

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

WRIT PETITION NO.853 OF 2015

Chhatrapati Shivaji Raje Krida Va Shikshan Prasarak Mandal, Sangole.	..	Petitioner
Vs.		
State of Maharashtra and Ors.	..	Respondents

**ALONG WITH
CIVIL APPLICATION NO.123 OF 2016
IN
WRIT PETITION NO.853 OF 2015**

Sopan Dnyanu Ghadage	..	Applicant (orig.Respt.No.3)
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In the matter between

Chhatrapati Shivaji Raje Krida Va Shikshan Prasarak Mandal, Sangole.	..	Petitioner
Vs.		
State of Maharashtra and Ors.	..	Respondents

Mr. Ajit Kinjale for Petitioner.
Mr. A. R. Metkari, AGP, for Respondent Nos.1 and 2.
Mr. Anant Vadgaonkar for Respondent No.3.
Mr. N. V. Bandiwadekar i/b Mr. Sagar Mane for Respondent No.4.

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

P.C.

. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has impugned the judgment and order passed by the School Tribunal on 8th August 2012 in the appeal filed by the respondent no.3 thereby setting aside the oral order of termination dated 19th November 2010 and directing the management to reinstate the respondent no.3 on the post of Assistant Teacher with

continuity of service and full back wages from the date of his termination till his reinstatement.

2. Learned counsel for the petitioner states that the earlier management of the respondent no.3 Institution did not contest the appeal filed by the respondent no.3 properly. He submits that the respondent no.3 has been wrongly granted reinstatement by the School Tribunal though he was not working as Assistant Teacher in the respondent no.2-School. He submits that the new management has taken an action against the earlier management of the respondent no.3 Institution and thus this Court shall intervene with the order passed by the School Tribunal.

3. The next submission of the learned counsel for the petitioner is that though the respondent no.3 did not produce any record and/or evidence before the School Tribunal in support of his claim for back wages and that he was not gainfully employed with any other employer during the pendency of the appeal, the School Tribunal has awarded the entire back wages from the date of his termination till his reinstatement.

4. Learned counsel appearing for the respondent no.3, on the other hand, opposed this writ petition on the ground that the petitioner has not explained gross delay in filing the writ petition.

5. Learned counsel for the respondent no.3 submits that the respondent no.3 was not employed from the date of his termination till the date of the order passed by the School Tribunal and till date. He

submits that in so far as the issue of payment of back wages is concerned, if the matter is required to be remanded back to the School Tribunal for determination of the full back wages, he has no objection. He submits that the respondent no.3 would produce requisite proof and would file additional affidavit before the School Tribunal in that regard. Statement is accepted.

6. In so far as the challenge to the order of reinstatement granted by the School Tribunal is concerned, I have perused the impugned order passed by the School Tribunal and record produced along with this writ petition. The management had though appeared before the School Tribunal did not contest the claim properly. In my view, the School Tribunal has considered all the documentary evidence produced by the parties and has rendered findings of facts and has rightly granted prayer of reinstatement of the respondent no.3 with continuity of service. I am thus not inclined to interfere with that part of the order passed by the School Tribunal.

7. In so far as the issue of payment of back wages granted by the School Tribunal is concerned, the respondent no.3 did not dispute that no evidence was produced by the respondent no.3 before the School Tribunal that he was gainfully employed with any other employer during the pendency of the appeal from the date of his termination till the date of the order passed by the School Tribunal and thereafter the respondent no.3 has also no objection for remand of the matter on the issue of back wages.

8. In so far as the amount deposited by the petitioner is concerned, it is prayed by the respondent no.3 that the said amount be allowed to be withdrawn as prayed in the civil application filed by the respondent no.3.

9. In rejoinder, learned counsel appearing for the petitioner states that since the issue of back wages is remanded back to the School Tribunal, the respondent no.3 shall not be allowed to withdraw any amount deposited by the petitioner.

10. In response to this submission, learned counsel for the respondent no.3 submits that since last more than 10 years, the respondent no.3 has not been paid any wages by the petitioner. He is ready and willing to give indemnity within two weeks from today before this Court. Statement is accepted.

11. I therefore pass the following order :-

- (a) The impugned order dated 8th August 2012 passed by the Presiding Officer, School Tribunal, Solapur is upheld in so far as the grant of reinstatement with continuity of service of the respondent no.3 is concerned;
- (b) The order of the School Tribunal dated 8th August 2012, in so far as the grant of full back wages from the date of termination till the reinstatement of the respondent no.3 is concerned, is set aside. The matter is remanded back to the School Tribunal, Solapur for redetermination of the issue of back wages;
- (c) The petitioner as well as the respondent no.3 would be at liberty to produce appropriate evidence before the School Tribunal in respect

of the said claim of back wages;

- (d) The School Tribunal is directed to determine the issue of back wages from the date of termination of the services of the respondent no.3 till the date of reinstatement of the respondent no.3 in accordance with law and shall make an endeavour to decide the said issue within four months from today;
- (e) In so far as the Civil Application No.123 of 2016 filed by the respondent no.3 is concerned, the office is directed to permit the respondent no.3 (applicant in civil application) to withdraw the amount deposited by the petitioner pursuant to the order passed by this Court upon the respondent no.3 furnishing the indemnity in favour of the Registrar of this Court to the effect that if the respondent no.3 does not succeed in the matter before the School Tribunal, the respondent no.3 shall refund the said amount with interest as may be directed by the School Tribunal;
- (f) Writ petition as well as the civil application are disposed of in aforesaid terms. No order as to costs.

12 In view of the order passed by this Court setting aside the order of back wages and remanding back to the School Tribunal, learned counsel appearing for the respondent no.3 states that his client would withdraw the execution application filed for enforcement of the order for back wages. Statement is accepted. Execution application for enforcement of the order for payment of back wages shall be withdrawn within two weeks from today.

R.D. DHANUKA, J.