

(2016) 12 BOM CK 0081

In the Bombay High Court

Case No : Writ Petition No. 2393 of 1997

Sonwane Arjun Patil Bua

APPELLANT

Vs

Adarsh Shikshan Sanstha

RESPONDENT

Date of Decision : 08-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 5, Section 9

Citation : (2017) 1 ALLMR 566 : (2017) 3 MhLJ 107

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Shri M.S. Chaudhari, Advocate, for the Petitioner; Shri S.N. Kendre, AGP, for the Respondent Nos. 4 & 6

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J.(Oral)—The Petitioner is aggrieved by the judgment dated 05.05.1997 by which the School Tribunal has dismissed Appeal No. 163/1995 filed by the Petitioner.

2. This Writ Petition was admitted on 08.07.1997. However, interim relief was not granted.

3. The Petitioner had approached the School Tribunal alleging that though he was appointed on 01.08.1989 and he worked continuously, the Respondent/Management orally terminated him on 22.08.1995. When the Respondent/Management was without grants, the Petitioner was appointed as a trained graduate teacher. However, as soon as they started receiving grants in 1995, the Petitioner was orally terminated so as to accommodate new persons.

4. The contention of the Petitioner is that after the appeal was preferred before the School Tribunal, notices were issued to the Respondents. None of them appeared and did not render any assistance to the School Tribunal.

5. Shri Chaudhari, learned Advocate for the Petitioner, therefore, strenuously submits that the appeal should have been allowed as the contentions put forth by the Petitioner were not controverted and there was no reason for the School Tribunal to disbelieve the Petitioner. He further strenuously submits that the Education Officer also did not render any assistance to the School Tribunal. In this backdrop, the School Tribunal should have allowed the appeal and granted reinstatement with continuity and full back wages.

6. Shri Chaudhari further submits that this matter can be remanded to the School Tribunal so as to permit the Respondents to appear in the matter and produce the documents to indicate that the Petitioner was working from 1989 onwards.

7. The School Tribunal/Respondent No. 5 is a formal party and hence, stands deleted from the proceedings.

8. The learned AGP appearing on behalf of Respondent No. 4/Education Officer and Respondent No. 6/State, submits that the Petitioner had never moved any application before the School Tribunal for seeking production of documents.

9. Despite service on Respondent Nos. 1, 2 and 3, none have appeared in this matter. None had appeared before the School Tribunal.

10. I have considered the submissions of Shri Chaudhari and have gone through the petition paper book with his assistance.

11. It is the contention of the Petitioner that he was orally terminated on 22.08.1995. He had worked continuously for about six years as a trained graduate teacher. However, his appointment order dated 20.07.1989 indicates that he was appointed purely on temporary basis for one academic year 1989-1990.

12. There is nothing on record to indicate that an advertisement was published for filling in a permanent vacant post. There is no evidence to indicate that the selection procedure was followed. The Petitioner has contended before the School Tribunal that the Secretary of the Respondent/Management demanded donation of Rs. 25,000/-. Since he was unable to pay the said donation, he was orally terminated from service.

13. In this backdrop, the Petitioner could have issued a notice for production of documents whereby those documents on which he desired to place reliance, could have been got produced through the Respondent/Management. As none of the Respondents appeared in the matter and the matter proceeded ex-parte, it appears that the Petitioner merely filed an affidavit and on the basis of the same, he prayed for reliefs set out in the appeal.

14. It is trite law that merely because the Respondents did not participate in the proceedings and the proceedings are being conducted ex-parte, the Court or Tribunal cannot allow the plaint/suit/complaint or appeal purely based on an

affidavit filed by the claimant. The Court is not expected to blindly rely upon the pleadings in the appeal or affidavit and allow the appeal or suit or plaint or complaint without scrutinizing the evidence before it.

15. The School Tribunal has observed in paragraphs 16 and 17 of the impugned judgment that the Petitioner, besides the first appointment order indicating his appointment on temporary basis for one academic year, did not produce any other document to indicate that he was appointed again or that he had worked continuously with the Respondent/Management. These observations of the School Tribunal are based on available record.

16. Though Shri Chaudhari strenuously submits that the matter be remanded to the School Tribunal so as to permit the litigating sides to lead evidence or produce documents by way of evidence, I am unable to accept the said submission for the reason that the appeal is of 1997. Practically after 20 years, the matter cannot be remanded back only because there is no evidence and for enabling the parties to fill up the lacuna and lead further evidence. The writ/supervisory jurisdiction of this Court is not to cure the lapses on the part of the Petitioner in recording of evidence, but is limited only to the revisional powers by which this Court is expected to consider whether, the impugned judgment is perverse, erroneous and causes gross injustice.

17. In the light of the above, I do not find any merit in this Writ Petition. The same is, therefore, dismissed. Rule is discharged.