

Sequeira

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4201 OF 2010

Suresh Tukaram Nagage
Age 48 yrs. Occ :Service
Residing at -
At & Post : Salashi, Shirgaon
Taluka Deogad
Dist. Sindhudurg

.. Petitioner

Versus

Salashi Gramvikas Mandal
Through its President / Chairman
Salashi Gramvikas Mandal
C/o The Headmaster,
Madhyamik Vidyamandir
Salashi, Tal. Deogad
Dist.Sindhudurg & 4 others.

.. Respondents

Mr.Subhash Langote i/b Mr.V.A.Madane, for the Petitioner.
Mr.Rohit Pramod Sakhadeo, for Respondent Nos.1 and 3.
Mr.S.D.Rayrikar-Assistant Government Pleader, for Respondent
Nos.4 and 5.

***CORAM: N.M.Jamdar, J.
Friday 8 January, 2016***

Oral Order :

This petition filed by the teacher challenges the order passed by the School Tribunal to the extent of refusing back wages to the Petitioner from 1 May 1991 to 20 January 1997. The back wages have been refused on the ground that there are no pleadings of the

Petitioner that the Petitioner is not gainfully employed elsewhere during the said period.

2. The learned counsel for the Petitioner submitted that unlike Labour Laws there is no such concept of making a requisite pleading or that a teacher is not gainfully employed elsewhere for the purpose of seeking back wages. This submission cannot be accepted. The Apex Court in the case of *Deepali Gundu Surwase v/s. Kranti Junior Adhyapak Mahavidyalaya (D. Ed) and Ors. - (2014) II CLR 813 S.C.*, which arose from the order of the School Tribunal has made it amply clear that the initial burden lies on the teacher to show that he is not gainfully employed during the relevant period and which has to be discharged by him by making requisite pleading. Such averments have to be made on oath and if they are specifically omitted to be made then inference can follow that the Petitioner did not want to make an incorrect statement on oath. The approach of the School Tribunal is in consonance with the decision of the Apex Court and cannot be faulted.

3. The learned counsel for the Petitioner then submitted that in identical matter of some other teacher the School Tribunal had granted full back wages, even this submission cannot be accepted. If the approach of the School Tribunal in the present case is according to the decision of the Apex Court merely because the School Tribunal has passed an order in some other case, the same cannot be used to set aside an order otherwise by according to the dicta of Apex Court. It is upto the Management to levy appropriate

challenge to such orders.

4. The learned counsel for the Petitioner then submitted that the reason thus given for denying the back wages on the ground that School is unaided is also incorrect. There may be some justification in this submission but the Petitioner is not entitled to succeed on the above grounds. The Petitioner has already been reinstated pursuant to the impugned order and is gainfully working in the School. In the circumstances no interference is warranted in writ jurisdiction. Petition is accordingly **rejected**.

(N.M.Jamdar, J.)