

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 2653 OF 2016

1. Janu Lala Pathan,  
Secretary, Smt. Phundabi  
Shikshan Prasarak Mandal,  
Sanchalit Janpir Vidyalay,  
Nalvandi, Tq. Patoda,  
District Beed.

2. Smt. Kabirabano d/o  
Suleman Shaikh, Headmaster  
of Janpir Vidyalay, Nalvandi,  
Tq. Patoda, District Beed.

..Petitioners

Versus

1. Subhash Tukaram Jadhavar,  
Age 47 years, Occ. Typist,  
R/o Barshi (in front of Sessions  
Court), Tq. Barshi, Dist. Solapur.

2. The Education Officer (S),  
Zilla Parishad, Beed.

..Respondents

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Advocate for Petitioners : Shri Wagh S.S.  
Advocate for Respondent 1 : Shri Bade Patil K.D.  
AGP for Respondent 2 : Shri Kutti P.N.

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CORAM : RAVINDRA V. GHUGE, J.  
Dated: August 30, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the order dated 16.10.2016, by which, the objections raised by the petitioner at Exhibits 18 and 22 in the execution proceedings Misc. Application No.15 of 2010 have been rejected.

5. Contention of the petitioner is that the order of the School Tribunal, dated 22.11.2001 is a vague order. It does not specifically state as to how the backwages are to be calculated. After the judgment of the Honourable Supreme Court, dismissing the Special Leave Petition of the petitioner, four letters were sent to the respondent / employee and he did not join. After one year of waiting, the petitioner obtained permission from the Government and have filled in the post.

6. It is further contended that though the petitioner is a grant-in-aid minority institution, there are no salary grants with respect to the respondent / employee and, therefore, considering the view taken by the Honourable Supreme Court in the matter of Satimbla Sharma and Others Vs. St. Pauls Secondary School and others [2011 CJ (SC) 1184], the principle of 'equal pay for equal work' would not

be applicable to the respondent / employee.

7. It is further contended that because the judgment of the School Tribunal is vague, the Tribunal cannot go beyond its order and hence, considering the view taken by the Honourable Supreme Court in the matter of Vedic Girls Secondary School Arya Samaj Mandir, Jhajjar Vs. Smt. Rajwanti and others [AIR 2007 SC 1779], the executing Court cannot direct payment of salary as per the Government Scheme.

8. It is further contended that presently the petitioner does not have any vacancy. They cannot accommodate the respondent. They can pay the wages to the respondent strictly as per the contract signed between the petitioner and the respondent employee.

9. Shri Patil, learned Advocate appearing on behalf of respondent No.1 has supported the impugned order. He contends that the execution proceedings are still pending. Objections raised by the petitioner have been rejected by the impugned order. The judgment of the School Tribunal dated 22.11.2001, granting reinstatement to him with 75% backwages and all consequential benefits has been sustained by this Court by its judgment dated 29.7.2009. The Special Leave Petition, filed by the petitioner, has been dismissed by the Honourable Supreme Court and yet the judgment of the Tribunal is

not implemented.

10. I have considered the submissions of the learned Advocates.

11. The first contention of the petitioner that no salary grants have been allotted with regard to the respondent / employee and the rest of the institution is grant-in-aid, deserves no consideration. The respondent has been held to be an Assistant Teacher. His termination during his probation period was held to be illegal, right upto the Honourable Apex Court. By his reinstatement he has, therefore, attained permanency.

12. It is apparent that the petitioner is putting forth a shrewd stand of having not understood the judgment of the Tribunal correctly since it does not state as to how the backwages are to be calculated. It is settled law that once the termination is set aside, there is no termination in the eyes of law and such a litigant has to be treated at par with equally placed employees. This objection of the petitioner, therefore, has been rightly negated by the Tribunal.

13. The petitioner admits that the backwages at the rate of 75% from 30.4.1998 till the order of the Honourable Apex Court, has not been paid to the respondent / employee. Considering the observations as recorded above, the petitioner is under a legal

obligation to pay 75% backwages. Causing a delay in the said payment would indicate an intentional and deliberate disobedience of the orders passed by the Courts. Therefore, the petitioner cannot be said to be justified in contending that they would pay the backwages on the basis of the paltry amount that the management used to pay to the respondent / employee as per the appointment order / contract, when he was under probation.

14. In so far as the contention of the petitioner is concerned, that it sent four letters to the respondent / employee after the judgment of the Honourable Apex Court and because he did not join, another person has been appointed in his place, deserves to be rejected outright. Rule 16(3) of the MEPS Rules, mandates that the plea of voluntary abandonment of service would be available to the management only after the permanent employee is absent continuously for three years.

15. There is no dispute that the petitioner had engaged the respondent / employee in litigation right upto the Honourable Apex Court. On 10.2.2010, the Special Leave Petition of the petitioner has been dismissed. Until then, the petitioner had not reinstated the respondent / employee. Nevertheless, unless the respondent / employee has remained continuously absent for three years, the petitioner cannot take the plea of voluntary abandonment of service

and as such any person appointed in place of the respondent / employee cannot claim equity and cannot seek continuance on the post.

16. It is, therefore, for the management to decide as to how would they deal with such a newly appointed person, since the right of the respondent / employee for reinstatement has been crystallized before the Honourable Apex Court. The said defense of the petitioner, therefore, deserves to be rejected.

17. It is informed that the respondent / employee has been now reinstated on service on 14.3.2016. Shri Patil submits that no work is being allotted to him. Nevertheless, it is for the management to keep the respondent employee engaged in service. If no work is allotted, it would not mean that the petitioner / management could be justified in depriving the monthly salary of the respondent, which would be payable at par with equally placed employees.

18. It is quite evident and apparent that this petitioner / management has made an attempt to avoid compliance of the orders at issue and has kept the respondent engaged in litigation. The objections raised by the petitioner before the Tribunal in execution proceedings clearly indicate that the petitioner is travelling beyond the judgment of the Tribunal, of this Court, even after the dismissal

of it's Special Leave Petition. The objection is that the respondent / employee has no right to the post. The petitioner has the courage to put forth this objection knowing fully well that the respondent / employee has succeeded right upto the Honourable Apex Court. Similar are the other objections, which have, in my view, been rightly rejected by the School Tribunal.

19. Considering the above, I am dismissing this petition by imposing costs of Rs.25,000/- (Rs. Twenty Five Thousand only/-) on the petitioner, since I find that the petitioner has made a deliberate attempt to tire out the respondent / employee, despite the dismissal of it's Special Leave Petition on 10.2.2010. It was only after this Court has passed an order on 9.3.2016 that the petitioner reinstated the respondent / employee on 14.3.2016 and is still keeping him idle without work.

20. This petition is, therefore, dismissed. Costs of Rs.25,000/- (Rs. Twenty Five Thousand only/-) shall be deposited by the petitioner before the School Tribunal in Misc. Application No.15 of 2010, within a period of four weeks from today, failing which the School Tribunal shall be justified in refusing to consider the stand of the petitioner.

21. Looking at the pendency of this litigation since 1998, I find it

appropriate to direct the School Tribunal to decide Misc. Application No.15 of 2010 as expeditiously as possible and in any case on/or before 23.12.2016. The School Tribunal shall not seek an extension of time and shall be justified in refusing adjournment to the litigating sides if the same are sought on unreasonable grounds.

21. Rule is discharged with above directions.

22. On depositing the costs, the respondent / employee shall withdraw the same from the School Tribunal, without conditions.

( RAVINDRA V. GHUGE, J. )

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akl/d