

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

Writ Petition No. 5309 of 2012

(Vakil Jalilkhan Pathan Vs. Deputy Director of Education, Nagpur Division,
Nagpur and ors.)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Shri P. N. Shende, Advocate for the petitioner
Shri A. S. Dhore, Advocate for the respondent nos. 3 and 4
Shri N. R. Patil, AGP for the respondent nos. 1 and 2

**CORAM : Smt. V. A. Naik and
P. B. Varale, JJ.**

DATE : 18-11-2015.

Heard.

By this writ petition, the petitioner seeks a declaration that the petitioner is entitled to get the benefit of notional annual increments for the period from 1993 to 2002. The petitioner has challenged the order of the Deputy Director of Education dated 8-12-2010 refusing to grant the benefits to the petitioner.

The petitioner was appointed as a Peon by the respondent no. 3 - Society in the year 1989. It appears that since there was some dispute in the management, the petitioner's services were illegally terminated in the year 1993. The order of

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termination was challenged by the petitioner before the School Tribunal. The School Tribunal allowed the appeal filed by the petitioner and by the judgment dated 20-2-2001 directed the management to reinstate the petitioner in service with continuity of service and full back wages. The order was challenged in the writ petition and the same was dismissed and the order of the School Tribunal was confirmed.

After reinstating the petitioner in terms of the order of the School Tribunal of the year 2001, the management again terminated the services of the petitioner in the month of February, 2003. The said order was also challenged before the School Tribunal. The School Tribunal allowed the appeal filed by the petitioner and the management was directed to reinstate the petitioner with continuity of service and back wages. When the matter came up before the Hon'ble Supreme Court in Civil Appeal No. 3380/2008, the Hon'ble Supreme Court, by the order dated 30-4-2008 held that since the petitioner was not working in the school for the period from

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1993 to 2002, the petitioner should not be paid the back wages for the said period. It appears that by misconstruing the order of the Hon'ble Supreme Court, the management continued to pay the salary to the petitioner, as was last drawn by him in the year 1999, when he was terminated for the first time.

The petitioner was aggrieved by the said action and therefore, he made a representation to the Education Officer seeking notional increments for the period from 1993 to 2002. The said application was, however, rejected by the impugned order. In the meanwhile, the petitioner had also approached the School Tribunal seeking clarification of the judgment so as to claim the consequential benefits. The said application was rejected by the School Tribunal on the ground that it does not have the power to review its order.

Shri Shende, learned counsel for the petitioner submitted that the Deputy Director of Education was not justified in depriving the petitioner of the notional increments for the period from 1993 to 2002 as the School Tribunal has granted

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reinstatement to the petitioner with continuity in service and full back wages. It is stated that the School Tribunal has further held that the management had committed an illegality in terminating the services of the petitioner. It is stated that the petitioner cannot be deprived of the notional increments and cannot be paid the same salary in the year 2002 and onwards. It is submitted that the action on the part of the management and the Deputy Director of Education is clearly illegal and is liable to be set aside.

Shri Patil, learned Assistant Government Pleader appearing for the Deputy Director of Education submitted that since the petitioner had filed a review application before the School Tribunal seeking the consequential benefits and since the review application was dismissed by the School Tribunal, the petitioner would not be entitled to the consequential benefits like notional increments. It is stated that the petitioner was directed to be reinstated in service with continuity of service and back wages and the Hon'ble Supreme Court held that

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the petitioner was not entitled to back wages as he had not worked for the period from 1993 to 2002. It is stated that the petitioner had invited the order from the School Tribunal in respect of the consequential benefits and since the application of the petitioner was rejected, the petitioner would not be entitled to any relief.

Shri Dhore, the learned counsel for the management made submissions on similar lines and submitted that the petitioner is not entitled to the relief of consequential benefits.

On hearing the learned counsel for the parties and on a perusal of the orders of the School Tribunal and the Hon'ble Supreme Court, it appears that the prayer made by the petitioner needs to be granted. The petitioner was illegally removed by the management for no fault on the part of the petitioner and without following the due procedure prescribed by law. The order of termination was set aside and the School Tribunal directed the management to reinstate the petitioner with continuity of service and full back wages. The said order was confirmed by

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this Court. The Hon'ble Supreme Court modified with the order only to the extent of grant of back wages to the petitioner for the period for which he was out of service. The order of the Hon'ble Supreme Court would not mean that the petitioner would not be entitled to continuity of service and consequential benefits like notional increments. The Hon'ble Supreme Court modified the orders of back wages only because the petitioner had not worked during the said period. When the services of the petitioner were terminated wrongly, it cannot be said that the petitioner is not entitled to notional increments on the basis of the order of the School Tribunal. The petitioner had made an application to the School Tribunal for reviewing the order and seeking consequential benefits but the same was rejected only because the School Tribunal found that it had no jurisdiction to review its order. Even if the School Tribunal had jurisdiction and had rejected the application of the petitioner, still, considering the judgment of the School Tribunal dated 20-2-2001, the petitioner would be surely entitled to the benefits

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of notional increments. We find that the management and the Deputy Director of Education had committed an illegality in depriving the petitioner of the notional increments when the management had terminated the services of the petitioner illegally and the petitioner was directed to be reinstated with continuity of service.

Hence for the reasons afore stated, the writ petition is allowed. The respondents are directed to grant notional increments to the petitioner and to revise his salary accordingly within a period of three months. The respondents are directed to pay the arrears of salary to the petitioner as early as possible and positively within a period of four months.

Order accordingly. No costs.

JUDGE

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