
(1995) 02 BOM CK 0049

In the Bombay High Court

Case No : Writ Petition No. 4494 of 1986

Vasantrao Baburao Kharat

APPELLANT

Vs

Siddeshwar Shikshan and Others

RESPONDENT

Date of Decision : 07-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 02 BOM CK 0049

Hon'ble Judges : V.P. Tipnis, J;R.G Vaidyanatha, J

Bench : Division Bench

Judgement

Vaidyanatha, J.—This is a petition challenging the observations in the order dated 18th February 1985 in School Tribunal Appeal No. 83 of 1984 on the file of the Presiding Officer, School Tribunal, Pune. We have heard the learned counsel for both sides.

2. Few facts which are necessary for the disposal of the present petition are as follows.

3. The petitioner is working as a clerk in the 1st respondent school. It appears that he had gone on leave on medical ground from 5-1-1984 and reported to duty on 3-4-1984 and produced medical certificate. The management was not satisfied with the medical certificate and did not take him on duty. Since the management refused to take him on duty and after waiting for sometime, the petitioner filed an appeal before the Tribunal challenging the directions of the management for not taking him on duty. The management contested the case before the Tribunal by filing written statement. After hearing both sides the learned Tribunal allowed the appeal by the impugned order and set aside the order of termination of the petitioner. It directed the management to reinstate the appellant in the post of clerk within a period of 2 months from the date of the order.

4. The management did not file any writ petition against the said order. In

pursuance to that order the petitioner was reinstated by the management on 5th July, 1985. However, the Tribunal did not grant the back wages to the petitioner. In that connection the petitioner filed a review petition before the Tribunal and it came to be rejected by order dated 22-8-1985 on the ground that the review is not maintainable. Hence the petitioner has approached this Court challenging the observations of the Tribunal in para 14 of the impugned order that the petitioner is not entitled to back wages.

5. The learned counsel for the petitioner contended that when the Tribunal has set aside the order of removal from service the Tribunal should have granted back wages from the date of termination till the date of reinstatement. On the other hand the learned counsel for the respondents supported the impugned order.

6. The tribunal was conscious of the fact that the petitioner is entitled to back wages the Tribunal has rejected the claim of the petitioner for the following observations which are in para 14 of the impugned order :

"As regards back emoluments in the circumstances on record I do not think it equitable to direct the respondent to pay the appellant his back salary. It is obvious from the evidence on record that the appellant himself invited trouble by proceeding on leave. The reasons put forth by him for proceeding on leave needs scrutiny. It is obvious from record also that during this period of his absence the appellant was participating in local elections. In these circumstances it will not be just and proper to direct the respondent to pay the appellant his salary for this period. The respondent may consider his leave application in the light of the provisions of the rules framed by the Government under the Act."

From the above reasoning we find that the Tribunal was conscious of the legal position and rejected the claim for back wages on the ground that the petitioner had participated in the local elections when he had proceeded on medical leave. The appeal was filed u/s 11 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations 1977. The relevant provisions for our purpose in Section 11(2)(c) which reads as under :

"To give arrears of emoluments to the employee for such period as it may specify."

The above provisions show that the discretion given to the Tribunal to mention the period for which official is entitled to the arrears of salary. In the present case the Tribunal, has on considering the facts of the case, exercised the discretion in not granting the back wages. While deciding the writ petition under Article 226 of the Constitution, normally this Court should not substitute its own discretion in place of the discretion of the Tribunal, if the view taken by the Tribunal is a plausible one. Even if another view is possible, it is well settled that normally the revisional or appellate authority should not substitute its own discretion in place of the discretion passed by the Tribunal. In our view the Tribunal has exercised its discretion properly and has rightly rejected the claim of

the petitioner for back wages and hence we do not want to interfere with that order.

7. As seen above the Tribunal was concerned only with granting of back wages, prior to its order in which has commented on the conduct of the petitioner in participating in the local elections during the level period. But position changes once the order was passed on 18.2.1985, under which the order of termination was set aside and the management was directed to take the petitioner in service. Admittedly the petitioner was not taken in service immediately and he was taken only on 5.7.1985. We therefore feel that we may allow few days to the management to comply with the order of the Tribunal. Hence we feel the petitioner should get wages from 1.3.1985 till he was reinstated on 5.7.1985.

8. In the result petition is partly allowed. Petitioner is granted wages or arrears of salary from 1.3.1985 till he was reinstated on 5.7.1985. Rule made absolute in the aforesaid terms. In the circumstances of the case no order as to costs. Certified copy expedited.