

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

WRIT PETITION NO.5678 OF 2016

Deccan Education Society. .. Petitioner
Vs.
Mrs. Rekha Chandrasen Thakare. .. Respondent

Mr. Amey Borwankar i/b Mr. Vinay Borwankar for Petitioner.
Mr. Vishnu Madane for Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 8th August 2016

P.C.

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 23rd January 2015 passed by the Presiding Officer, School Tribunal, Pune directing the petitioner to pay full back wages to the respondent within four months from the date of the said order and interest @9% p.a. from the date of termination of her services till realisation of entire decretal amount if the amount is not paid within four months.

2. There is no dispute that by an order dated 23rd January 2015 passed by the School Tribunal in the earlier appeal filed by the respondent, the termination order dated 12th February 2011 passed by the petitioner thereby terminating the services of the respondent was quashed and set aside and the management was directed to give benefit of continuity of service to the respondent.

3. By an order dated 24th July 2014 passed by this Court in Writ Petition No.6689 of 2013 filed by the management, this Court

directed the School Tribunal to decide afresh the issue of back wages as arising in Appeal No.10 of 2011 within six months from the date of the said order and upheld the order of reinstatement with continuity of service.

4. Pursuant to the said order passed by this Court, the respondent appeared before the School Tribunal and filed an additional affidavit to the effect that the respondent was not gainfully employed from the date of termination of her services till the date of reinstatement.

5. The School Tribunal has considered the said affidavit filed by the respondent and also the judgment of the Supreme Court in the case of ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors.***, reported in ***2013 (10) SCC 324*** and has granted full back wages to the respondent from the date of termination of her services till the actual date of reinstatement of her services. This order is impugned by the petitioner in this Court under Article 227 of the Constitution of India.

6. Learned counsel appearing for the petitioner submits that when the matter was remanded to the School Tribunal by this Court by an order dated 24th July 2014, no liberty was granted by this Court to file any additional evidence before the School Tribunal on the issue of back wages.

7. The next submission of the learned counsel for the petitioner is that the judgment of the Supreme Court in case of ***Deepali Gundu Surwase (supra)*** was delivered after disposal of the appeal filed by the

respondent in the month of November 2012 and therefore, no benefit could be granted by the respondent.

8. The last submission of the learned counsel for the petitioner is that there were several lapses on the part of the respondent committed during the period of her service with the petitioner and thus though the School Tribunal had granted reinstatement to the respondent while considering the issue of back wages, the School Tribunal could not have granted the full back wages to the respondent from the date of termination of her services till the actual date of reinstatement of her services.

9. In so far as the first submission of the learned counsel for the petitioner is concerned, a perusal of the order passed by this Court on 24th July 2014 indicates that by the said order, this Court had directed the School Tribunal to decide afresh the said appeal within six months. By the said order, this Court had also directed the School Tribunal to decide the issue in relation to the payment of back wages afresh after applying the principles of law laid down by the Supreme Court in the case of ***Deepali Gundu Surwase (supra)***. I am thus not inclined to accept the first submission of the learned counsel for the petitioner.

10. The Supreme Court in the case of ***Deepali Gundu Surwase (supra)*** has held that for denial of or contest to the claim of back wages, it has to be specifically pleaded and proved that during the intervening period, the employee was gainfully employed. The School Tribunal has applied the principles laid down by the Supreme Court in the said

judgment. In my view, merely because this Court has not made it clear that the respondent was entitled to file any additional affidavit before the School Tribunal on the issue of back wages, the respondent was not prevented from filing any additional affidavit. Issue of back wages was remanded back by this Court on the ground that no evidence was produced by the respondent. When the respondent filed an affidavit before the School Tribunal, the petitioner did not oppose filing of such affidavit. It is also an admitted position that the petitioner neither controverted the averments made by the respondent in the said additional affidavit nor produced any other material for consideration of the School Tribunal to controvert the said fact. In my view, there is thus no merit in the submission of the learned counsel for the petitioner that the School Tribunal could not have considered the additional affidavit filed by the respondent on the issue of back wages.

11. In so far as the last submission of the learned counsel for the petitioner that there were several lapses on the part of the respondent during her tenure of the services with the petitioner is concerned, there is no dispute that the finding of fact rendered by the School Tribunal in the earlier appeal filed by the respondent granting relief of reinstatement has been upheld by this Court. The School Tribunal has also made various observations about malafide action on the part of the management in terminating the services of the respondent. I am thus not inclined to accept this submission of the learned counsel for the petitioner.

12. The petition is devoid of merit and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.