

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

WRIT PETITION NO. 610 OF 1997

Someshwar Education Society,
Songir, Taluka and District Dhule.
Through it's Chairman.

...PETITIONER

-VERSUS-

Bhikubai Nathu Pawar,
Age : 40 years,
R/o Telephone Colony,
Plot No.2, Gondur Road,
Deopur, Dhule.

...RESPONDENT

...

Advocate for Petitioner : Shri R.R.Raghuwanshi h/f Shri R.B.Raghuwanshi.
Advocate for Respondent : Shri A.R.Syed h/f Shri S.P.Bramhe.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th October, 2016

Oral Judgment :

1 The Petitioner has challenged the judgment of the School Tribunal dated 26.11.1996 by which Dhule Appeal No.68/1994 filed by the Respondent has been allowed and the Respondent has been granted reinstatement with continuity of service and full back wages from 30.04.1987.

2 This Court by it's order dated 24.04.1997 admitted the

petition and granted stay to the impugned judgment only to the extent of the direction to pay full back wages. The direction to reinstate was not interfered with. The Petitioner was directed to deposit 50% of the back wages in this Court and the Respondent was granted liberty to withdraw the amount by filing an undertaking.

3 The learned Advocate for the Petitioner/ Management informs that the Respondent was reinstated in 1996 and she has, thereafter, retired from service after attaining the age of superannuation.

4 Considering the above and the fact that the Respondent had been in employment for the last two decades, I do not find it appropriate to cause any interference in the impugned judgment to the extent of the direction to reinstate the Respondent and the grant of continuity in service.

5 The learned Advocate for the Petitioner has strenuously criticized the grant of 100% back wages. He submits that the principle of "no work no pay" should be made applicable in this case and the Respondent should be deprived of the back wages since she cannot be awarded wages for the period during which she had not worked.

6 The learned Advocate for the Respondent has strenuously supported the grant of 100% back wages by contending that once the termination is held to be illegal, the effects of illegal termination must be suffered by the Employer. If back wages are deprived, it would amount to permitting the Employer to take advantage of its own wrong. It is, therefore, prayed that this Court should not interfere with the grant of 100% back wages.

7 Upon considering the submissions of the learned Advocates on the issue of 100% back wages, I find that the view taken by the Honourable Apex Court in the matter of *Nicholas Piramal India Limited v/s Hari Singh*, **2015 (2) CLR 468**, would be applicable. The Honourable Apex Court has concluded that grant of 50% back wages would be an appropriate relief to reduce the rigours of litigation suffered by an employee on account of the illegal termination at the hands of the employer.

8 It needs to be noted that the Respondent lady teacher was initially constrained to approach the Honourable Supreme Court since her appeal was rejected by the School Tribunal on the ground of delay and her petition was dismissed by this Court. It was after approaching the Honourable Supreme Court that the School Tribunal was directed to deal

with the appeal filed by the Respondent/ Teacher.

9 Considering the above, I find it appropriate to grant 50% back wages to the Respondent from the date of her termination till the date of her reinstatement. An amount of Rs.1,50,000/- approximately towards 50% back wages was directed to be deposited. Rs.50,000/- were deposited in this Court on 19.05.1998. The remaining amount of Rs.1 lac was directed to be deposited in two installments of Rs.50,000/- each, vide order dated 21.07.2000 passed in Civil Application No.6008/1997. By order dated 01.09.2003 passed by this Court on Civil Application No.6032/1997, the order dated 21.07.2000 was sustained and the said Civil Application was rejected.

10 In the light of the above, this Writ Petition is partly allowed. Rule is made partly absolute in the above terms.

11 The Respondent/ Teacher is at liberty to withdraw the amount deposited by the Petitioner in this Court with accrued interest, if already not withdrawn by her.