SECRETARY, AKOLA TALUKA EDUCATION SOCIETY AND ANR. A

v.

SHIVAJI AND ORS.

APRIL 5, 2007

[S. B. SINHA AND MARKANDEY KATJU, JJ.] B

Maharashtra employees of Private Schools (Conditions of Service) Rules, 1981—Rule 26(2)(ii)—Termination without notice—Employees not given three months notice—Order of termination bad in law—Labour Law— C *Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.*

Labour laws—Back wages—Termination of employees—Tribunal found order of termination **malafide** *and allowed full back wages—Challenge against—Held: Tribunal ought not to have granted full back wages—Tribunal* D *failed to take into account the financial condition of employer—In peculiar facts and circumstances, interest of justice would be met if grant of back wages is confined to 25% from date of termination till their reinstatement.*

Appeal—Fresh plea—Plea that institute in question was not recognized E *one and Tribunal did not have jurisdiction to entertain the case, raised for the first time before this Court—Held, not entertainable.*

Appellant No. 1 has been imparting vocational training to the students admitted in their training institute, in different disciplines like Draftsman Civil, Electrician, Wireman, Welder and Fitter etc. The strength of the F **students in the aforementioned disciplines allegedly began to go down from year to year. The services of respondents-Employees/teachers were terminated on the plea that school had to be closed down. The respondents filed appeal before the School Tribunal. The jurisdiction of the Tribunal to entertain the said appeals was questioned on the ground that the institute in question was** G **not a school within the meaning of the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The Tribunal held that the institute was school within the meaning of the provisions of the said Act and that the plea of the appellant that the institute had to be closed down being incorrect, the orders of termination were** *mala fide.* **Appellant unsuccessfully filed writ petition before High Court. Hence** H

A the present appeal.

Appellant contended that the Institute is not covered by the definition of the 'private school' within the meaning of the provisions of the said Act, as it was not recognized by the authorities under the said Act; the Tribunal merely proceeded on the basis that the school, in fact, was not closed down, but having
B failed to take into consideration the charts filed before it, from which, it would appear that the number of students had gone down in different disciplines; and that the Tribunal wrongly allowed full back wages to the teachers without taking into consideration the financial conditions of the appellant.

C Partly allowing the appeal, the Court

HELD 1.1. The question as to whether the provisions of the said Act were applicable in the case of Appellant school although raised a question of jurisdiction, it was necessary for the appellant to plead the jurisdictional fact in relation thereto. [Para 15] [956-G]

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1.2. It is true that in the light of the interpretation clause contained in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, a 'private school' was required to be recognized by the authorities specified therein. The Tribunal had found that it was recognized
E by the Central Government. The State also in its counter affidavit contended that it is recognized by the State. Appellant did not raise a contention before the Tribunal that the institute in question was not recognized by the authorities specified under sub-section (21) of s.2 of the Act. The said contention was required to be specifically raised so as to enable the respondents to meet the same. As the jurisdictional fact required for
F determining the jurisdiction of the Tribunal had not been stated by the appellant, such a contention cannot be allowed to be raised now for the first time. [Para 16] [956-H; 957-A-B]

2.1. There cannot be any doubt whatsoever that if the 'institute' comes
G within the description of 'school' in terms of the provisions of the said Act, before terminating the services of the respondents, it was obligatory on their part to satisfy the conditions precedent therefor. [Para 17] [957-C]

2.2. Rule 26 of the Maharashtra employees of Private Schools (Conditions of Service) Rules, 1981 provides that a permanent employee may
H be retrenched by the management after giving him three months' notice on one or more ground specified therein. Stoppage of imparting coaching in

respect of some courses of studies was one of them. Admittedly, the respondents had not been given three months notice. The order of termination was, therefore, bad in law. [Para 18] [957-D] A

3.1. In view of the provisions contained in sub-clause (ii) of clause (2) of Rule 26, it was not necessary to obtain prior approval of the Education Officer, as a technical or a vocational school does not come within the purview thereof. The contention raised by the appellants before the Tribunal that the institute was required to be closed down was found to be factually incorrect and on that ground the decision of the Tribunal to the effect that the termination of services of the respondents were bad in law cannot be said to be suffering from any error of law apparent on the face of the record. [Para 19] [957-F] B C

3.2 It is now well-settled that back wages should not granted automatically. The Tribunal however, ought not to have granted full back wages. Full back wages should not be granted only because it would be lawful to do so. Before such an order is passed, a judicial or quasi-judicial authority must consider all aspects of the matter. Appellant has produced facts to show decline in strength of the students in different disciplines. The same has not been disputed. In some disciplines the strength of the students has considerably gone down. The school is an unaided one. It, therefore, must meet its financial need from the fees realized from the students. It was a relevant consideration. The Tribunal failed to take the said fact into consideration. The financial condition of the school has not been denied or disputed. In the peculiar facts and circumstances of this case, interest of justice shall be met if grant of back wages is confined to 25% only from the date of termination of the respondents till their reinstatement. D E

[Paras 21 and 23] [957-G-H; 958-B; G, H] F

U.P. State Brassware Corporation Ltd. and Anr. v. *Uday Narain Pandey,* [2006] 1 SCC 479; *A. P. SRTC and Anr.* v. *B. S. David Paul,* [2006] 2 SCC 282; *Banshi Dhar* v. *State of Rajasthan and Anr.,* [2006] 11 SCALE 199 and *U.P. SRTC* v. *Mutthu Singh,* [2006] 7 SCC 180, relied on. G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1816 of 2007.

From the Final Judgment and Order dated 23.01.2006 of the High Court of Judicature of Bombay, Bench at Aurangabad in Writ Petitions Nos. 1143 to 1149, 1269, 1270 and 1336 of 2005. H

A Shekhar Naphade Sr. Adv., Uday B. Dube and Kuldip Singh for the Appellants.

Vinayak Dixit Sr. Adv., Shivaji M. Jadhav, Himanshu Gupta, Brij Kishor Sah, Rahul Joshi and S.S. Shinde (for V.N. Raghupathy) for the Respondents.

B The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. The State of Maharashtra enacted 'The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, 'the C Act') to regulate recruitment and conditions of service of employees in certain private schools. It came into force with effect from 20.03.1978. 'Private School' has been defined in Section 2(20) of the Act to mean :

> *"Private School"*, means a recognized school established or D administered by a Management other than the Government or a local authority."

3. The terms 'recognized' and 'school' have been defined in Section 2(21) and 2(24) respectively in the following terms :

> E "2(21).-*"Recognized"* means recognized by the Director, the Divisional Board or the State Board, or by any officer authorized by him or by any of such Boards;"
>
> "2(24).- *"School"*, means a primary school, secondary school, higher secondary school, junior college of education or any other institution F by whatever name called including technical, vocational or art institution or part of any such school, college or institution, which imparts general, technical, vocational, art or, as the case may be, special education or training in any faculty or discipline or subject below the degree level;"

G 4. Appellant No.1 herein runs a training institute. It imparts vocational training to the students admitted therein in different disciplines e.g. Draftsman Civil, Electrician, Wireman, Welder and Fitter etc. The strength of the students in the aforementioned disciplines allegedly began to go down from year to

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year. So much so, no student took admission in the courses of 'Draftsman Civil' or 'Welder'. The relevant portion of the chart showing details of admissions in the aforementioned disciplines reads as under :

"Sr. No.	Academic Year	Draftsman Civil		Electrician		Wireman		Welder		Fitter	
		Sanctioned strength	Actual admission	Sanctioned strength	Actual addmission	Sanctioned strength	Actual admission	Sanctioned strength	Actual admission	Sanctioned strength	Actual admission
14	August 1998	16	08	16	18	16	18	16	18	24	26
15	August 1999	16	09	16	18	16	09	16	18	24	19
16	August 2000	16	07	16	17	16	07	16	12	24	14
17	August 2001	16	00	16	09	16	06	16	05	24	11
18	August 2002	16	00	16	01	16	05	16	00	24	02

5. Similarly, in the certificate courses of six months and one year also, there had been a steady decline, as would appear from the following charts:

"Details of Admission for Certificate Courses of six months

Sr. No.	Academic Year	Electric Motor & Armetcher Winding		Electronic Assembly & Trouble shooting	
		Sanctioned Strength	Actual Admission	Sanctioned Strength	Actual Admission
1.	Jan. 1999	20	13	25	10
2.	Jul. 1999	20	16	25	05
3.	Jan. 2000	20	05	25	06
4.	Jul. 2000	20	15	25	07
5.	Jan. 2001	20	08	25	—
6.	Jul. 2001	20	06	25	—
7.	Jan. 2002	20	—	25	—
8.	Jul. 2002	20	—	25	—

Details of Admission for Certificate Courses of one year

Sr. No.	Academic Year	Tailoring & Cutting		Lathe Machine Operator		Computer Operation (Part-time)	
		Sanctioned Strength	Actual Admission	Sanctioned Strength	Actual Admission	Sanctioned Strength	Actual Admission
1.	Jul. 1998	40	34	25	17	20	—
2.	Jul. 1999	40	24	25	09	20	—
3.	Jul. 2000	40	26	25	05	20	—
4.	Jul. 2001	40	32	25	06	20	—
5.	Jul.-2002	40	—	25	—	20	

6. Respondent No. 1 herein was appointed on a temporary basis. The services of the private respondents were purported to have been temporarily terminated as allegedly a decision had been taken to close down the institute with effect from 12.08.2002, contending that the said purported orders of termination were violative of the Act and the Rules framed thereunder.

7. Appeals thereagainst were filed by the aggrieved employees/teachers before the School Tribunal, Pune Region. The jurisdiction of the Tribunal to entertain the said appeals was questioned on the ground that the institute in question was not a school within the meaning of the provisions of the said Act. The Tribunal, however, in its judgment held : (i) As the appellant was duly recognized by the Central Government permanently without grant-in-aid, it was a school within the meaning of the provisions of the said Act; (ii) *Inter alia*, on the premise that the services of all the staff and teachers were not terminated, the plea of the appellant that the institute had to be closed down being incorrect, the orders of termination were *mala fide*;

8. The Tribunal furthermore took note of the fact that during pendency of the said appeals, some new teachers had been appointed.

9. The writ petition preferred by the appellant thereagainst has been dismissed by reason of the impugned judgment.

10. Mr. Shekhar Naphade, the learned Senior Counsel appearing on behalf of the appellants, would urge :

(i) The institute is not covered by the definition of the 'private school' within the meaning of the provisions of the said Act, as it was not recognized by the authorities under the said Act.

(ii) The Tribunal in its judgment merely proceeded on the basis that the school, in fact, was not closed down, but having failed to take into consideration the charts filed before it; from which, it would appear that the number of students had gone down in different disciplines, and thus, the impugned judgment cannot be sustained.

(iii) The Tribunal wrongly allowed full back wages to the teachers without taking into consideration the financial condition of the appellant.

11. Our attention, in this behalf, has also been drawn to the following statements made in the Rejoinder to the Counter Affidavit of Respondent Nos. 1 to 3 before this Court:

"I say that the details of the number of students currently studying in the Institute and the fees collected from them are as follows :

Students studying in 2nd year of ITI	47 x Rs.6,000 (Fees collected from every student)	Rs.2,82,000/-
Students studying in 1st year of ITI	72 x Rs.8,000/- (Fees collected from every student)	Rs. 5,76,000/-
Students studying in certificate course	7 x 2,000 (Fees collected from every student)	Rs.14,000/-
	Total	Rs.8,72,000/-

I say that the details regarding the expenses incurred by the Petitioner on the salary and other miscellaneous expenses are as follows :

1.	Towards salary of staff at current rate of consolidated pay	Rs. 65,200/- per month x 12 months	Rs.7,80,400/- per annum
2.	Expenses for raw material per student per year Rs. 2400	Rs.2,400 x 126 (No. of students)	Rs.3,02,400/-
3.	Misc. Expenses (Telephone bill, electricity bill, stationery, travel expenses, repairs, etc.		Rs.2,00,000/-
		Total	Rs.12,82,800/-

A Considering the above mentioned two tables, it becomes clear that the Petitioner is facing a deficit of Rs.4,10,800/- in the current academic year. The Petitioner if is directed to pay 100% back wages to the Respondents employees, it would create a burden of more than Rs. 40 lacs. The Petitioner is not in a position to pay back wages and the said direction would affect the poor students, who are studying in the Institute and the efforts of the Management to re-establish the Institute would be thwarted. It is respectfully submitted that the institute is being run by reducing the tuition fees so as to attract the higher number of students. As stated earlier the fees charged from the students have dwindled from Rs.20,000/- per annum in the year 1998 to Rs.6,000/- to 8,000/- at present."

12. It was furthermore submitted that the institute having been set up in a tribal area, it is unlikely that many students would take admission in the said institute in future.

13. Mr. Vinayak Dixit, the learned Senior Counsel appearing on behalf of the respondents, on the other hand, supported the impugned judgment contending that the plea taken by the appellant that the school was required to be closed down was an act of *mala fide* on the part of the appellants. The learned counsel would contend that in terms of Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, as the appellant was bound to give three months' notice and was furthermore required to obtain prior approval of the competent authority specified therein; and as the mandatory conditions for retrenching the services of the respondents had not been complied with, the orders of termination were *void ab initio.*

14. It was submitted that the appellant had not paid any salary to the teachers for the last 23 months, although they had been reinstated in terms of this Court's order dated 19.08.2006. It was also submitted that even after their reinstatement, they are being paid salary only on a consolidated basis.

15. The question as to whether the provisions of the said Act were applicable in the case of Appellant school although raised a question of jurisdiction, in our opinion, it was necessary for the appellant to plead the jurisdictional fact in relation thereto.

16. It is true that in the light of the interpretation clause contained in

the said Act, a 'private school' was required to be recognized by the authorities specified therein. The Tribunal had found that it was recognized by the Central Government. The State also in its counter affidavit contended that it is recognized by the State. Appellant herein did not raise a contention before the Tribunal that the institute in question was not recognized by the authorities specified under sub-section (21) of Section 2 of the Act. The said contention was required to be specifically raised so as to enable the respondents herein to meet the same. As the jurisdictional fact required for determining the jurisdiction of the Tribunal had not been stated by the appellants, we are of the opinion that such a contention cannot be allowed to be raised before us for the first time.

17. There cannot be any doubt whatsoever that if the 'institute' comes within the description of 'school' in terms of the provisions of the said Act, before terminating the services of the respondents, it was obligatory on their part to satisfy the conditions precedent therefor.

18. Rule 26 of the Rules provides that a permanent employee may be retrenched by the management after giving him three months' notice on one or more grounds specified therein. Stoppage of imparting coaching in respect of some courses of studies was one of them. Admittedly, the respondents had not been given three months' notice. The order of termination was, therefore, bad in law.

19. We may, however, state that in view of the provisions contained in sub-clause (ii) of clause (2) of Rule 26, it was not necessary to obtain prior approval of the Education Officer, as a technical or a vocational school does not come within the purview thereof. There cannot furthermore be any doubt whatsoever that the contention raised by the appellants before the Tribunal that the institute was required to be closed down was found to be factually incorrect and on that ground the decision of the Tribunal to the effect that the termination of services of the respondents were bad in law cannot be said to be suffering from any error of law apparent on the face of the records.

20. The Tribunal, however, in our opinion ought not to have granted full back wages. Full back wages, as is well-known, should not be directed to be granted only because it would be lawful to do so. Before such an order is passed, a judicial or a quasi-judicial authority must consider all aspects of the matter. Appellant herein has produced facts to show decline in strength of the students in different disciplines. The same has not been disputed. We

A have noticed hereinbefore that in some disciplines the strength of the students has considerably gone down. The school is an unaided one. It, therefore, must meet its financial need from the fees realized from the students. It was a relevant consideration. The Tribunal, in our opinion, failed to take the said fact into consideration. The financial condition of the school, as noticed supra, has also not been denied or disputed.

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21. It is now well-settled by a large number of decisions of this Court that back wages should not granted automatically. In *U.P. State Brassware Corporation Ltd. and Anr.* v. *Uday Narain Pandey,* [2006] 1 SCC 479, this Court observed :

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> "22. No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical
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> grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act."

[See also *Banshi Dhar* v. *State of Rajasthan & Anr.,* (2006) 11 SCALE 199 Para 11]

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22. In *U.P. SRTC* v. *Mutthu Singh,* [2006] 7 SCC 180], this Court opined:

> "...But we are fully satisfied that in the facts and circumstances of the case, back wages should not have been awarded to the respondent-workman. In several cases, this Court has held that payment of back
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> wages is a discretionary power which has to be exercised by a court/ tribunal keeping in view the facts in their entirety and neither straight jacket formula can be evolved nor a rule of universal application can be laid down in such cases."

[See also *A.P. SRTC and Anr.* v. *B.S. David Paul* - [2006] 2 SCC 282]

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23. We, therefore, are of the opinion that in the peculiar facts and circumstances of this case, interest of justice shall be met if grant of back wages is confined to 25% only from the date of termination of the respondents till their reinstatement. It is, however, made clear that the respondents shall be entitled to receive entire salary for the period they had worked prior to their

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termination as also post reinstatement. A

24. The appeal is allowed to the aforementioned extent with the aforementioned directions. However, in the facts and circumstances of the case, there shall be no order as to costs.

D.G. Appeal partly allowed. B