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

WRIT PETITION NO. 9707 OF 2014

- 1 INDIRA SIKSHAN PRASARAK MANDAL,
Chitenerwadi, At.Post.Gadadgavan,
Tq.Jintur, Dist.Parbhani.
Through it's President.
- 2 The Headmaster,
Prathamik Ashram Shala,
At Post : Gadadgavan,
Tq.Jintur, Dist.Parbhani.
- 3 Namdeo S/o Maruti Sanap,
Age : 39 years, Occ : Assistant Teacher,
Jorsinghnaik Madhyamik Ashram Shala,
R/o At Post : Gadadgavan (Tada),
Tq.Jintur, Dist.Parbhani.
- 4 Jorsinghnaik Madhyamik Ashram Shala,
R/o At Post : Gadadgavan (Tada),
Tq.Jintur, Dist.Parbhani.
Through it's Headmaster.

...PETITIONERS

-VERSUS-

- 1 VITTAL SITARAM JADHAV,
Age : 36 years,
R/o Palaskheda, Post.Borgaon,
Tq. & Dist.Jalna.
- 2 B.R.Rathod,
Age : Major, Occ : Assistant Teacher,
Prathamik Ashram Shala,
At Post : Gadadgavan,
Tq.Jintur, Dist.Parbhani.
- 3 The District Special Social Welfare Officer,
Parbhani. Dist.Parbhani.

4 The Competent Authority/
Appellate Authority,
Divisional Deputy Director,
Social Welfare Division,
Aurangabad.

...RESPONDENTS

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Advocate for Petitioners : Shri Salunke V.D.

AGP for Respondent Nos.3 and 4 : Smt.S.D.Shelke.

Advocate for Respondent No.1 : Shri Wakade Ramesh I..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th August, 2015

Oral Judgment:

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

2 On 05.11.2014, while issuing notice to the Respondents, I had
passed the following order:-

- “1. The case of respondent No.1 employee before the Divisional Social Welfare Officer in appeal No. 7 of 2009 was that he has been terminated from 27-10-2008. The appeal was eventually dismissed by the impugned order dated 22-08-2014, but with the direction to the petitioner to pay the outstanding wages of the first respondent from 01-06-2000 till 27-10-2008.
2. It is pointed out from the petition paper book that an application (IDA) No. 47 of 2012 is preferred by the first respondent under Section 33-C (2) of the

Industrial Dispute Act, 1947 before the Labour Court. An identical relief of arrears of wages from 01-07-1998 to 08-03-2009 with interest has been claimed. The said proceeding is still pending.

3. *In the light of the above, issue notice before admission to the respondents, returnable on 10-12-2014. The learned A.G.P. waives service on behalf of respondent Nos. 3 & 4. In the meanwhile, the direction in clause (2) of the impugned order dated 22-08-2014 shall stand stayed till further hearing in this matter. Humdust allowed for respondent Nos. 1 & 2.”*

3 The grievance of Shri Salunke, learned Advocate for the Petitioners is limited only to the extent that when the competent appellate authority/ Respondent No.4 has dismissed Appeal No.7/2009 preferred by Respondent No.1, there could not have been any direction granting incidental/ consequential relief to the said Appellant. The grievance is that despite the Appellate Authority finding no merit in the appeal and having dismissed it in its totality, it has directed the Petitioners to pay the Appellant/ Respondent No.1 herein the purported outstanding wages/ salary for the period 01.06.2000 to 27.10.2008.

4 It is undisputed that Application (IDA) No.47/2012 initiated by Respondent No.1 under Section 33C(2) of the Industrial Disputes Act, 1947 for seeking recovery of unpaid wages for the same period 01.06.2000 to 27.10.2008 is pending before the competent Labour Court.

5 Shri Wakade, learned Advocate for Respondent No.1, submits that Respondent No.1 had brought it to the notice of the Appellate Authority/ Respondent No.4 as regards the pendency of Section 33C(2) recovery proceedings before the Labour Court and has accordingly, deleted the said prayer clause from the said Appeal.

6 In the light of the above, this Writ Petition is partly allowed. The direction issued by Respondent No.4/ Appellate Authority in clause (2) of the impugned judgment dated 22.08.2014 delivered in Appeal No.07/2009 is quashed and set aside.

7 Nevertheless, Respondent No.1 is at liberty to prosecute his Application (IDA) No.47/2012 before the Labour Court on it's own merit and for the said purpose, all the contentions of the litigating sides are kept open.

8 This Writ Petition is, therefore, partly allowed. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)