

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

C,A,W,NO. 514/2015 AND W.P.NO. 384/2004.

Nandkishor Manikrao Jagtap

-VERSUS-

Shri Shivaji Education Society and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

**CORAM : B.P.DHARMADHIKARI &
S.B.SHUKRE, JJ.**

DATE : MARCH 30, 2015.

Heard Shri P.S. Patil, learned Counsel
for the applicant/petitioner, Shri A, Sambre,
learned Counsel for respondent nos.1 and 2 and
Shri A.M. Deshpande, learned A.G.P. for
respondent no3.

2. On 16.03.2015, this Court has
considered Civil Application No.514/2015. As this
Court did not grant any stay of departmental
enquiry, the matter was adjourned to enable the

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learned counsel appearing for the employer Shri Sambre, to make statement about fate of the said departmental enquiry. Shri Sambre, learned Counsel upon instructions today states that no records of any enquiry are available and no enquiry was held.

3. We have heard Shri Patil, learned counsel for petitioner as also learned A.G.P. for respondent no.3. We have seen order dated 08.03.2004. This Court has granted stay in terms of prayer clause (ii), and thereby the employer was directed to pay regular salary to petitioner. Applicant / petitioner is receiving the same. It is claimed that he is working regularly. According to Shri Patil, learned counsel the only dispute is for period from October, 2002 to February, 2004. During that period, the petitioner was not permitted to sign muster roll, though he was working.

4. Shri Sambre, learned counsel submits that the matter needs to be heard finally to ascertain the correctness of this story.

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5. Learned A.G.P. submits that no orders at this stage can be passed in the matter. According to him, not permitting any employee to sign muster constitutes “otherwise termination”, under Section 9 of the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977, and hence, the said disputed question ought to have been raised before the School Tribunal. He further submits that government may have paid some other employee for very same work. Shri Patil, learned counsel denies this.

6. In this situation, we find that interest of justice can be met with by directing the petitioner to make a comprehensive representation within a period of two weeks from today to the respondent no.3. The respondent no.3 shall after hearing the petitioner and respondent nos. 1 and 2 Management take a suitable decision accordingly within next four weeks.

7. We have granted this time bound program, as petitioner reaches superannuation on 30.06.2015.

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8. We find that as petitioner has on the strength of interim orders dated 08.03.2004, continues to function, there is no question of otherwise termination. Only issue will be whether period between October, 2002 to February, 2004 petitioner has performed his duties and State Government has released grants for very same period to respondent no.1.

9. As such with this directions and keeping all contentions about it open, we dispose of the Writ Petition. No costs.

10. Certified copy expedited.

JUDGE

JUDGE

Rgd.