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

WRIT PETITION NO.239 OF 2008

Sau.Pushpa Madhukar Shinde
(Pushpa Josef Salve),
Age : 49 years, Occ : Service
as Headmistress,
D.V.Joshi Navin Marathi School,
Shrirampur, District Ahmednagar.

...PETITIONER

-VERSUS-

- 1 Sau.Mandakini Vishwanath Dhas,
 Age : 45 years, Occ :
 R/o Devakarvasti, Ward No.7,
 Shrirampur, District Ahmednagar.
- 2 Maltibai Dahanukar Trust,
 Industrial Insurance Building,
 Churchgate, Mumbai-400020.
 Through it's Chairman.
- 3 The Headmaster,
 Dahanukar Vidyalaya (Primary Section),
 Tilaknagar, Tal.Shrirampur,
 District Ahmednagar.
- 4 Education Officer (Primary),
 Zilla Parishad, Ahmednagar.
- 5 The Superintendent,
 Salary Squad,
 Private Primary School,
 Ahmednagar.
- 6 Hind Seva Mandal,
 Borkarnagar, Nagar Savedi Road,
 Ahmednagar, through its Secretary,
 Avinash s/o Damodar Apte,
 Age : 56 years, Occ : Hon.Gen. Secretary

& Social Work,
R/o Kamgar Sadan, Shrirampur,
District Ahmednagar.

...RESPONDENTS

**WITH
WRIT PETITION NO.764 OF 2008**

Hind Seva Mandal,
Borkarnagar, Nagar Savedi Road,
Ahmednagar, through its Secretary,
Avinash s/o Damodar Apte,
Age : 56 years, Occ : Hon.Gen. Secretary
& Social Work,
R/o Kamgar Sadan, Shrirampur,
District Ahmednagar.

...PETITIONER

-VERSUS-

- 1 Sau.Mandakini Vishwanath Dhas,
Age : 45 years, Occ :
R/o Devakarvasti, Ward No.7,
Shrirampur, District Ahmednagar.
- 2 Maltibai Dahanukar Trust,
Industrial Insurance Building,
Churchgate, Mumbai-400020.
Through it's Chairman.
- 3 The Headmaster,
Dahanukar Vidyalaya (Primary Section),
Tilaknagar, Tal.Shrirampur,
District Ahmednagar.
- 4 Education Officer (Primary),
Zilla Parishad, Ahmednagar.
- 5 The Headmaster/ Headmistress,
Navin Marathi School,
Shrirampur, District Ahmednagar.

...RESPONDENTS

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Shri V.S.Badakh, Advocate for Petitioner in WP/239/2008 and for Respondent No.5 in WP/764/2008.

Shri Darshan D. Pokharkar, Advocate for Respondent No.1 in both petitions.

Shri Abhijeet B. Kale, Advocate for Respondent Nos.2 and 3 in both petitions.

Shri S.T.Shelke, Advocate for Respondent No.4 in both petitions.

Shri S.V.Natu, Advocate for Respondent No.6 in WP/239/2008 and for Petitioner in WP/764/2008.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th September, 2015

Oral Judgment:

1 The first petition has been filed by the Headmistress, who is aggrieved by the directions of the School Tribunal in the judgment and order dated 14.11.2006 in Appeal No.35/2003, that 25% unpaid salary of Respondent No.1/ Employee should be paid by Respondent No.6/ Management (Hind Seva Mandal) and in the event of failure on the part of the Management to pay the said salary, the Petitioner/ Headmistress shall pay the same from her salary.

2 The second petition is preferred by the Management (Hind Seva Mandal) challenging the same judgment of the School Tribunal

dated 14.11.2006 granting reinstatement with continuity and back-wages to Respondent No.1/ Teacher.

3 Both these petitions have been admitted by this Court vide orders dated 22.07.2008.

4 It is not in dispute that Respondent No.1/ Employee had challenged her termination dated 30.06.2003 by filing Appeal No.35/2003 under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short “MEPS Act, 1977”) before the School Tribunal. By way of interim relief, Respondent No.1/ Teacher was protected from termination, she continued in employment and was granted 75% of the salary under the orders of the School Tribunal.

5 It is also not in dispute that the Management is grant-in-aid institution and the salary grants are made available by the Government through which the teachers like Respondent No.1 are paid their salaries.

6 It is also not in dispute that in the event the termination of Respondent No.1/ Teacher is set aside as being unsustainable in law and is held entitled for back-wages, the Management has to forward the proposal

to the Education Officer/ Pay Unit who can issue necessary orders for payment of salary of the reinstated Employee through the salary bills.

7 Shri Pokharkar, learned Advocate for Respondent No.1/ Teacher, who was original Appellant, submits that the Division Bench of this Court, by its order dated 14.09.2015 delivered in a bunch of petitions, namely, Writ Petition Nos.2921/2003, 2938/2003, 2655/2003, 2937/2003 and 48/2004 [*Katore Sitaram Bhavka and another v/s Hind Seva Mandal*, (the Petitioner in the second petition herein)], has held that all these petitions have become infructuous as the aggrieved teachers have been reinstated in service at an interim stage under the orders of the Division Bench. Hence, all the petitions were disposed of without dealing with the legality and validity of their terminations as the then Management had no objection for reinstating the teachers in employment.

8 Shri Pokharkar, therefore, submits that his client (Respondent No.1) would be satisfied if a direction is issued to the Pay Unit/ Education Officer to release her residual 25% salary, similar to the direction issued by the Division Bench.

9 Shri Natu, learned Advocate for the Management and Shri

Badakh, learned Advocate for the Headmistress, submit that considering the statement of Respondent No.1/ Teacher and the observations of the Division Bench in paragraphs 1 and 2, both these petitions can be disposed of.

10 I have considered the submissions of the learned Advocates.

11 For the sake of clarity, the conclusions drawn by the Division Bench in its above referred order dated 14.09.2015 in paragraphs 1, 2 and 3, are reproduced as under:-

- “1. All these petitions can be disposed of through this common order. These petitions are almost infructuous, because the petitioners had secured their services at the interim stage and they are in service since then. The only question that could arise is regarding their seniority in the school where they are working. The question of seniority can be decided by appropriate authority. The petitioners are given liberty to approach to the concerned authority for deciding the question of seniority.
2. The learned counsel for the petitioners state that the salary for the period of one month i.e. July, 2003 was not paid to the petitioners. The respondent institution may submit the bill for the said period to the Pay Unit/ Education Officer.
3. All the petitions stand disposed of with aforesaid liberty.”

12 It is undisputed that the salary of Respondent No.1/ Teacher, pursuant to the order of the School Tribunal, is to be paid through the

salary grants and neither the Management nor the Headmistress could be held liable for the said payment. In an identical situation concerning the other employees similar to Respondent No.1/ Teacher, the Division Bench in paragraph 2 as reproduced above, has directed the Management to forward the proposals/ salary bills of the employees to the Pay Unit/ Education Officer who is then to pass necessary orders in the light of the fact that salaries are to be paid from the salary grants.

13 Since Respondent No.1/ Employee has worked for the entire duration from 01.07.2003 till 30.04.2007 in regular employment, the Pay Unit/ Education Officer shall consider whether, Respondent No.1/ Employee was entitled for 100% salary and in the event, he arrives at a conclusion that Respondent No.1 will be entitled for full salary as she has worked for the entire duration, he may pass necessary orders sanctioning the said payment.

14 Considering the above, both these petitions are disposed of by directing the Management to forward the proposal of Respondent No.1/ Teacher to the Pay Unit/ Education Officer to the extent of unpaid 25% salary for the period 01.07.2003 till 30.04.2007, as like the directions issued by the Division Bench in paragraph 2. The said proposal shall be forwarded within FOUR WEEKS from today.

15 After receiving the proposal, the Pay Unit/ Education Officer shall pass necessary orders in the light of the conclusions of the Division Bench and shall release 25% salary for the above period, within a period of FOUR WEEKS from the date of receipt of the proposal.

16 In the event, an adverse order is passed by the Pay Unit/ Education Officer, Respondent No.1/ Employee shall be at liberty to take recourse to the available legal remedies for the redressal of her grievance.

17 The impugned judgment and order dated 14.11.2006 stands modified accordingly. The Writ Petitions are, accordingly, partly allowed. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)