



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10152 OF 2018

Bhaskar Bhujangrao Bade .. Petitioner

Versus

The Executive President Maharashtra
Academy of Engineering and
Educational Research and others .. Respondents

Shri Mukul S. Kulkarni, Advocate h/f Shri Abhishek D. Chapule,
Advocate for the Petitioner.

Shri Gaurav D. Deshpande, Advocate for the Respondent Nos. 1
and 2.

Mrs. R. R. Tandale, A.G.P. for the Respondent No. 3.

**CORAM : ROHIT W. JOSHI, J.
DATE : 30TH SEPTEMBER, 2026.**

ORDER :

. The present petition is filed in order to assail the judgment and order dated 05th April, 2018 passed by the learned Presiding Officer, School Tribunal, Latur in Appeal No. 09 of 2015 to the extent of which relief of backwages is denied by the learned School Tribunal, by allowing the appeal preferred by the petitioner, who is appellatant before the learned School Tribunal.

2. The petitioner was appointed as an Assistant Teacher in the respondent No. 2 – school, which is a private school within the meaning of the provisions of the Maharashtra Employees of Private Schools (Conditions of Service Regulation) Act, 1977

(hereinafter referred as to the “M.E.P.S. Act” for the sake of brevity), run by the respondent No. 1 – Management. The date of appointment of the petitioner is 23.06.2003. The services of the petitioner were terminated after holding disciplinary inquiry vide order dated 26.10.2012. This order of termination was assailed by the petitioner by filing appeal before the learned School Tribunal, Latur which was registered as Appeal No. 42 of 2012.

3. The said appeal was allowed vide judgment and order dated 26.09.2013. The learned School Tribunal, Latur had quashed and set aside the order of termination and directed reinstatement with 75% of the backwages. The judgment and order dated 26.09.2013 passed by the learned School Tribunal was assailed by the respondent Nos. 1 and 2 vide Writ Petition No. 9260 of 2013. The said petition was partly allowed vide judgment dated 20.06.2014. This Court set aside the judgment and order passed by the learned School Tribunal on the ground that relief of reinstatement with backwages should not have been automatically granted only because inquiry was defective and that management must be given one opportunity to cure the defect in the inquiry. Accordingly matter was remanded back to the inquiry committee for holding fresh inquiry.

4. After fresh inquiry was held in view of the leave granted by this Court, the services of the petitioner were again terminated vide order dated 07.01.2015. This order of termination was

impugned by filing appeal U/Sec. 9 of the M. E. P. S. Act vide Appeal No. 09 of 2015. The appeal is partly allowed vide impugned judgment and order dated 05.04.2018. The learned School Tribunal has set aside the order of termination and granted relief of reinstatement with continuity of service. However, claim for backwages is denied. The appellant – employee has filed present petition assailing the said order to the extent of denial of backwages.

5. The management has accepted the judgment and has not challenged the same. Therefore, the only issue that is required to be decided in the present petition is as to whether the petitioner is entitled to receive backwages or not.

6. Perusal of the memorandum of appeal indicates that the petitioner has made statement in the memorandum of appeal that he was not gainfully employed after termination of the services. The management has countered this contending that the petitioner was gainfully employed as a teacher with a hostel namely Mouli Vastigruh and Sanskar Kendra.

7. Mr. Mukul Kulkarni, learned advocate for the petitioner argued that by making statement in the memorandum of appeal regarding non gainful employment, the petitioner has discharged his initial burden as not being gainfully employed, as such the learned Tribunal ought to have granted 100% backwages while setting aside order of termination and since the management has

not led any evidence to counter the same.

8. Mr. Gaurav Deshpande, learned advocate for the respondent - management counters the contention. Learned advocate vehemently argued that the association of the petitioner with said hostel and that the petitioner was rendering services is a matter of record. It is argued that it was for the petitioner to prove and establish that he lent his services were without any remuneration. Learned advocate would argue that in the peculiar facts of the case mere statement of not being gainfully employed would not sub-serve the purpose. Learned advocate would also submit that in order to establish entitlement to the relief of backwages, the employee is not only required to establish that he was not gainfully employed and but also that despite his sincere attempts he could not secure alternate employment during the period of termination. Reliance in support of this contention is placed upon the judgment of the of this Court in the matter of **(Navin J. Surti Vs Modi Rubber Ltd. and another)** reported in ***2004 SCC Online Bom 20*** .

9. In reply Mr. Kulkarni, learned advocate for the petitioner contends that petitioner was not gainfully employed with Mauli Hostel. Despite being in employment with the respondent No. 2 school, the petitioner was associated with said hostel is one of the charges framed against the petitioner in the disciplinary inquiry. Learned advocate contends that since in the inquiry one of the charge is with respect of gainful employment with the said

hostel, the responsibility of leading evidence and to prove that the petitioner was gainfully employed was upon the management. Mr. Kulkarni further contends that in the earlier round of litigation affidavit of the Director of the said hostel was filed in support of the contention that the petitioner was not drawing any remuneration while imparting education to the students in the hostel.

10. There cannot be any quarrel with the legal position with respect to award of backwages. Normal rule is that when termination of the employee is set aside, the relief of backwages must follow. However, it is for the employee to prove that he was not gainfully employed from the date of his termination till the date of reinstatement. It has been held by the Supreme Court in the case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others reported in *(2013) 10 SCC 324* that the burden of not being gainfully employed itself can be discharged by making statement either in the pleadings or by way of affidavit before the adjudicating authority or the Court that the employee was not gainfully employed during the interregnum period. One such statement is made by the petitioner, the burden shifts upon the employer to positively establish that the employee was gainfully employed elsewhere.

11. In the present case, the petitioner – appellant has made statement of not being gainfully employed in the memorandum of appeal. He has also fairly not denied his association with Mauli

Hostel. He has come up with a stand that he was rendering service without any remuneration and he was not getting any salary. The management has contended that the petitioner was gainfully associated with the hostel and, therefore, the relief of backwages in the earlier appeal was opposed by the management. In the second inquiry pursuant to order passed by this Court a specific charge came to be framed that the petitioner was associated with Mauli Hostel and was drawing salary from his employment with the said hostel. The termination effected pursuant to the said charge sheet is set aside by the learned School Tribunal.

12. The facts of the present case are peculiar. Association of the petitioner with Mauli Hostel is not in dispute. He has, however, stated that he was not gainfully employed with the said hostel, although he was providing guidance to the students staying there. The management is also aware about the fact of association of petitioner with Mauli Hostel. The management had also framed a charge of being in gainful employment of Mauli Hostel against the petitioner in the departmental inquiry. The order of termination passed pursuant to the departmental inquiry is set aside by the learned School Tribunal. This order is not challenged by the management. The management should have summoned any competent witness from the said hostel to prove that the petitioner was in gainful employment with the said hostel, particularly in view of the fact that, in the earlier round of litigation, the petitioner had filed affidavit of Director of the

hostel stating that the petitioner was not employed for wages and order of termination in which one of the charges was relating to gainful employment of the petitioner with Mauli Hostel is set aside. At the same time, the petitioner has also failed to lead positive evidence to establish that, despite sincere efforts, he could not secure alternate employment.

13. Mr. Deshpande has placed reliance on judgment in the case of **Navin J. Surti** (supra) to argue that, in the absence of any evidence from the petitioner that he was unable to secure alternative employment despite making efforts in that regard. In the case of **Navin J. Surti** (supra), this Court had granted relief of 50% back wages to the employee on the ground that evidence regarding failure to secure alternate employment was not brought on record.

14. In the considered opinion of this Court, adopting the said course will subserve the ends of justice in the peculiar facts of the present case.

15. I, therefore, pass following order.

O R D E R

A. The writ petition is partly allowed by directing the respondent No. 1 – management to pay 50% of backwages to the petitioner from the date of termination of his services i. e. 15.01.2015 till the date of reinstatement that

is 15.04.2018.

B. Parties to bear their own costs.

[ROHIT W. JOSHI, J.]

bsb/Sept. 26