

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

WRIT PETITION NO. 3140 OF 2015

Kashi Vishweshwar Shikshan Prasarak Mandal
Surangli, Through its Secretary and Others ..PETITIONERS

VERSUS

The State of Maharashtra and Others ..RESPONDENTS

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Mr. R.K. Jadhavar, Advocate for petitioners.
Mr. D.R. Korde, AGP for Respondent Nos.1 and 5.
Mr. V.L. Dhoble, Advocate for Respondent Nos.2, 3 and 4.
Mr. M.S. Adate, Advocate h/f Mr. S.S. Tope for Respondent No.6.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 16th MARCH, 2016**

ORDER :

1. The submissions of the learned Counsels were recorded in the order of this Court dated 21.10.2015, which are as under:-

“1. The petitioners are aggrieved by the impugned judgment and order dated 16.10.2014, delivered by the School Tribunal in Appeal No. 2/2013.

2. Learned Advocate for Respondent No.2/original appellant submits that he has been awarded backwages. Prayer for reinstatement became infructuous as he has attained the age of superannuation. He, therefore, submits that in the light of the impugned order, the petitioner/management be directed to deposit backwages in this Court because his pension papers forwarded by the management have been rejected as they are defective. He apprehends that the management has intentionally forwarded a defective proposal.

3. *Issue notice before admission to the respondents returnable on 27.11.2015.*

4. *The petitioner shall deposit the backwages as granted by the School Tribunal in this Court on/or before 21.11.2015. On the condition of deposit, the impugned judgment is stayed. Needless to state, if the amount is not deposited, the interim protection granted shall stand vacated without reference to the Court.*

5. *Learned Advocates waive service for Respondent Nos.2 and 6. Learned AGP waives service for Respondent Nos.1 and 5."*

2. Since the petitioner did not comply with the order of this Court and did not deposit the back wages, further order was passed on 18.12.2015 which is as under:-

"1. If the order dated 21.10.2015 is not complied with or before 22.12.2015, the directions would be issued to the Education Officer to deduct the amount of back-wages from the grants paid to the petitioner and deposit the same in this Court.

2. Stand over to 22.12.2015."

3. After considering the reply of the Education Officer, this Court had passed the following order on 04.03.2016:-

"1. Despite the order passed by this Court on 23.2.2015, the Education Officer namely Shri Ramdas Sakharam Shewale - respondent No.5, is present in the Court. An affidavit-in-reply dated 2.3.2016 is filed on record.

2. This Court had specifically directed respondent No.5 to deduct the amount of backwages from the grants paid to the petitioner institution. There can be no debate that the wages

are to be paid from the salary grants disbursed to the establishment.

3. In paragraph Nos.6 and 7 of the affidavit-in-reply filed by Shri Shewale, he has diverted the issue to the non-salary grants, when the payment of wages or backwages is a matter of the salary grants.

4. Learned AGP prays for sometime to file an affidavit of Shri Shewale in relation to the payment of backwages from the salary grants and tender an apology.

5. S.O. to 9.3.2016 in the Supplementary Board. Further orders would be passed after hearing the learned AGP and after considering the affidavit if filed by Shri Shewale.”

4. On 09.03.2016, Mr.Dhoble, learned Counsel appearing on behalf of the employee submitted that he was suspended with effect from 31.08.2009 with the prior approval of the Education Officer and thereafter has been dismissed on 12.05.2011. Suspension allowance for the said entire period of suspension has not been paid to the employee. He further submits that the employee was entitled for 50% suspension allowance in the first four months and thereafter was entitled for 75% suspension allowance. He therefore submits that failure to comply with the law of payment of suspension allowance, would render the entire enquiry vitiated.

5. The petitioner has tendered an additional affidavit dated 11.03.2016 through Mr. Sukhdev Tukaram Jadhav, Secretary of the petitioner contending that the employee was not paid his suspension allowance since he did not mark his daily attendance in the school. It was in these circumstances that he was not paid his suspension allowance during the enquiry as he was not available.

6. The learned Counsel for the petitioner further submits that this school does not even have its own premises. Presently it is being operated from the Kashivishweshwar Temple at Surangli, Tq. Bhokardan, Dist. Jalna and it does not have its own building and premises or infrastructure. The petitioner also does not have funds to pay suspension allowance of the employee for the present.

7. I have considered the submissions of the learned Counsels for the petitioners and the respondents. I have gone through the grounds raised by the petitioner in challenging the impugned judgment and order of the School Tribunal dated 16.10.2014. I have also considered the above recorded statements of the petitioner that neither does it have the funds to pay suspension allowance of the employee, nor is it in a position to pay his back wages. I do not find that the impugned judgment of the

School Tribunal could be termed as being perverse or erroneous so as to cause grave injustice to the petitioner-management, in these peculiar facts of this case.

8. In the light of the above, this petition is dismissed. Needless to state, the employee is at liberty to seek execution of the impugned judgment. Similarly, the Education Department is at liberty to look into the present state of affairs of the petitioner in the light of the fact situation and take necessary action to safeguard the interest of the employees as well as the students. It may also contemplate initiation of action under the Maharashtra Education Institution (Transfer of Management) Act, 1971.

9. Needless to state, considering the above observations, earlier directions set out in the order dated 04.03.2016 shall stand recalled.

(RAVINDRA V. GHUGE, J.)