Sequeira

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3472 OF 2012

The Chairman
Dyanvardhinin Shikshan Sanstha
Shahupuri, Satara & anr. .. Petitioners
Vs.
Rashmi Ramesh Ingawale & anr. .. Respondents

Mr.M.S.Athalye, for Petitioners.
Ms.Pranita Hingmire, for Respondent No.1.

CORAM: N.M. JAMDAR, J.
Friday, 12 February 2016.

Oral Order :

By this petition, the Petitioners challenge the order passed by the School Tribunal holding that the Respondent No.1 is entitled to 50 per cent of the back wages i.e. from 17 September 2008 to 28 November 2008 amounting to ₹ 13,226.

2. The School Tribunal noted that since the Respondent No.1 was already reinstated in service there was no need to pass separate order as regards her reinstatement. It is the contention of the Petitioners that the Petition is being prosecuted not for the amount of ₹ 13,226 but for the finding that the Petitioners had orally terminated the services of the Respondent and because of which the Petitioners are not able to take any disciplinary action against the Respondent for her absence.

3. It is a contention of the Petitioners that the Respondent joined services pursuant to the appointment of Court Commissioner and the Petitioners never obstructed the Respondent from joining the services. It is also the contention of the Petitioners that there is no finding in the order passed by the School Tribunal as regards the controversy whether it was the Petitioners who obstructed the Respondent from joining or Respondent willfully stayed away. It was submitted that the School Tribunal has passed the order only on the ground that the Respondent now stands reinstated in service. The reply affidavit has been filed by the Respondent taking a stand that whenever the Respondent attempted to join the services, the Petitioners did not allow her to join and the attitude of the Petitioners is of harassment.

4. The parameters of writ jurisdiction are well-settled. It is not for every error that the writ is to be issued, unless the Court is satisfied that it leads to failure of justice. As far as the alleged absence of the Respondent is concerned, School Tribunal has not granted back wages and the back wages are only restricted to 50 per cent of the period of two and a half months i.e.₹ 13,226 therefore, the Respondent has also suffered financially. No challenge is levied by the Respondent against the order of depriving of back wages.

5. As regards the contention of the learned counsel for the Petitioners, that the right of the Petitioner-Management to proceed against the Respondent for unauthorised absence is taken away by

the impugned order, one has to consider the need to put a quietus to the litigation especially in the schools in the field of imparting education. If the Petitioners are seeking an opportunity to proceed against the Respondent for her alleged absence, the Petitioners ought to have moved diligently.

6. The manner in which this particular petition is continued or prosecuted by the Petitioners is reflected in the order dated 29 January 2016, it is reproduced as under -

> '*The Petitioner-Management has challenged the order passed by the School Tribunal dated 30 August 2011. In the order dated 17 September 2012. It is noted that the Respondent No.1 is granted only 50 per cent back wages for two and a half months and that pursuant to the impugned order the Respondent is in service since 21 July 2009. Thereafter none appeared for the Petitioners on 12 October 2012. On 23 October 2012 since none appeared for the Petitioner, petition was dismissed for default. It was restored by allowing Civil Application on 18 February 2014. On 18 February 2014, the matter was adjourned at the request of the Petitioner. On the last date none appeared for the Petitioners. Today when the matter is called, request is made on behalf of the Petitioners for adjournment.*
>
> *2. The learned counsel for the Respondent states that back wages directed to be paid are only 50 per cent of two and a half months. Considering the consistent conduct of the Petitioners in prosecuting this petition, any further indulgence will be only on the condition of deposit of back wages in this Court. Stand over to 12 February 2016.*
>
> *3. If the back wages are not deposited before the next date, the Petition will stand dismissed for non-prosecution*'.

7. It is only when an order was passed that if the 50 per cent back wages amount i.e. ₹ 13,226 is not deposited before the next date the Petition will stand dismissed for prosecution that the matter is argued on merits. In view of this the manner in which the petition is prosecuted and passage of time, I am not inclined to interfere in the equitable jurisdiction of this Court.

8. As far as the contention raised by the Petitioners based on the decision of this Court in the case of **Yavatmal Islamia Anglo Urdu Education Society, Yavatmal and anr. Vs. Mujib Ahmed Abbas Ali and another** – *2010 (1) Mh.L.J. 359* is concerned, for the reasons stated above and by passage of time and by the fact that the ultimate quantum involved in this petition is ₹ 13,226, it is not necessary to interfere into the merits of the rival contention, The charge levied by the Respondent that the conduct of the Petitioners throughout has been of harassment to her is fortified in the manner in which the present petition is prosecuted. In the circumstances, there is no merit in this petition. The Writ petition is rejected.

(N.M.Jamdar, J.)