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

**BENCH AT AURANGABAD**

**WRIT PETITION NO.2650 OF 2015**

- 1 Asha W/o Panditrao Gitte,  
Age : 42 years, Occu. Service,  
i.e. Headmistress,  
Sainath Madhyamik Vidyalaya,  
Waghbet, Tq. Parli-Vaijnath,  
Dist. Beed.
- 2 Tanaji Malusari Shikshan  
Prasarak Mandal, Waghbet,  
Tq. Parli-Vaijnath,  
Dist. Beed.  
Through Its President.                      **...Petitioners...**

**Versus**

- 1 The Education Officer (Secondary)  
Zilla Parishad, Beed.  
Tq. Dist. Beed.
- 2 Arun S/o Uttamrao Gitte,  
Age 40 years, Occ. Nil,  
R/o Waghbet, Tq. Parli-Vaijnath,  
Dist. Beed.                                      **...Respondents...**

**WITH**

**WRIT PETITION NO.2820 OF 2015**

Arun S/o Uttamrao Gitte,  
Age : 40 years, Occu : Asst. Teacher,  
R/o Waghbet, Tq.Parli-Vaijnath,  
Dist. Beed.                                      **...Petitioner...**

**Versus**

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- 1 Tanaji Malusari Shikshan  
Prasarak Mandal, Waghbet,  
Tq. Parli-Vaijnath,  
Dist. Beed.  
(Through Its President)
- 2 Secreatary,  
Tanaji Malusari Shikshan  
Prasarak Mandal, Waghbet,  
Tq. Parli-Vaijnath,  
Dist. Beed.
- 3 Sainath Madhyhamik Vidyalaya,  
Waghbet, Tq. Parli-Vaijnath,  
Dist. Beed.  
(Through its Head Mistress)
- 4 The Education Officer (Secondary)  
Zill Parishad, Beed. ...Respondents...

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Shri Sachin S. Deshmukh, Adv. for petitioners.  
Shri V. G. Shelke, AGP. for respondent No.1.  
Shri R. J. Godbole, Adv. For respondent No.2.

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**CORAM: RAVINDRA V. GHUGE, J.**

**DATE: 15.12.2015**

**ORAL JUDGMENT :**

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

2] The petitioners in the first petition are the Head Mistress and the management, who are aggrieved by the judgment and order dated 8.1.2015 delivered by the

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School Tribunal, Aurangabad, by which Appeal No.8/2006 filed by the respondent no.2 - employee was allowed. The second petition is filed by the employee challenging the same judgment of the School Tribunal only to the extent of deprivation of 60% of the back wages.

3] Since both the petitions assail the same judgment of the School Tribunal and since the parties are identical, I have taken up these petitions together for hearing and disposal. For the sake of brevity, the litigating sides in these petitions would be referred to as the 'employer' and the 'employee'.

4] The employer submits that the impugned judgment of the School Tribunal is an *ex-parte* judgment. Though notice was served on the employer, they failed to remain present. Observations of the School Tribunal in paragraph nos.7 and 8 indicate that the employer had failed to appear in the proceedings.

5] Shri Deshmukh, learned Advocate for the employer, therefore, submits that it is apparent that the impugned judgment is *ex-parte*. He, however, has an explanation for the non-appearance of the employer before the Tribunal. Contention is that Writ Petition No.6860/2009

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was filed before this Court by the employer for challenging the order of the Tribunal dated 17.4.2007 condoning delay in filing of the appeal and the order dated 12.6.2009 by which the review application of the employer was rejected.

6] Shri Deshmukh further submits that since this Court admitted the petition on 12.8.2009 and noted that the decision in Appeal No.8/2006 would be subject to the decision of this writ petition, the employer was under the belief that it was the writ petition that would be conducted and since this Court had admitted the writ petition, the Tribunal would not proceed with the pending appeal.

7] He, therefore, submits that under this belief that the Tribunal would postpone the hearing of the appeal till the writ petition was decided, led to the employer not appearing in the matter.

8] He, however, submits that the impugned judgment of the Tribunal is an *ex-parte* judgment and hence the same has been delivered without considering the case of the employer. If the matter is remanded for a fresh hearing, the employer would ensure that the writ petition

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is filed within four weeks from today and no adjournment would be asked for before the Tribunal. He further submits that the matter on remand could be decided within a time frame as this Court may decide.

9] Shri Godbole, learned Advocate appearing on behalf of the employee, prays that the impugned judgment of the Tribunal be modified and 100% back wages be granted to the employee. He states that there was no justification in the Tribunal depriving 60% back wages to the employee, who was rendered unemployed only because the employer was pre-determined to remove him from service.

10] He states that the employee was appointed on probation with effect from 1.9.1999 and was terminated on 19.1.2006 with effect from 20.1.2006. He was deemed permanent by virtue of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977. As such, entire back wages should have been granted to the employee.

11] He opposes the prayer for a remand on the ground that the employer voluntarily chose not to appear in the matter. Pendency of a writ petition cannot be a ground

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for non-appearance before the Tribunal. He, therefore, prays for the dismissal of the petition preferred by the employer and seeks enhancement of back wages in his petition.

12] I have considered the submissions of the learned Advocates as have been recorded hereinabove.

13] There is no dispute that Writ Petition No.6860/2009 was admitted and pending in this Court. It is also undisputed that this Court had not stayed the appeal proceedings pending before the School Tribunal. It, therefore, appears that the employer did not have a justifiable reason to abstain from the hearing before the Tribunal.

14] Notwithstanding above, the fact remains that the claim of the employee and the allegations set out in the appeal have been adjudicated upon without a contest. The case of the employer was not put forth. It was the employer, who for reasons best known to it, chose to remain absent and invited the impugned judgment.

15] In the above facts, ends of justice would be met by compensating the employee so as to reduce the rigors of litigation by remitting the matter to the School

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Tribunal. This would also ensure a contest on merits and the employer would get an opportunity to justify the termination dated 20.1.2006.

16] At this juncture, Shri Godbole submits on instructions from the employee present in the Court that in the event the matter is remanded for a fresh hearing, back wages as are awarded should be deposited by the employer before the Tribunal and the aspect of full back wages be kept open. He submits on instructions that the employee does not desire to accept costs and instead prays that the back wages as directed be deposited before the Tribunal. Shri Deshmukh strongly opposes the said request of Shri Godbole.

17] In the light of the above, the first petition is partly allowed. The impugned judgment and order dated 8.1.2015 delivered by the School Tribunal is quashed and set aside. Appeal No.8/2006 is remitted back to the School Tribunal, Aurangabad, for enabling the employer to file its written statement with all documents that it may chose to place on record, within five weeks from today. The litigating sides shall appear before the School Tribunal on 4.1.2016 and formal notices need not be

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issued by the Tribunal. Since the appeal is of the year 2006, the Tribunal shall endeavour to decide the same as expeditiously as possible and preferably on or before 30.6.2016.

18] Insofar as imposition of costs or the request of Shri Godbole is considered, the Tribunal had directed payment of 40% back wages from the date of termination dated 20.1.2006 till his reinstatement. His last drawn salary was Rs.17,056/-. It cannot be ignored that the appeal was delayed initially on account of the delay caused by the employee. The delay was condoned by order dated 17.4.2007.

19] As such, the employer shall deposit 40% of the back wages from 17.4.2007 till 8.1.2015 before the School Tribunal alongwith filing of its written statement before the Tribunal. The statement of the employee that he would not withdraw the said amount till the appeal is decided, is recorded.

20] In the event this amount is not deposited by the employer alongwith its written statement within five weeks from today, the liberty to participate in Appeal No.8/2006 by the employer shall stand forfeited and the

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judgment of the School Tribunal dated 8.1.2015 set aside by this Court, therefore, shall stand restored.

21] Needless to state that all contentions of the litigating sides are kept open including the contention of the employee that he be granted 100% back wages in the event he succeeds.

22] Parties to note that the amount to be deposited by the petitioners before the Tribunal is only by way of an equitable order and shall be subject to the result of the appeal. Till then, the employee shall not withdraw the said amount.

23] Rule is made partly absolute accordingly in the first petition filed by the employer. The second petition filed by the employee is dismissed and the Rule is discharged.

**(RAVINDRA V. GHUGE, J.)**