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

WRIT PETITION NO.5383 OF 2015

- 1 Shri Shivaji Shikshan Prasarak Mandal,
Shivajinagar, Tq.Rahuri, Dist.Ahmednagar.
Through its President.
- 2 Shri Vitthal Madhyamik Vidyalaya,
Aradgaon.
Run by Shri Shivaji Shikshan Prasarak
Mandal, Shivajinagar, Tq.Rahuri,
Dist.Ahmednagar.
Through its Head Master.

...PETITIONERS

-VERSUS-

- 1 Smt.Bharati Sambhaji Karpe,
Age : 31 years, Occ : Service,
R/o Taklimian, Tq.Rahuri,
Dist.Ahmednagar.
- 2 The Education Officer (Secondary),
Zilla Parishad, Ahmednagar.

...RESPONDENTS

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Shri Vikramsingh P. Patil, Advocate for the Petitioners.

Shri V.B.Jagtap, Advocate for Respondent No.1.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th December, 2015

Per Court:

- 1 Respondent No.1 was appointed by the earlier Management

of the Petitioner in 2009 as an Assistant Teacher. She was orally terminated on 01.08.2011. She preferred an appeal before the School Tribunal at Solapur bearing Appeal No.94/2011. By the impugned judgment and order dated 18.01.2013, the oral termination of Respondent No.1 dated 01.08.2011 was quashed and set aside and she was directed to be re-instated in service with continuity and full back wages.

2 Mr.Patil, learned Advocate for the Petitioners, submits that the Petitioners had not intentionally or deliberately terminated Respondent No.1. There were about 180 such appointments made illegally by the earlier Management. Signatures of the Head Master were missing from such appointment orders. No resolution was passed by the Management for appointing Respondent No.1 and similarly situated 179 other persons. He, therefore, submits that legally speaking, none of these appointments were legal.

3 The Block Education Officer directed the Petitioners to terminate the service of Respondent No.1 on account of being an illegal appointment. Only 2 persons out of the 180 terminated employees challenged their termination before the School Tribunal.

4 In the present case, the Petitioners did not participate in the

proceedings before the School Tribunal, though not deliberately or willfully. In the other case, the Petitioners participated in the proceedings and after considering the factual matrix, the School Tribunal dismissed the appeal of that employee.

5 Shri Jagtap, learned Advocate on behalf of Respondent No.1, has strenuously submitted that Respondent No.1 should not be punished for the failure of the Petitioners to participate in the proceedings before the School Tribunal. Moreover, the appointment of Respondent No.1 cannot be found fault with only because the Head Master has not signed the appointment order. Even otherwise, the oral termination order is unsustainable in Law as the Law does not recognize oral termination.

6 He, therefore, submitted that the appeal was rightly allowed and the impugned judgment can neither be termed as perverse in nature nor legally unsustainable. The Petitioners can not pray for a remand since it is an attempt to take a chance with the Tribunal by non-participation and since the appeal was allowed, now the petitioners are praying for remand on grounds of sympathy. Rigours of litigation would seriously affect Respondent No.1 as she would be required to undergo retrial of the matter.

7 He, therefore, submitted that in the event, this Court is inclined to remand the matter to the School Tribunal, the Petitioners should be directed to reduce the rigours of litigation suffered by Respondent No.1 by payment of some amount.

8 It appears from the statement of the Petitioners that the earlier Management had made 180 appointments in the fashion in which Respondent No.1 was appointed. It is pointed out that all 180 employees were terminated. 178 employees accepted the oral termination. 2 have challenged it before the School Tribunal. Respondent No.1 has succeeded and the other Appellant has suffered dismissal of his appeal.

9 The Petitioners have suffered the impugned order on account of non-participation and which can only be attributed to the conduct of the Petitioners. It is not in dispute that notices were properly served on the Petitioners. It is the Petitioners, who did not participate in the proceedings for the reasons best known to them. Nevertheless, the proceedings before the School Tribunal have been concluded ex-parte.

10 In this view of the matter, I am of the opinion that the Petitioners be afforded an opportunity to participate in the said proceedings, but by compensating Respondent No.1.

11 Respondent No.1 is out of employment under oral termination order from 01.08.2011. Salary drawn at the time of oral termination was about Rs.4,000/- per month. A confirmed employee, as per the contention of Shri Jagtap, would stand to earn an amount of about Rs.26,000/- per month today. In the light of this situation, I am of the view that the Petitioners be directed to pay compensation to Respondent No.1 for remanding the matter to the School Tribunal and for enabling the Petitioners to participate in the said proceedings.

12 Learned Advocate for the Petitioners has taken instructions from the Administrative Officer of the Petitioner Educational Society who is present in the Court today. It is suggested that an amount of Rs.8,000/- would be paid to Respondent No.1 w.e.f. 01.08.2011 onwards. Such amount would be continued to be paid till the appeal before the School Tribunal is decided. It is requested that the said appeal be made time bound. Learned Advocate for Respondent No.1 is dis-satisfied with this proposal and maintains that she should be paid an amount of Rs.26,000/- per month from 01.08.2011 onwards. In my view, the statement of the Petitioners is reasonable.

13 In the light of the above, the impugned judgment and order

of the School Tribunal dated 18.01.2013 passed in Appeal No.94/2011 is quashed and set aside. Appeal No.94/2011 is remitted back to the School Tribunal, Pune Division at Solapur.

14 Litigating parties shall appear before the School Tribunal on 21.12.2015 and separate notices are dispensed with. Petitioners shall file their written statement within a period of 3 (three) weeks from the date of appearance, failing which they shall acquiesce their right to file the written statement. The School Tribunal, thereafter, shall decide appeal No.94/2011 as per the procedure and in accordance with Law, as expeditiously as possible and preferably on or before 30.06.2016.

15 The Petitioners shall pay @ Rs.8,000/- per month from 01.08.2011 till 31.12.2015 *lump sum*, within a period of 3 (three) weeks from today, directly to Respondent No.1. An amount of Rs.8,000/- per month w.e.f. 01/01/2016 shall be paid regularly to Respondent No.1 on or before the 10th day of each month till the appeal is decided or till 30.06.2016, whichever is earlier.

16 Needless to state that the School Tribunal shall decide the appeal on its own merits and without being influenced by any observations made by this Court in this order.

17 With the above directions, the writ petition is partly allowed and disposed of.

(RAVINDRA V. GHUGE, J.)