

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.6251 OF 2012**

**Krantiba Mahatma Jyotiba Phule  
Shikshan Prasarak Mandal and Anr. : Petitioners.**

**Versus**

**The Regional Deputy Commissioner,  
Social Welfare, Pune Division, Pune : Respondents**

**Mr. G M Savagave for the Petitioners.**

**Ms. M S Bane "B" Panel Counsel for the Respondent Nos.1 to 3 and 5.**

**Mr. C G Gavnekar for the Respondent No.4.**

**CORAM : R. M. SAVANT, J.**

**DATE : 04<sup>th</sup> August 2015**

**P.C.**

1           The writ jurisdiction of this Court is invoked against the order dated 21/02/2012 passed by the Respondent No.1 by which order the Appeal filed by the Respondent No.4 came to be allowed and resultantly the termination dated 15/06/2009 of the Respondent No.4 came to be set aside and the Respondent No.4 was directed to be paid back-wages from 15/06/2009 as also the increments from the year 2005 to 2009.

2           The Respondent No.4 herein is an S.S.C. D.Ed. and was appointed as a Superintendent in the Ashram School run by the Petitioner-Institution on 14/06/1998. The services of the Respondent No.4 came to be abruptly terminated by the communication which was addressed to him dated 15/06/2009. The said termination was challenged by the Respondent No.4 by

filing an Appeal before the Respondent No.1 in terms of the Ashram Schools Code. Though the services were terminated without any reasons and without holding any inquiry, in the reply filed to the said Appeal various grounds were mentioned which according to the Petitioner-Institution were the reasons for the termination of the services of the Respondent No.4.

3           The Respondent No.1 considered the said Appeal and on the ground that the services of the Respondent No.4 were terminated without following the procedure, allowed the said Appeal and set aside the termination dated 15/06/2009 of the Respondent No.4. The conclusion that the Petitioner-Institution has not followed the procedure was arrived at on the basis of admission of the representative of the Petitioner-Institution in the Appeal. The Respondent No.1 has accordingly by the impugned order directed reinstatement of the Respondent No.4 and also payment of back-wages from 15/06/2009 as also the payment of increments from the year 2005 to 2009.

4           The above Petition has been filed in the year 2012 and has been heard from time to time. During pendency of the above Petition for admission, the Respondent No.4 has been reinstated in service. The question therefore that arises for consideration is of the entitlement of the Respondent No.4 to the back-wages from 15/06/2009 and the increments from the year 2005 to 2009. In the facts and circumstances of the present case where admittedly no

procedure has been followed prior to termination of the Respondent No.4, the termination is vitiated on the said ground and therefore the Respondent No.4 would be entitled to the back-wages and the payment of increments. The learned counsel for the Petitioner initially sought to contend that the Appeal filed by the Divisional Social Welfare Officer was not maintainable, and the Respondent No.4 was required to file an Appeal before the School Tribunal. However, confronted with the situation where the said ground was not raised before the Divisional Social Welfare officer the learned counsel did not pursue the said ground. The learned counsel for the Petitioner also sought to question the directions issued vide clause (4) of the impugned order i.e. the payment of increments from the year 2005 to 2009. The learned counsel however was not in a position to justify the withholding of the increments.

5           In so far as the aspect of back-wages is concerned, the learned counsel for the Petitioners sought to draw this Court's attention to the order passed by a learned Single Judge of this Court in Writ Petition No.8574 of 2004 wherein the learned Single Judge has directed the State Government to make payment of wages to the Respondent No.1 in the said case in accordance with Government Resolution dated 14/03/1978 as the school in question has not claimed any grant for the said post whilst the Respondent was out of service. It is therefore the contention of the learned counsel for the Petitioners that the liability is of the State Government for payment of back-wages and increments.

Upon this, the learned counsel for the Respondent No.4 Shri C G Gavnekar drew this Court's attention to the Division Bench Judgment of this Court reported in 2014(4) Mh.L.J. 323 in the matter of Subash Vidya Mandal, Pimpalwandi and another v/s. Pushpalata Prabhakar Deshmukh wherein the Division Bench has in paragraph 12 observed to the following effect (excerpt) :-

“However, it is for the appellants to submit pay bills for payment of backwages to the respondent to the appropriate authority. It is for the appellants to satisfy the appropriate authority that the State Government is under an obligation to release the salary grant for payment of backwages.”

The Division Bench thereafter in paragraph 13 proceeded to grant reasonable time to the appellants to pay backwages and observed that in the meanwhile, it will be open for the appellants to submit pay bills to the appropriate authority for the release of salary grant for payment of backwages. Hence if it is the case of the Petitioner-Institution that the liability to pay the back-wages and the increments to the Respondent No.4 in the instant case is of the State Government, in view of the fact that the Petitioner-Institution has not drawn grant for the said post as it was lying vacant, it is for the Petitioner-Institution to put up the pay bills before the appropriate authority. Hence though no interference is called for with the order directing to pay back-wages as also payment of increments to the Respondent No.4, having regard to the facts and

circumstances of the present case, the Petitioner-Institution is granted time till 31/10/2015 to pay the back-wages from 15/06/2009 as also the increments from the year 2005 to 2009. It is during the said period that the Petitioner-Institution may represent to the State Government by putting up the bills if it is of the opinion that the liability for payment of back-wages and increments is that of the State Government. However, it is made clear that irrespective of the fact that the pay bills are sanctioned or not the Petitioner-Institution would be under an obligation to pay the back-wages and the increments to the Respondent No.4. With the observations as afore-stated, the above Writ Petition is disposed of.

**[R.M.SAVANT, J]**