It is seen from the record annexed to the petition that the controversy has germinated out of a service matter and a dispute as regards seniority.

12. Therefore, it is necessary to understand and appreciate respective case before the Tribunal and certain admitted and disputed facts.

13. The facts as pleaded by Education Officer are recorded in paragraph 8 of judgment of School Tribunal. Those do reflect admitted/un-controverted facts. Relevant portion is seen at pages 37 and 38 of paperbook. It is quoted below for ready reference:-

8. By filing written say at exh-8 respondent No. 4 has resisted this Appeal on the ground that approval was granted to the appellant in the pay scale of untrained teacher for the academic year 1988-89, 1989-90 and 1990-91.

Appellant has completed his B.Ed. course in the academic year 1991-92. He has passed B.Ed. course on 8.5.1992. Therefore, he is continued as trained teacher in the school since the academic year 1992-93. Since acquiring trained qualification the name of the appellant is mentioned in category "c" of Schedule "B".

Respondent No. 3 was in service as untrained teacher in the academic year 1989-90. He has completed B.Ed. in the year 1990-91. He has passed B.Ed. on 11.5.1991. After passing of B.Ed. his service is approved as trained teacher for each academic year 1991-92, 1992-93, 1993-94, 1994-95, 1995-96 & 1996-97. Permanent approval is granted in his favour by order dated 11.6.1997.

Since 27.6.1991 respondent No. 3 is in service as trained teacher. Therefore, his name is mentioned in category "c" in seniority list.

Therefore, respondent No. 3 is the senior most Assistant Teacher as per Rule-12 and Sch "F" of M.E.P.S. Rules and various Government Resolutions.

(quoted from pages 37 and 38 of the paperbook of the petition. Sub-paragraphing is done for convenience of reference and emphasis)

14. In the judgment of school Tribunal a finding as regards fact of seniority inter-se based on acquiring degree of B.Ed. is recorded. This finding is recorded by the Tribunal in relation to point No. 2 framed in the judgment of the Tribunal. It is seen in paragraph No. 19 of the judgment. Relevant portion is seen at page 52 of paperbook of the Writ petition, and is quoted below:-

.....

There is no dispute between the parties that the respondent No. 3 acquired training qualification on 27.6.1991 whereas the appellant acquired his training qualification on 11.6.1992. Thus, the respondent o. 3 came in category "c" of sub clause 2 of Sch-"F" on 27.6.1991 and the appellant came in the same category on 11.6.1992. Therefore, respondent no. 3 is senior than the appellant.

15. The fact that the complainant-appellant was untrained teacher till 1992 is not disputed by complainant-present Respondent No. 2 any where.

16. It is seen that the date of acquiring degree of B.Ed. by Dattatraya Kamble (petitioner No. 1) is 11.5.1991, and by Dattatraya Jadhav (Respondent No. 2) is 8.5.1992. These dates being factual is confirmed from Exhibit "D" at page 28

annexed to the petition and relied upon by Dattatraya Jadhav as well. Thus, the factual aspect of these dates and its correctness is not disputed by Respondent No. 2.

17. Moreover, in the reply filed in this Court as well, any dispute as regards these facts if being contrary to record etc. are not disputed. Now it is evident that entire factual background is undisputed and, therefore, entire foundation of the F.I.R. that though Dattatraya Jadhav-the complainant entered the employment on 17.5.1988, Dattatraya Kamble-the accused has by forgery shown complainant's date of entry to be 26.7.1991, reveals to be tricky plea, and it is not the whole truth, on whatever the complainant himself shows.

18. It is seen that seniority with reference to acquiring qualification of B.Ed. degree, was the crux of the matter before School Tribunal. The School Tribunal is the exclusive forum of civil jurisdiction over the service matters between Teachers of private school and the employer. Finality is attached by law to its judgment by the statute. The fact finding done by School Tribunal is not open to challenge before any other court or Tribunal, much less in investigation and trial of an offence before a Criminal Court barring certain inbuilt provisions in the statute or criminal law.

19. Dattatraya Jadhav the complainant - is a person who lost before the School Tribunal. Now he says in his affidavit in reply filed in this court that the judgment of the School Tribunal was procured by fraud. This plea is raised without applying for review before School Tribunal on the ground that the judgment of tribunal was a product of fraud. He claims that fraud is played due to false documents, namely, false seniority. Seniority cannot be false, it can be erroneous or illegal at the most. Moreover, the foundation of said plea as regards falsehood is Respondent No. 2's erroneous notion that his date of entry in employment as unqualified teacher is liable to be counted for seniority as Assistant Teacher for promotion to the post of Head Master.

20. He also claims that resolutions are also false and forged. Since seniority based on B.Ed. qualification was to be the decisive factor, all other points including resolutions turn to be irrelevant.

21. Entire foundation of the FIR is thus totally erroneous notion and belief of complainant about law and rules as regards seniority.

22. Once it is found by a court or Tribunal of civil jurisdiction that decisive factor was seniority based on the date of acquiring qualification of B.Ed. degree, the question as to whether service record is forged in respect of date of entry in service in relation to the complainant in the employment before acquiring B.Ed. degree, is a fact which is totally irrelevant.

23. Thus, it is duly demonstrated by the petitioner that present is one illustrative rare amongst rarest cases, where it is shown on record by the petitioners that the quashing of FIR can be done and is liable to be done, barely upon reading the

record annexed to the petition and without investigation whatsoever.

24. The facts which have surfaced are undisputable and undeniable being admitted and proved from record and confirmed by a quasi judicial forum in its finding. There is no warrant for further fact finding and investigation. Nothing can be achieved from further investigation except satisfaction of personal erroneous grudge and a baseless grievance.

25. In the result, all other questions raised by the complainant-Respondent No. 2 turn out to be sheerly imaginary. The petitioners have fully demonstrated that the complaint is actuated with malafides, as there is no genuine grievance, rather the vexatious intentions are writ large.

26. Present FIR is one rare illustration of it being lodged sheerly to vindicate personal grievance and is seen to be one rare amongst rarest case where it can be held in summary inquiry in writ jurisdiction that FIR is actuated with malafides.

27. In these premises, we are satisfied that present is one rare amongst rarest cases where malafides are proved beyond any room for doubt, being based on undisputed facts which have attained finality in the form of judgment of an authority having competent jurisdiction under the statute.

28. Admittedly, complainant has lost before the School Tribunal and his writ petition is pending before the High Court. The complainant hopes to demonstrate in Writ Petition filed by him in the High Court that his claim as to seniority is genuine. Merely, on such hope, the complainant cannot be allowed to pursue a totally baseless FIR.

29. We, therefore, allow this petition. Rule is made absolute in terms of prayer clauses (C) and (D). It is made clear that observations made in this judgment will not come in the way while deciding Writ Petition No. 1437 of 2009.