

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

WRIT PETITION NO. 799 OF 1997

- 1 People's Education Society,
Mandane, Tq.Shahada,
District Dhule.
Through Chairman.
- 2 Adarsh Vidyalaya Mandane,
Tq.Shahada, Dist.Dhule.
Through Headmaster.

...PETITIONERS

-VERSUS-

- 1 Deelip Ramrao Behare,
R/o Mandane, Tq.Shahada,
District Dhule.
- 2 The Education Officer,
Zilha Parishad, Dhule.

...RESPONDENTS

...
Advocate for Petitioner : Shri S.P.Brahme and Shri A.R.Syed.
None for the Respondents.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th October, 2016

Oral Judgment :

- 1 The Petitioner is aggrieved by the judgment of the School Tribunal dated 27.02.1996 by which Dhule Appeal No.35/1994 filed by the Respondent/ Employee was allowed and he was granted reinstatement

with all pecuniary benefits and the absence from the date of termination till reinstatement was to be adjusted against the leave credited to his account.

2 While admitting this petition on 03.04.1997, this Court granted interim relief only to the extent of staying the payment of back wages on the condition that the amount of 50% of back wages would be deposited in this Court. The reinstatement was not stayed.

3 It is informed by the learned Advocate for the Petitioner, on instructions, that the Respondent was thereafter, reinstated in service and 50% back wages calculated at Rs.75,503/- were deposited in this Court on 15.09.2001. The said amount of back wages has already been withdrawn by the Respondent/ Employee.

4 None appears for the Respondent inspite of an adjournment on earlier date. This matter was filed on 18.06.1996 and is taken up for final hearing after more than 20 years.

5 Considering the subsequent events and the fact that the learned Division Bench of this Court did not, at prima facie stage, find any perversity in the direction of reinstatement and since the Respondent has,

thereafter, been reinstated, I deem it inappropriate to consider the challenge as against the said direction at this stage since the Respondent has been working for more than two decades and has settled in employment.

6 Insofar as the back wages are concerned, Shri Brahme has strenuously submitted that the principle of "no work no pay" should be made applicable in this case. An employee cannot be paid wages when he has not worked. He further submits that the Educational Society would be required to suffer financial burden and hence, the direction to pay back wages should be set aside.

7 The Honourable Supreme Court in the matter of *Nicholas Piramal India Limited v/s Hari Singh*, 2015 (2) CLR 468, 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. The Petitioner has already deposited an amount equivalent to 50% of the back wages and the said amount has already been withdrawn by the Respondent/ Employee under the orders of this Court.

8 As such, this Writ Petition is partly allowed. While sustaining

the directions of reinstatement and continuity in service, the direction to pay 100% back wages is modified as set out in the foregoing paragraph.

9 Rule is made partly absolute in the above terms.

10 Needless to state, in the event the amount deposited by the Petitioner as recorded above is not withdrawn by the Respondent/Employee, he shall be at liberty to withdraw the said amount with accrued interest by producing a recent colour photograph along with identity proof in the nature of the Election Commission of India's Voter Identity Card and an application for withdrawal duly identified by his Advocate.

kps

(RAVINDRA V. GHUGE, J.)