
(2014) 10 BOM CK 0026
In the Bombay High Court
Case No : Writ Petition No. 5309 of 2012

Vakil Jalilkhani Pathan

APPELLANT

Vs

Deputy Director of Education

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Citation : (2014) 10 BOM CK 0026

Hon'ble Judges : P.R. Bora, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : P.N. Shende, Advocate for the Appellant; B.H. Shambarkar, Advocate and A.S. Fulzele, AGP, Advocate for the Respondent

Judgement

B.P. Dharmadhikari, J.—Heard Advocate Shri P.N. Shende for the petitioner, Shri A.S. Fulzele, the learned Assistant Government Pleader for respondent nos. 1 and 2 and Advocate Shri B.H. Shambarkar for respondent nos. 3 and 4.

2. Considering the nature of controversy, matter is heard finally by issuing Rule and making it returnable forthwith.

3. Advocate Shri P.N. Shende submits that the petitioner claims increment for the period prior to his reinstatement in terms of the judgment of the School Tribunal dated 20-02-2001. According to him, the petitioner has been reinstated with continuity as also back-wages and when the matter went before the Hon'ble Apex Court, the petitioner only waived back-wages. Hence the benefits of continuity should have been given and while reinstating the petitioner back in service, his wages should have been fixed after releasing increments notionally till that date. He submits that when the omission of Management to fix the wages accordingly was pointed out to the Competent Authorities, on 08-12-2010 the Deputy Director of Education has communicated to the Accounts Officer of Education Department that as there is no reference to increments in the judgment of the Hon'ble Apex Court, the petitioner is not entitled to increment for the period from 1993 till his reinstatement in 2002. He argues that thus the

order of Hon''ble Apex Court has been misconstrued and the earlier orders passed by the School Tribunal have been overlooked.

4. Advocate Shri B.H. Shambarkar, strongly opposes the arguments. He along with learned Assistant Government Pleader submit that the School Tribunal has not directed releasing of the increments and as such the order dated 08-12-2010 communicating to the Accounts Officer, the ineligibility of the petitioner to earn increment is just and proper. Advocate Shri B.H. Shambarkar has drawn support from the observations of the Hon''ble Apex Court in its judgment in the case of A.P.S.R.T.C. and Another Vs. S. Narsagoud, .

5. Perusal of judgment of the School Tribunal dated 20-02-2001 shows that the School Tribunal has allowed the reinstatement in service with continuity and back-wages from March 1993. It has also in operative part para (3) recommended to the Deputy Director of Education, Zilla Parishad, Nagpur Division, Nagpur to see that the costs saddled by it and the arrears of emoluments from March 1993 are paid to the appellant or otherwise deducted from the grants due and payable to employer in future. This is order ultimately got modified in the Hon''ble Apex Court and the Hon''ble Apex Court has observed that though the petitioner would be paid back-wages from the date of the order passed by the School Tribunal in his favour, he may not be paid any back-wages for the period from 1992 to 2002. These observations are in Special Leave to Appeal (Civil) No. 6646 of 2006. Record shows that the judgment and order of the School Tribunal dated 20-02-2001 was implemented by the Management and the petitioner was reinstated. Thereafter he was again terminated by order dated 01-02-2003. Later termination of the petitioner formed subject matter of Appeal No. STN/11/2003 before the School Tribunal. The School Tribunal on 28-04-2003 allowed that appeal and directed reinstatement with continuity and full back-wages. This order of the School Tribunal was then questioned by the Management in Writ Petition No. 355 of 2004 which was dismissed on 28-02-2006. This dismissal of Writ Petition No. 355 of 2004 was questioned before the Hon''ble Apex Court in Special Leave to Appeal (Civil) No. 6646 of 2006.

6. Thus facts mentioned supra show that the Hon''ble Apex Court only held that the employee before it (present petitioner) may not be paid any back-wages for the period from 1993 to 2002. The continuity given by the School Tribunal in its order dated 20-02-2001 was thus not disturbed.

7. The perusal of judgment in case of A.P. SRTC and another (supra) shows that the Labour Court there while delivering award on 24-12-1997 found no fault with the disciplinary inquiry proceedings or with the finding arrived thereat, but it found punishment disproportionate as the employee was charged of unauthorized absence. The Labour Court held that the denial of back-wages would be sufficient punishment. This order was questioned before the High Court and the learned Single Judge of the Hon''ble Andhra Pradesh High Court disposed of the Writ Petition on 16-08-1999. In that Writ Petition a grievance was raised

by the employee that though he was reinstated, while fixing wages payable to him on his reinstatement, the periodical increment which would have been earned by him otherwise were not taken into account. The High Court directed the appellant i.e. A.P. SRTC to compute the periodical increments for that period. The observations of the Hon''ble Apex Court in para 9 need to be understood in this background. The Hon''ble Apex Court has noted that there is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. The Hon''ble Apex Court thereafter observed that the employee after having been held guilty of unauthorized absence from duty cannot claim the benefit of increments notionally earned during said period of unauthorized absence in absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service. These observations need to be understood in the facts of the case as the Hon''ble Apex Court in para 9 held that the employee was unauthorizedly absent and the charge levelled against him was established. The Labour Court did not find anything wrong with the Departmental Enquiry or finding of the Enquiry Officer. Only because the punishment was found harsh the Labour Court interfered and substituted denial of back-wages as sufficient punishment. Thus the employee who was absent and was denied back-wages was directed to be paid increments by the learned Single Judge of the High Court. This is not approved by Hon''ble Apex Court.

8. Here the petitioner employee was orally terminated. He was not absent from duties and as such the above referred judgment of the Hon''ble Apex Court which considers a relief to be given to the employee found absent from duties is not attracted. The petitioner has been reinstated with full back-wages and continuity. The Hon''ble Apex Court has only removed the part of back-wages. The relief granted therefore cannot be construed to mean that the employee was denied increments also.

9. In this situation, we find impugned communication dated 08-12-2010 unsustainable. It is set aside.

10. The respondents shall fix the salary of the petitioner on the date of his reinstatement after notionally releasing the increments for the period during which he was out of the employment. The increments so notionally worked out will not result in any financial yield but his salary on the date of reinstatement shall be accordingly stepped up and from that stage onwards his salary will be further revised till this date. This exercise be completed within a period of four months from today. Incremental arrears from date of reinstatement till date shall be paid to him within six months from today.

11. Writ Petition is thus partly allowed and disposed of. No costs.