

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.2806 OF 2016
(Conferences of Churches of Christ in Western India, Pune and others
Vs. Surekha Daniel Bhalerao and another)
IN
WRIT PETITION NO.9746 OF 2014

Mr.A.B.Gatne, Advocate for the applicants.
Mr.P.N.Kutti, AGP for the respondent/State.
Mr.P.N.Khedkar, Advocate for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 19/08/2016

PER COURT :

1. I have heard the learned Advocates for the respective sides. The writ petition was disposed of as withdrawn without conditions, by order dated 27/01/2015 since the petitioner made a statement that the dispute in between the litigating sides has been resolved.

2. After passing of the abovesaid order, the Education Officer, Pay and Provident Fund Squad (Zilla Parishad), Ahmednagar passed an order dated 16/04/2015 concluding that the petitioner shall bear the entire financial burden arising out of the non-employment and subsequent order of reinstatement of non applicant No.1 herein.

3. The petitioner preferred WP No.4848/2015 alongwith the non

applicant No.1/ employee Mrs.Bhalerao for challenging the said order. By order dated 09/09/2015, the learned Division Bench of this Court concluded that the termination of the employee Mrs.Bhalerao was on account of the illegal act of the applicant herein and hence the applicant/Management shall bear the consequences of its own action of termination. This Court, therefore, rejected the petition and upheld the order of the Education Officer dated 16/04/2015.

4. It is now submitted by the Management that the employee Mrs.Bhalerao is now pursuing the applicant/Management for payment of the back wages. It was orally agreed that if the Government does not pay, Mrs.Bhalerao would not seek back wages.

5. It is further submitted that the applicant/Management is willing to deposit the entire back wages of Rs.9,13,314/- in this Court as a condition for restoration of the writ petition since both the parties have fallen apart and are not able to settle the dispute. It is further stated that the employee Mrs.Bhalerao has already been reinstated in service and she continues in employment.

6. Learned Advocate appearing on behalf of non-applicant No.1 /

employee denies the purported settlement between the parties. It is submitted that the employee deserves to be paid her back wages notwithstanding as to whether the Government or the Management pays it. There was no settlement to the extent that if the Government does not pay the back wages, the employee Mrs.Bhalerao would give up her claim for back wages. She had therefore joined the Management in the writ petition before the Division Bench. Now that the learned Division Bench has concluded that the Management shall pay the back wages, the civil application filed by the Management deserves to be rejected.

7. Having considered the above stated submissions, it is apparent that the learned Division Bench has ruled that the back wages and the effects of termination and reemployment of the employee Mrs.Bhalerao would not be borne by the State Government and it shall be the Management which shall bear the burden. As such, there is no question of the State Government paying the back wages to the employee.

8. Since the terms of the settlement between the parties were not placed on record, it is not possible for this Court to visualize as to what were the terms of settlement. However, the fact that the

Management and the employee joined hands and filed Writ Petition No.4848/2015 before the learned Division Bench of this Court is indicative that there was some settlement between the parties. Now the parties have fallen apart.

9. In these circumstances, if the writ petition is not restored, the Management would lose an opportunity of challenging the impugned judgment of the School Tribunal.

10. Considering the above and the statement made by the Management as is recorded, this civil application is allowed. The order of this Court dated 27/01/2015 is recalled on the following conditions :-

- [a] The delay of 328 days caused in filing the civil application is condoned subject to costs of Rs.10,000/- (Rs.Ten Thousand only).
- [b] Mr.P.N.Khedkar, learned Advocate for respondent No.1 submits that the said costs be donated to the Advocate's Association of the Bombay High Court, Bench at Aurangabad.
- [c] As such, the costs shall be deposited within a period of 3 (three) weeks from today.
- [d] The non-applicant Mrs.Bhalerao shall be continued in employment until further orders in the writ petition.
- [e] The amount of back wages of Rs.9,13,314/- shall be deposited in this Court within a period of 6 (six) weeks from today and

on depositing the said amount, same shall be invested with the State Bank of Hyderabad, High Court Branch for an initial period of 6 months and to be renewed thereafter.

- [f] After the above stated directions are complied with, WP No.9746/2014 shall stand restored.
- [g] In the event, any of the above conditions are not complied with, this order shall stand recalled and the earlier order dated 27/01/2015 shall stand restored leading to the rejection of this civil application.

(RAVINDRA V. GHUGE, J.)