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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6452 OF 2021

Mohammed Mussaviruddin Mohammed
Naziruddin,
Age-53 years, Occu-Service,
R/o Yusuf Colony, Wangi Road,
Parbhani, Tq. and Dist.Parbhani

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
School Education Department,
Mantralaya, Mumbai-32

2. The Education Officer (Secondary),
Zilla Parishad, Parbhani,
Tq. and Dist. Parbhani

3. Parbhani Education Society,
Khandoba Bazar Road, Opp.Marathwada
High School, Parbhani,
Tq. and Dist. Parbhani,
(Through its Secretary)

-- RESPONDENTS

Mr.Vivek Dhage, Advocate for the petitioner.
Mr.P.S.Patil, AGP for respondent Nos. 1 and 2.
Mr.K.S.Chavan h/f Mr.VM.Maney, Advocate for respondent No.3.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : FEBRUARY 8, 2023

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put forth prayer clause B, C and D as under :-

"B. By issuing Writ of Certiorari or orders or any other writ in the nature of writ of certiorari, the impugned order dated 30.04.2021 passed by respondent No.2, Education Officer (Secondary), Zilla Parishad, Parbhani may kindly be quashed and set aside;

C. By issuing Writ of Mandamus or orders or any other writ in the nature of Writ of Mandamus, the respondent No.2 Education Officer (Secondary), Zilla Parishad, Parbhani may kindly be directed to grant approval to the petitioner to the post of Headmaster of Dr.Zakir Hussain High School, Sailu, Tq. Sailu, Dist. Parbhani in view of proposal dated 04.01.2021 ;

D. By issuing writ of mandamus or orders or any other writ in the nature of Writ of Mandamus, the respondents may kindly be directed not to relieve the petitioner from the post of Head Master of Dr.Zakir Hussain High School, Sailu, Tq.Sailu, Dist.Parbhani."

3. We have considered the strenuous submissions of the learned Advocate for the petitioner, the learned AGP on behalf of respondent Nos. 1 and 2 / Education Department and Mr. Chavan, the learned

Advocate for respondent No.3.

4. This is a peculiar case wherein the petitioner claims that he opted for a voluntary retirement, purportedly under a threat from the Management, by submitting an application on 15.05.2019. On 31.07.2019, he was relieved from service in terms of his application seeking voluntary retirement. He returned back to the Management in January 2021 praying for reinstatement. The Management obliged him by reinstating him w.e.f. 04.01.2021. The proposal of his reinstatement was forwarded to the Education Officer for approval alongwith the representation of the Management dated 22.02.2021. By the impugned order dated 30.04.2021, the Education Officer declined to grant approval for the reinstatement of the petitioner. The Establishment in which the petitioner was reinstated, receives salary grants.

5. The contention of the petitioner is that though he was relieved on 31.07.2019, the Management voluntarily reinstated him on 04.01.2021. This arrangement is between the petitioner and the Management. If

the Management is reinstating the petitioner, the Education Officer can not have any objection.

6. The Management has filed an affidavit in reply, through the Secretary dated 17.08.2021, specifically contending that the petitioner opted for voluntary retirement and gave a notice period of 3 months. It is denied that the management ever threatened the Petitioner and compelled him to opt for a retirement or face termination. On 31.07.2019, after 3 months notice period was over, the application was accepted and the petitioner was relieved. On 08.12.2020, he made a representation, which was considered sympathetically and a resolution was passed by the management on 26.12.2020, agreeing to reinstate the petitioner on the post of Head Master. Article 30 of the Constitution of India permits the Educational Institution to administer it's education.

7. The Education Officer has filed an affidavit in reply dated 01.02.2022 contending therein that after the petitioner opted for voluntary retirement, all his retiral benefits were cleared by the

Department. He was paid the gratuity amount of Rs.7,93,100/-, commutation amount of Rs.15,17,215/- and he has been receiving pension on month to month basis @ Rs 36,050/-. It is further stated that once a person has opted for voluntary retirement, and has availed of all the benefits payable as per the service conditions, without a demur, a private arrangement between the Management and such a candidate, to again bring him back in employment and put him on the post of Head Master, is without the sanction of the Government.

8. The petitioner has relied upon a judgment delivered by the Hon'ble Supreme Court in **Ariane Orgachem Pvt.Ltd., Vs. Wyeth Employees Union and others [2016 AIR SC 1761]**.

9. In **Ariane (supra)**, the appellants before the Hon'ble Supreme Court were against the judgment of the High Court of Bombay, which quashed the order of the Deputy Commissioner, Labour and directed him to refer the Industrial Dispute of the concerned workmen for adjudication. The case of the Management was that the employees had opted for a voluntary retirement, after they were transferred from

employment and they had failed to receive an interim protection order from the Industrial Court in the ULP proceedings. After accepting the VRS benefits in such circumstances and after withdrawing the ULP complaints from the Court, they raised an industrial dispute alleging force, coercion and duress while excepting the voluntary retirement scheme. The dispute was referred to the Industrial Tribunal. It is, in this backdrop, that the Management challenged the order of the Bombay High Court before the Hon'ble Supreme Court. The appeal was dismissed and while upholding the order of the Bombay High Court, costs of Rs.1,00,000/- was imposed and the Industrial Court was directed to decide the industrial dispute within 6 months.

10. The petitioner has then relied upon the judgment delivered by the Hon'ble Supreme Court in **N.Ammad Vs. The Manager, Emjay High School and others [AIR 1999 SC 50]**. In the said case, the issue was as to whether a minority school administered by the Minority Community would assume the legal character of a minority institution only after the Government declares it to be a minority institution. In paragraph Nos. 13, 26, 27, 28 and 29, the Hon'ble Supreme Court held as under :-

"13. When the Government declared the school as a minority school it has recognised a factual position that the school was established and is being administered by a minority community. The declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration. Therefore, we are unable to agree with the contention that the school can claim protection only after the Government declared it as a minority school on 2-8-1994.

26. If the said observations were meant for a non-minority school, we would not have considered its implications here. But as the observations are meant for a minority school in that case we may state at once that we are unable to concur with it. The management of a minority school is free to find out a qualified person either from the staff of the same school or from outside to fill up the vacancy. We may point out, in this context, that the Division Bench in Henry Gomes's case (*supra*) has quoted with approval the following observation of another earlier Division Bench decision of the same High Court in [Manager Corporate E. Agency vs. State of Kerala](#) (1990 2 Kerala Law Times 240) "

"The right to appoint the Headmaster of a school or the Principal of a college, is one of prime importance in the administration of the institution. The right of the minority to administer an educational institution of its choice requires the presence of a person in whom they can repose confidence. Who will carry out their directions, and to whom they can look forward to maintain the traditions, discipline and the efficiency of the teaching. When once the pivotal position of the Headmaster is recognised, it has to be held that the right to appoint a person of its choice as Headmaster is of paramount importance to the minority, any interference with which (otherwise than by prescribing qualifications and experience) will denude the right of administration of its content, reducing it to mere husk, without the grain. Such an inroad cannot

be saved as regulation which the State might impose for furthering the standards of education.

(emphasis supplied)

Approval of the above observations of the earlier Division Bench decision of the same court does not go in consonance with the direction issued in Henry Gomez case that the management is bound to find out a qualified teacher from among the members of its staff to be posted as headmaster of the school.

27. Shri R.F. Nariman, learned senior counsel contended, alternatively, that if the management is anxious to find out the most qualified person to fill up the post of Headmaster the management should have advertised for the post inviting applications from qualified persons. To buttress up the said argument learned counsel cited a two Judge Bench decision of this Court in [Shainda Hasan vs. State of Uttar Pradesh & ors.](#) (1990 2 SCR 699). In that case the management of a college was selected by relaxing the qualifications the University declined to accord approval thereto. When appellant approached this court learned judges suggested that the University might not interfere with the selection and appointment under the facts of that case. But no legal proposition has been laid down that selection process must be through advertisement. According to us, it is for the management of the minority educational institution to choose the modality for selecting the qualified persons for appointment.

28. Thus the management's right to choose a qualified person as the Headmaster of the school is well insulated by the protective cover of [Article 30\(1\)](#) of the Constitution and it cannot be chiseled out through any legislative act or executive rule except for fixing up the qualifications and conditions of service for the post. Any such statutory or executive fiat would

be violative of the fundamental right enshrined in the aforesaid Article and would hence be void.

29. In the present case, nobody has alleged that 4th respondent does not possess the qualifications prescribed for the post of Headmaster. If that is the position, management has the right and freedom to appoint him as the Headmaster of the school whether it is by bringing him down from another school or even from outside the State. We therefore concur with the conclusion of the Division Bench of the High Court in the impugned Judgment and dismiss these appeals."

11. The fact situation in the case before us is not only distinguishable from the facts appearing in the above 2 judgments, but also in view of the peculiarity of the circumstances surrounding the attrition of the petitioner and the Management voluntarily re-inducting him in employment and appointing him as a Head Master. It is well settled that if a candidate alleges forcible retirement, amounting to termination, he has to challenge the said action on the ground that it amounts to forcible termination.

12. In the instant case, it is the petitioner who contends that the Management threatened him that he should opt for retirement or he would be dismissed. The petitioner thought over the 2 options and

moved an application on 01.05.2019 seeking voluntary retirement and by setting forth a 3 months notice period, he was relieved after the 3 months notice period expired 31.07.2019. For this entire period, he did not approach any statutory authority raising a grievance or by filing any legal proceedings. He did not even issue a notice to the Management that he desires to withdraw the voluntary retirement application because it was purportedly extracted by exerting force and duress. The petitioner, after being relieved on 31.07.2019, filled up the pension papers and started receiving pension. He also opted for the commutation of a particular percentage of his pension and received an amount of Rs.15,17,215/- from the Government. He also received the gratuity amount of Rs.7,93,100/-. He accepted his monthly pension post commutation @ Rs.36,050/-.

13. It is the case of the petitioner that he was at loggerheads with one Mr.Jaan Mohd. Pasha, who was the Secretary of the Institution. Because of the enmity between the petitioner and also the son in law of Mr.Pasha, the latter gave him 2 options, either to opt for voluntary retirement or to face dismissal. The petitioner opted for voluntary

retirement. Mr.Pasha died in 2020 and thereafter the petitioner returned to the Management with an application dated 08.12.2020 praying for reinstatement in service with continuity. By a private arrangement between the petitioner and the Management, the petitioner was reinstated w.e.f. 04.01.2021.

14. In **Gyanendra Sahay Vs. Tata Iron and Steel Company Limited [AIR 2006 SC 2795]**, it has been held that once an employee has sought retirement voluntarily and has accepted the retiral benefits without any protest, it is not open for him to turn around and contend that he was compelled by circumstances to seek voluntary retirement. In **National Engineering Industries Limited Vs. State of Rajasthan [(2000) 1 SCC 371]**, the employee had accepted the amount of retiral benefits and had encashed the cheque. Therefore, there was a cessation of relationship of employer and employee. In **Man Singh Vs. Maruti Suzuki India Limited and another [(2011) 14 SCC 662]**, the High Court of Punjab and Haryana had held that if an employee desires to allege that his voluntary retirement was a forcible act, he should deposit the entire amount that he has received alongwith interest @ 7.5% p.a., in the

Court. The Hon'ble Supreme Court concluded that though the imposition of interest was a little harsh, an employee cannot be permitted to approbate and reprobate.

15. In the case before us, the petitioner, purportedly under the threat of termination, opted for voluntary retirement. He gave 3 months notice to the Management. The Management did not show any haste and waited for the entire 3 months notice period to end. The petitioner did not withdraw his application during this notice period, in as much as, he did not initiate any proceedings purportedly on account of the threat of termination. The conduct of the petitioner, after his retirement, in accepting the gratuity amount, in opting for commutation of a portion of the pension and receiving Rs.15,17,215/- in lieu thereof and receiving his monthly pension without any demur or complaint, is indicative of the fact that the petitioner had come to terms with his retirement and had no grievance about it.

16. The crucial aspect involved in this case is as to whether, without a challenge to the alleged forcible retirement, a candidate can return to

the Management after a passage of 18 months and by a private understanding between himself and the Management, instrumentalize his reinstatement on the post of Head Master and then demand salary from the grants of the Government. The Management shrewdly did not pay any salary to the petitioner after notionally reinstating him and the petitioner continues to draw his pension even till today. He has even retained the entire amount of retiral benefits that he has received. Now that the impugned order has been passed on 30.04.2021, which is 4 months after the notional reinstatement of the petitioner, the Management has discontinued him and the petitioner is now living a retired life.

17. In the above peculiar facts and circumstances, we do not find that the Education Department of the State Government is at fault in refusing approval. In our view, if such practices are tolerated on the basis of a private arrangement between the Management and the Employee, this would lead to serious uncertainty. If the vacancy is filled in by any candidate, the return of such a retired employee would amount to foisting him on such candidate and thereby dislodge the

candidate who has been selected on account of a vacancy that arose out of such voluntary retirement of an employee.

18. Though the Management before us contends that the vacancy created on account of the retirement of the petitioner was not filled in, the situation would hardly turn in favour of the petitioner since it cannot be permitted to allow such an employee to return as and when he desires and the private Management, on the pleading that it is a minority institution, to act as per its whims. This cannot be countenanced, more so when the money is paid from the State Exchequer, which is public money. Such private arrangement would surely not bind the State Government.

19. We, therefore, do not find that the impugned order could be termed as being perverse or erroneous in the light of the Law laid down by the Hon'ble Supreme court in Syed Yakoob Vs.K.S.Radhakrishnan and others [AIR 1964 SC 477] and Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 675].

20. This petition is, therefore, dismissed. Rule is discharged.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)