

(2001) 10 BOM CK 0063
In the Bombay High Court
Case No : A.C.J.W.P. No. 1723 of 1991

Sanjay Irappa Bansode

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 04-10-2001

Acts Referred:

Citation : (2002) 92 FLR 335 : (2002) 1 LLJ 542

Hon'ble Judges : V.G. Palshikar, J; S.J. Vazifdar, J

Bench : Division Bench

Advocate : G.S. Godbole, for the Appellant;

Final Decision : Allowed

Judgement

S.J. Vazifdar, J.—The Petitioner is an employee of respondent No. 5. Respondent No. 2 is the Education Officer, Zilla Parishad, Solapur. Respondent No. 3 is the Joint Charity Commissioner, Pune. Respondent No. 4 is the Assistant Charity Commissioner, Pune and Respondent No. 5 is the Secretary of Dr. Ambedkar Memorial Smarak Nidhi, Solapur, (hereinafter referred to as the "Institution"). Respondent No. 6 is the Head Master of the Institution.

2. The petitioner seeks a writ of mandamus, directing Respondent No. 2 forthwith pass and pay the Petitioner's pay bill for the period June 13, 1984 to August 17, 1988 submitted by Respondent No. 5 and a writ of mandamus, directing Respondent No. 4 to communicate his consent in writing in the capacity of Administrator of the Institution to Respondent No. 2 to deduct the said amount of back wages from non-pay grant payable to Respondent No. 5 Institution.

3. The Petitioner's father was employed as a peon in this Respondent No. 5 's educational institution. The Petitioner's father expired while in service. A permanent vacancy created thereby was filled by the Institution by appointing the Petitioner as a peon on August 3, 1983. The Petitioner's service was covered by the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 and the Rules and Regulations framed thereunder.

4. The Petitioner's services were terminated with effect from April 30, 1984 by the Institution's letter dated June 12, 1984. The Petitioner challenges the same by filing an appeal before the School Tribunal at Pune. The Petitioner's appeal bearing Appeal No. 77 of 1985 was rejected on December 4, 1980 on the ground that it has not been filed within the time prescribed. The Petitioner challenged the said order by filing Writ Petition No. 2467 of 1986 in this Court. By an order and Judgment dated April 28, 1988, a Division Bench of this Court allowed the petition. Para 6 which is the operative part of the judgment reads as under:

"6. Accordingly, petition succeeds and the judgment dated December 4, 1985 in Appeal No. 77 of 1985 delivered by the School Tribunal, Pune is set aside, and the petitioner is directed to be reinstated in service with full back wages and continuity of service. The petitioner would be entitled to the full back wages provided the petitioner was not employed during the interregnum at any other place and has drawn the scales which are not lower than the scales available for peon. The Educational Institution shall not determine this aspect unilaterally but should forward the report to the Educational Officer of the Zilla Parishad, who shall take the final decision after giving opportunity to the Petitioner. The Petitioner should be reinstated before June 1, 1988."

5. Despite the order, the petitioner was reinstated only on August 18, 1988 instead of on June 1, 1988. Despite several representations, the Petitioner has not been paid the back wages. There appears to be disputes between the Respondents inter se, inter alia as to who should pay the Petitioner's back wages. Respondent No. 2 called upon the Institution to prepare a bill in order to enable him to pay the dues. Accordingly the institution prepared the bill and forwarded the same to Respondent No. 2. The disputes as to who should bear the liability of the Petitioner's wages continued between Respondent No. 2 and the Institution.

6. The petitioner can hardly be concerned with the same. Respondent No. 4 has been appointed as Administrator of the Institution however, the same is of no relevance to the Petitioner's case. There is no dispute that the Petitioner is entitled to the wages. In view of the judgment of the Division Bench of this Court dated April 28, 1988 there indeed cannot be any dispute.

7. The Petitioner received a memorandum dated July 20, 1990 from Respondent No. 2, directing him to demand his back wages from the Institution.

8. It is indeed unfortunate that in the disputes between Respondent No. 2 and 5 i. e. the Institution inter se, the Petitioner has been denied his back wages. This cannot be allowed to continue any longer.

9. In the circumstances, the following order is passed:

ORDER

Rule is made absolute in terms of prayer Clauses (a) and (b).

Respondent No. 2 shall pay the costs of this Petition fixed at Rs. 3000/- to the Petitioner.

Respondent No. 2 shall be entitled to deduct the same also from the non-pay grant payable to Respondent No. 5 i.e. the Institution.

It shall be open to Respondent No. 5 to adopt such proceedings, as it may choose for recovering from Respondent No. 2 the above amount, directed to be paid to the Petitioner. We, however, clarify that the payment to the Petitioner as directed above shall be unconditional.