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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10289 OF 2011

1. Bhodani Shikshan Prasarak Mandal)  
Through its Chairman, )  
Tanaji Sadaba Hange, )  
having its address at Bhodani, )  
Taluka Indapur, District, Pune )
  2. Shreeram Vidyalaya, Bhodani. )  
having its address at Bhodani, )  
Taluka Indapur, District, Pune. )
- ...Petitioners

Versus

1. Tanaji Madhav Gharge, )  
resident of At & Post Khorochi, )  
Taluka Indapur, District Pune. )
  2. The Education Officer (Secondary))  
Zilla Parishad, Pune. )
  3. The Dy. Director of Education, )  
Pune Region, Pune. )
  4. The State of Maharashtra, )  
(Writ to be served to the Secretary )  
Govt. of Maharashtra, )  
School Education Department, )  
Mantralaya, Mumbai-400 032. )
- ...Respondents

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Ms. Kumud A. Bhatia for the Petitioners.

Mr. Rahul S. Kadam for the Respondent No.1.

Mr. A. I. Patel, Addl. GP a/w Ms. V .R. Raje, AGP for the  
State/Respondent Nos. 2 to 4.

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**CORAM : M.M. SATHAYE, J.**

**DATE : 30<sup>th</sup> SEPTEMBER, 2026**

**ORAL JUDGMENT :**

1. The Petitioners (Management and School) have filed this petition under Articles 226 and 227 of the Constitution of India, taking exception to the order dated 21.10.2011 passed by Presiding Officer, School Tribunal, Pune Region, Pune ('the Tribunal' for short) in Appeal No. 9 of 2011. By the said impugned order, the appeal filed by Respondent No. 1 is partly allowed, declaring otherwise termination of Respondent No. 1 from the post of Headmaster bad in law, thereby quashing it. The Tribunal has granted Respondent No. 1 continuation in service; however, the period from 15.06.2009 to 19.05.2010 was treated as extraordinary leave without pay and the Petitioner/Management was directed to pay arrears of salary and back-wages from 19.05.2010 till reinstatement.

2. Respondent No. 1 filed appeal under Section 9 of the the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 contending *inter alia* as under. That he was appointed as Assistant Teacher on 19.06.1991. That he was promoted as Headmaster in 1996. That after a long service of more than 18 years, in the year 2009, the Petitioner/Management alleged misconduct and Respondent No. 1 was made to sign resignation letter dated 16.03.2009 under force. That before the resignation was accepted by the Petitioner/Management on 14.06.2009, Respondent No.1 had issued a letter dated 12.05.2009 requesting the Management not to accept the resignation but the said letter was

refused and despite such pending request (withdrawing the resignation) the Petitioner/Management accepted the resignation. He contended that the resignation letter itself was given under force.

3. The Petitioner/Management disputed that the withdrawal of resignation was received by it. According to the Petitioner/Management, the letter dated 12.05.2009 has returned unclaimed and therefore they had no knowledge about alleged withdrawal of resignation. According to Management, the theory of withdrawal of resignation is an afterthought and cooked up story.

4. The Tribunal on appreciation of evidence has allowed the appeal as stated above. In these circumstances, the Petitioner/Management filed the present petition, which was admitted on 13.01.2012 and initially the impugned order was stayed. Record shows that subsequently, under order dated 24.02.2012 the interim order was modified. Stay was not continued so far as order of reinstatement is concerned; however, stay continued about payment of back wages.

5. It is not disputed that thereafter Respondent No.1 was reinstated on 08.08.2012 and in due course of time, during pendency of the petition, he has reached the age of superannuation, retired and is also receiving pension.

6. Therefore, the narrow question involved in this petition is about legality of direction about back-wages from 19.05.2010 to 08.08.2012 ('the said period' for short).

7. Learned counsel for the Petitioner/Management submitted that Respondent No. 1 had the burden to prove that he was not gainfully employed during the said period, which is not discharged. She submitted that in the absence of such evidence, the back-wages could not have been directed to be paid. She relied on the judgment of **Ramesh Chand Vs. Management of Delhi Transport Corporation 2023 SCC OnLine SC 776** in support of her submission. She also submitted that it is a small school at village and the Petitioner/Management should not be burdened with the order of back-wages.

8. On the other hand, learned counsel for Respondent No.1 supported the impugned order contending *inter alia* that direction about back-wages would depend on the facts and circumstances of each case and for a person like Respondent No.1 who has rendered long service of 18 years, 3 months and 3 days, who had to face process of execution of the impugned order, which was initially stayed by this Court for some time, it is not probable that he would immediately get employed gainfully. He submitted that period involved is not very long period and therefore the order passed by the Tribunal may not be interfered with.

9. During hearing of the petition, a joint request was sought to be made by learned counsel for the Petitioner/Management and Respondent No.1/employee that the Management is ready to forward the proposal of Respondent No.1 to the State Government for consideration of payment during the said period. It was submitted across the bar that the Petitioner/Management had kept the post vacant and salary grant is not drawn.

10. Learned Addl. G.P. strongly opposed this request contending *inter alia* that impugned order specifically directs only management and not the State Government or education authority to bear the burden. He submitted that if the Management has kept the post vacant, it is an act detrimental to student education. He has relied on following judgments, in support of his submissions.

- i. Vidya Mandir Mandal and Anr. Vs. Anil Sakharam Kamble and Anr. (Bombay High Court, Writ Petition No.1202 of 2022, dated 07.04.2026).
- ii. Educational Society, Tumsar and Ors. Vs. State of Maharashtra and Ors. (2016) 3 SCC 512.
- iii. Rajapur Shikshan Prasarak Mandal Ratnagiri Vs. State of Maharashtra & Ors. (Bombay High Court, Writ Petition No.757 of 2016, dated 18.04.2018).
- iv. Shri Rangdas Swami Shikshan Vikas Mandal and Ors. Vs. Mutyal Vilas Rambhau and Ors. 2023 SCC OnLine Bom 2160.

11. Having heard learned counsel for the parties and on going through the record, interference is not required in the impugned order, for following reasons.

11.1. It has come on record that the envelope in which withdrawal of resignation was sent by Respondent No. 1 (under letter dated 12.05.2009) was refused by the concerned person of the Petitioner/Management. The Tribunal has considered the evidence in that regard in the form of envelope Exhibit-25/7 and the postal endorsement clearly indicated that 'the addressee has refused to accept the packet'. In law, refusal amounts to good service and therefore, this is a case where the Petitioner/Management has clearly refused to accept a communication from an employee who was

admittedly in dispute with the Management. Therefore, the Tribunal has held that acceptance of resignation in subsequent meeting dated 14.06.2009 cannot be considered to the detriment of service of Respondent No.1.

11.2. The Tribunal has considered this refusal and after considering the long period of 18 years, 3 months and 3 days service rendered by Respondent No. 1, has come to the conclusion that he is entitled to the back-wages as well as reinstatement.

11.3. Since the interim relief was modified and stay to order of reinstatement was not continued, Respondent No. 1 was reinstated on 08.08.2012, as already indicated above.

11.4. The period for which back-wages are granted is a small period of about 2 years and 3 months.

11.5 In **Ramesh Chand (Supra)**, the Hon'ble Supreme Court has clarified that initial burden is on the employee to come out with a case that he was not gainfully employed after the order of termination. However, it is also clarified by the Hon'ble Supreme Court that such consideration depends on facts and circumstances of each case.

11.6. In the present case, admittedly neither Respondent No. 1/employee has filed any affidavit stating that he was not gainfully employed, nor the Petitioner/Management has filed any affidavit or led evidence to show positively that he was gainfully employed. Therefore, this consideration is in the realm of guess work in the

dark. Considering that Respondent No. 1 (a teacher) had already rendered a long service of 18 years, 3 months and 3 days and after fighting a litigation in Tribunal got an order of reinstatement and back-wages, who also got re-instated eventually with the same Management, it is difficult to believe that such person would have got sufficient opportunity or time at his disposal for seeking another gainful employment during short period in between. Eventually on 08.08.2012 he was reinstated and has thereafter worked for the school.

11.7. In such peculiar facts and circumstances, considering short period for which Management is directed to pay back-wages, I am not inclined to interfere.

11.8. The argument of the Petitioner/Management that the post was kept vacant and salary grant is not drawn and one Mr. Jankar was acting as In-charge Headmaster with signing authority only, will have to be considered with caution. This submission would mean that the Petitioner/Management has run the school, in the *interregnum*, in under-staffed condition, which is actually detrimental to the students' interest. In that view of the matter, such explanation and argument in support of joint request that the proposal be considered by State Government for bearing the burden, cannot be acceded to. The direction under impugned order is clearly to the Management and the State is not directed to bear the burden, hence there is no question of considering the joint request of Management and the employee to forward proposal to the state. In that view of the matter, there is no need to further consider the judgments relied upon by Learned Addl.

G.P

12. In the aforesaid facts and circumstances and for reasons indicated above, there is no perversity in the impugned order and view taken is most probable. Hence, **writ petition is dismissed**. Rule is discharged. Interim relief is vacated. No order as to costs.

13. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

**(M.M. SATHAYE, J.)**