

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

CRIMINAL WRIT PETITION NO. 363 OF 2005

1. Dr. Arvind Tukaram Javle,
Age. 62 years, Occ. Doctor,
President of Khandesh College
Education Society, Jalgaon,
R/o. Near State Bank of India,
Zilla Peth, Jalgaon.
2. Sanjay S/o Laxman Patil,
Age. 35 years, Occ. Service,
Principal, I.T.I. (Industrial
Training Institute), Khandesh
College Education Society,
Jalgaon, R/o. C/o Maniyar Law
College Complex, Jalgaon. **..PETITIONERS..**
(Orig Accused Nos. 1 and 2.)

VERSUS

1. Gajendra Kashinath Shahane,
Age. 43 years, Occ. Service,
R/o. At and Post Rasalpur,
Tq. Raver, Dist. Jalgaon. ,
- 2 State of Maharashtra. **...RESPONDENTS..**
(Resp. No. 1 is
Orig complainant)

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Advocate for Petitioners: Mr. V T Choudhari
Advocate for Respondent no. 1: Mrs C.P. Kutti h/f P N
Kutti

APP for Respondent No. 2 : Mr M B Bharswadkar

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CORAM : V.K. JADHAV, J.

Dated: December 06, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the order passed by Chief Judicial Magistrate, Jalgaon dated 11.09.2003 in Criminal Case No. 3670/2003 thereby issuing process against the applicant- original accused nos. 1 and 2 for the offence punishable under section 13 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977, the original accused no. 1 and 2 have approached this court by filing present criminal writ petition.

2. Brief facts, giving rise to the present criminal writ petition are as follows :-

The respondent no.1 was appointed as an Instructor in Industrial Training Institute run by Khandesh College Education society. The said appointment was on temporary basis. The last appointment of respondent no.1 was for the period 5.08.1988 to 31.7.1989 and thereafter he was not continued in service. The respondent no.1 preferred an appeal before the School Tribunal, Nashik and the School Tribunal by its order dated 30.04.1994 directed

the Management to reinstate respondent no.1 on his original post and to give him all the benefits of the post attached to it from 31.07.1989 till he legally entitled to continue the post. There was no specific direction for payment of back wages. The respondent no.1 filed Contempt Application no. 32/1994 and the member of School Tribunal by order dated 13.05.1997 directed the Education Officer, Zilla Parishad, Jalgaon and Deputy Director of Education to deduct the dues of the Respondent no. 1 from the salary grant due and payable to the Management. Even though, there was no specific direction for payment of back wages, Management had paid certain amount to respondent complainant. On 31.07.1989 the trade wherein the respondent no. 1 was serving as instructor was closed, his service came to be terminated. The respondent no.1 filed Appeal no.30/1994 challenging the said termination order. The Member of School Tribunal partly allowed the appeal and the Management was directed to reinstate the respondent no.1 to any other post considering his qualification and his other prayer for back wages was came to be rejected. As per the directions respondent

no. 1 was appointed as junior clerk in the Society's College and he worked there till June 1999 and thereafter remained absent without informing the institution.

3. On 25.07.2003 respondent no. 1 filed criminal case no.3670/2003 under section 13 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 for non-compliance of the order passed by the School Tribunal, Nashik region, Nashik in appeal no.03/1991. By impugned order dated 11.09.2003, Chief Judicial Magistrate issued process. The petitioner filed application for recalling of the order of process, however, the learned Chief Judicial Magistrate has rejected the said application. Being aggrieved by the same petitioners preferred criminal revision application no.190/2004 and said criminal revision application is dismissed on the ground that, in view of the ratio laid down in Adalat Prasad Vs. Ruplal Jindal and others reported in 2004 Vol. VI Supreme 371, application for recalling of process is not maintainable. Consequently petitioners have approached this court by

filing present writ petition.

4. The learned counsel for the petitioners submits that, the Member of the School Tribunal Nashik Region, Nashik though directed to reinstate respondent no.1 on his original post and, further directed to give all the benefits of the post attached to it from 31.7.1989 till he legally entitled to continue the post, there is no specific order regarding back wages to be paid to respondent no.1-complainant. Further, the said Khandesh College Education Society had challenged the aforesaid order of the School Tribunal, Nashik in appeal No.3/1991 by filing writ petition No.43/1995. Learned counsel submits that, this Court by the Judgment and order dated 6.10.2016 partly allowed the writ petition and directions of the School Tribunal to the extent of payment of back wages is quashed and set aside. Learned counsel submits that the petitioner on instructions submits that, respondent no.1 has not challenged this order and order passed in writ petition no.43/1995. has now attained finality. Learned counsel submits that, once the order passed by the School

Tribunal is quashed and set aside to the extent of payment of back wages, it will have to be assumed that said order passed by the School Tribunal directing the Management to pay back wages is not in existence from very inception of the said order. Learned counsel submits that on the backdrop of the order passed by this Court in the aforesaid writ petition, continuation of the proceedings in complaint Criminal Case No.3670/2003 would be abuse of the court process.

5. Learned counsel for respondent-original complainant submits that this Court in the aforesaid writ petition no.43/1995 by order dated 6.10.2016 partly allowed the writ petition and though the order passed by the School Tribunal to the extent of payment of back wages is quashed and set aside, further held that, respondent no.1 complainant is entitled for any retiral benefits till 7.6.1999 from the date on which he abandoned the employment and considering that he had joined service on 22.8.1996, the Management shall make payment of said retiral benefits in the event respondent/employee appears and makes a request to

the Management by way of staking a claim. Learned counsel submits that this Court has not set aside the entire order passed by the School Tribunal and therefore, the complaint filed by respondent no.1 is maintainable. No interference is required.

6. On careful perusal of the contents of the complaint, it appears that, the complainant has referred a judgment and order passed by the School Tribunal in Appeal No.3/1991. It has alleged that the School Tribunal has decided said appeal in his favour by order dated 30.4.1994 and thereafter, he had approached to present petitioners who reinstated him on 17.6.1994 nominally but did not comply with the order passed by the said School Tribunal. It has further alleged in the complaint that, the petitioners have not extended him all benefits including the payment of the back wages and other benefits as directed by the School Tribunal. Consequently, respondent no.1-complainant constrained to file C.P. 32/1994. Respondent No.1-original complainant has admitted that certain amount has been paid by the Management, however, entire amount

towards back wages is not paid. It has therefore alleged that, the petitioners have not complied with the orders passed by the School Tribunal and therefore liable to be convicted under the provisions of Section 13 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act. On the backdrop of these allegations, on careful perusal of the order passed by this Court in writ petition No.43/1995, it appears that, the Management being aggrieved by the order passed by the School Tribunal in Appeal No.3/1991 has preferred the aforesaid writ petition. This Court by order dated 6.10.2016 partly allowed said writ petition and directions of the School Tribunal to the extent of payment of back wages is quashed and set aside. In the light of the aforesaid order, the complaint Criminal Case bearing No.3670/2003 does not stand and continuation of the proceedings in the said case would be abuse of the Court process. Hence, following order.

ORDER

- I. Criminal Writ Petition is allowed in terms of prayer clause 'B' and 'C'.

- II. Rule is made absolute in the above terms.
- III. Criminal Writ Petition accordingly disposed of.

(V.K. JADHAV, J.)

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