

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 3758 OF 1996

The Secretary
Balshikshan Mandir Trust
and another Petitioners

versus

D.B. Suryavanshi & anr..... Respondents.

Mr. H.V.Kode with Mr. S.A. Sawant for the petitioner.
Mr. S.S.pakale for respondent no.1.
Mr. S.K. Chinchalikar AGP for respdt. no.3.
None for respondent no.2 though served.

**CORAM; A.P. DESHPANDE, J.
DATED; 31ST JANUARY, 2007.**

P.C.;

1. Judgement and order passed by the school tribunal

dated 27-3-1996 is challenged in the instant petition.

Few facts that are necessary to adjudicate the issue

involved are set out hereinbelow.

2. Respondent no.1 herein was appointed as Assistant teacher in a night school administered by the petitioner by name B.S.M. Trust's Night High School.

The initial date of appointment of the respondent no.1 is 7-8-1989 and the appointment order clearly mentions that his appointment is purely temporary and shall stand terminated without any notice, on expiry of the said period. What is relevant to note is that the petitioner is undisputedly working as a full time

teacher in a day school and in addition to the said service, the respondent no.1 has sought appointment in the night school. It is not in dispute that even today the respondent no.1 continues to be a full time teacher in a day school.

3. The temporary appointment made by the order dated 7-8-1989 was brought to an end with effect from 1-5-1990 by letter of termination dated 29-3-1990. Again in the next academic session 1990-91 the petitioner was continued in service on the same terms and conditions and this time the appointment order states that the appointment of respondent no.1 is against the post reserved for backward class candidate. Besides, the appointment being temporary in nature, after the academic session 1991, it came to an end. The respondent no.1 was terminated from service and lastly he was appointed yet again as a part time teacher in the night school for academic session 1991-92. At the end of academic session 1991-92 the respondent no.1 was issued a termination notice and he ceased to be in the employment of the petitioner with effect from 1-5-1992. It is relevant to note that the teacher appointed in the night school has half the workload, available to a full time day school teacher, and the petitioner was appointed as a part time teacher in the night school. Aggrieved by the dis-continuation of service with effect

from 1-5-1992 the respondent no.1 preferred an appeal before the school tribunal challenging the legality and validity of the termination. The termination was sought to be justified by the petitioner mainly on the ground that there has been reduction in the number of sanctioned consequent reduction in the workload and teaching staff by the department. The tribunal allowed the appeal and has directed re-instatement of the respondent no.1 herein, with full back wages as a part of the time teacher. What is to be born in mind is that the respondent no.1 was already working in the recognised and aided day school as a full timer and in addition to the said work he was also appointed as a part time teacher in the night school temporarily. The petitioner has placed on record various orders passed by the education Superintendent to substantiate its case that the sanctioned teaching staff strength in academic session 1989-90, 1990-91 and 1991-92 was 13.5 teachers, whereas at the end of academic session 1991-92 the same was reduced to 12, thus rendering one teacher as excess. On account of such reduction of the sanctioned strength the petitioner justifies the termination of respondent no.1. Perusal of the order passed by the tribunal does not disclose the consideration of this aspect on its proper prospective, which has resulted in passing of the order of quashing the order of termination and in turn directing

re-instatement with full backwages. The petitioner has justified the reason for termination viz. reduction in the workload. Recourse to rule 26 ordinarily has to be resorted to, If the employee is working in a recognised and aided school and if he is a permanent employee, rendered excess on account of reduction in the workload, then he is entitled to absorption in some other school. However in the present case the respondent no.1 is already working as a full time teacher in a day school. Hence there is no question of directing absorption of respondent no.1 by taking recourse to rule 26, assuming that he is a permanent employee. There is no case for granting backwages for the reason that the respondent no.1 has been already gainfully employed and was performing the duty in addition to usual duties performed by him in a day school by working as a part timer in a night school. In the facts of the present case, the tribunal has committed an illegality in setting aside the termination re-instatement with full back wages. It may not be out of place to state that while issuing rule, this court has granted interim stay of the order passed by the tribunal and the same holds field till the decision of this matter finally today.

5. In the result, the impugned judgment and order

passed by the tribunal deserves to be quashed and set

aside. Hence the following order is passed.

6. The impugned judgment and order passed by the tribunal dated 27-3-1996 in appeal no. GEN/406/92/BOM/218/1992 is quashed and set aside. Rule made absolute in above terms with no order as to costs.

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