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

WRIT PETITION NO.1322 OF 1995

1 Dyan Prakash Shikshan Sanstha,
C/o Jaihind High School,
Babulgaon (Bk.), Tq.Vaijapur,
Dist.Aurangabad.
Through it's President
Shri Bhanudas Patil,
Age : Major,
Resident of as above.

2 Jaihind High School,
Babulgaon (Bk.), Tq.Vaijapur,
Dist.Aurangabad.
Through it's Headmaster.

..PETITIONERS

-VERSUS-

1 The State of Maharashtra.
Through Government Pleader,
High Court at Aurangabad.

2 The Presiding Officer,
School Tribunal at Aurangabad.

3 Udalsingh s/o Uttamasingh Jarwal,
Age : Major, Occ : Teacher,
R/o at Babhulgaon (Bk),
Tq.Vaijapur, Dist.Aurangabad.

..RESPONDENTS

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Shri V.D.Salunke, Advocate for the Petitioners.

Smt.V.A.Shinde, AGP, for Respondent No.1.

Shri V.N.Upadhye, Advocate for the Respondent No.3.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th August, 2015

Oral Judgment:

1 This petition was admitted by the order dated 02.12.1998. The recovery of back-wages as was granted by the School Tribunal vide the impugned judgment dated 28.02.1994 was stayed by this Court by way of interim relief.

2 Respondent No.3/ Employee was 38 years of age when he preferred Appeal No.139/1991-M before the School Tribunal at Aurangabad. He is now said to be about 62 years of age. The age of retirement of the Petitioner is 58 years.

3 I have heard the learned Advocates appearing for the respective sides.

4 The Petitioners had some grievances about Respondent No.3/ Employee as regards his behaviour and conduct in the school premises. Consequentially, a letter dated 19.10.1991 was served upon Respondent No.3 informing him that he should obtain 'written permission' of the Petitioners/ Management prior to entering the school premises. This letter was challenged by Respondent No.3 by preferring an appeal before the

School Tribunal contending that it amounts to otherwise termination under Section 9 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977.

5 During the pendency of the appeal before the School Tribunal, the Petitioners/ Management moved an application dated 27.12.1991 praying for directions to be issued to Respondent No.3 for reporting for duties. By the order dated 12.03.1992, Respondent No.3/ Employee was directed by the School Tribunal to join duties immediately. Respondent No.3 had reported for duties on 17.03.1992. He has now attained the age of superannuation.

6 The grievance of the Petitioners is that there was no termination in the eyes of law and hence, there was no cause of action put forth before the School Tribunal. The Employee was directed to join duties and only thereafter, he reported for duties. There was no pleading to the extent of his alleged unemployment, his attempts to secure an alternate employment and whether, he was unemployed for the period 19.10.1991 till 16.03.1992.

7 It is, therefore, canvassed by Shri Salunke, learned Advocate for the Petitioners that in the absence of any evidence and pleadings, the

back-wages ought not to have been granted by the School Tribunal as a matter of course. He submits that the law on back-wages is now settled and without proper pleadings and evidence as regards attempts to seek employment and failing to secure employment, thereby, remaining unemployed, back-wages cannot be granted.

8 Shri Upadhye, learned Advocate for Respondent No.3/ Employee, has opposed the submissions of the Petitioners. It is stated that the Employee was precluded from reporting for duties from 19.10.1991 till 16.03.1992. This period of absence is foisted upon the Employee by the Management. The Employee was unauthorizedly kept out of employment and was marked absent only on account of the notice dated 19.10.1991 issued by the Petitioners.

9 Shri Upadhye further submits that in the peculiar facts of the case, there was no occasion for the Employee to seek alternate employment. Moreover, since he was disallowed from entering the school premises, he could not have worked elsewhere as the Management has put forth a stand before the School Tribunal that they had never terminated Respondent No.3/ Employee. He, therefore, submits that no interference is required in the directions issued by the School Tribunal granting back-wages and considering the fact that the Employee had

reported for duties from 17.03.1992 much prior to the delivering of the impugned judgment.

10 I have considered the submissions of the learned Advocates as recorded above. In my view, this petition is rendered of an academic interest only to the extent of the plea of the Employee that he was terminated. It was under the orders of the School Tribunal dated 12.03.1992 that Respondent No.3/ Employee reported for duties from 17.03.1992.

11 Insofar as the notice dated 19.10.1991 is concerned, I am of the view that the same could not be termed as being an order of termination. The Employee was only instructed to seek prior permission of the Management before reporting for duties in the backdrop of certain allegations made against the Employee. The Employee could have either applied in writing for seeking such permission or could have raised a grievance before the Education Officer at the relevant place. From the impugned judgment of the School Tribunal, I do not find that the Employee had put forth a case that he had approached the concerned Education Officer and had prayed for issuance of directions to the Management to allow Respondent No.3/ Employee to enter the work premises.

12 From the impugned judgment, It appears that the School Tribunal has granted the back-wages to Respondent No.3/ Employee without any conclusion as regards whether, he was entitled for the back-wages. In a single sentence in paragraph 11 of the impugned judgment, the School Tribunal has concluded that the Employee is entitled to reinstatement with back-wages. Neither are the reasons cited nor had the Employee put forth a specific ground for canvassing his entitlement to back-wages.

13 It is, however, undisputed that the Employee was not on duty from 19.10.1991 till 16.03.1992 and had reported for duties on 17.03.1992 only after the Petitioners/ Management made an application seeking directions from the School Tribunal by the order dated 12.03.1992.

14 In the light of the above and considering the subsequent events in the past 20 years as well as the fact that Respondent No.3/ Employee is now 62 years of age, this Writ Petition is partly allowed only to the extent of setting aside the direction of the School Tribunal to pay the back-wages to Respondent No.3/ Employee from 19.10.1991 till 16.03.1992.

15 This Writ Petition is partly allowed. The impugned direction of the School Tribunal to the extent of the back-wages is quashed and set aside. Rest of the impugned judgment is sustained. Rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)