

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

Civil Application (CAW) No. 1560 of 2015

in

Writ Petition No. 282 of 2015

[Society of Sisters of St. John Vs. Arvind Narayan Lajurkar and ors.]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

1

Shri P. N. Shende, Advocate for the applicant/respondent no.

Shri S. N. Tapadia, Advocate for the petitioners

Shri S. M. Bhagde, AGP for respondent nos. 2 and 3

CORAM : Prasanna B. Varale, J.

DATE : 9-2-2016.

Heard.

By the present application, the applicant/respondent no. 1 prays for withdrawal of the amount deposited by the petitioner. The petitioner challenges the judgment and order dated 19-12-2014 passed by the Presiding Officer, School Tribunal in Appeal No. 19/2012.

This Court, by order dated 13-4-2015 referring to the controversy in the present petition, admitted the petition. This Court granted stay to the judgment and order of the School Tribunal impugned in the present petition subject to certain conditions. The condition no. 1 was the petitioner was granted liberty to reinstate the respondent no. 1 within stipulated period and if such reinstatement is granted, the order directing the payment of full back wages passed by the School Tribunal remain stayed. Second condition was that if the petitioner is not inclined to reinstate

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the respondent no. 1, the petitioner is directed to deposit entire amount of back wages within stipulated period.

The perusal of the record shows that the amount of back wages to the tune of Rs. 4,00,000/- is deposited in this Court by the petitioners on 5-5-2015. The respondent no. 1 submitted the present application is on the ground that the respondent no. 1 was out of employment since the date of termination and he being the sole bread winner of the family, he be permitted to withdraw the amount deposited in this Court by the petitioners.

Reply is filed to the present application. Shri Tapadia, learned counsel for the petitioners vehemently submitted that a wrong statement was made before the School Tribunal to the effect that the petitioner was not gainfully employed. Learned counsel submits that along with reply, the petitioners have placed on record certain documents to suggest that the respondent no. 1 was employed in a private school, namely, Gurukul Convent.

On hearing the learned counsel appearing for the respective parties and on perusal of the documents placed on record, it reveals that though certain documents are placed on record to suggest that the respondent no. 1 was employed in a private school, there is no date of his appointment in the said school reflected in the material. On the contrary, perusal of the judgment and order passed by the learned Presiding Officer, School Tribunal shows that

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the respondent no. 1 has filed an affidavit mentioning therein that after his termination, he was not in any gainful employment and as such, he claimed full back wages. Learned Presiding Officer observed that this affidavit was not challenged by any of respondents (petitioners in the present petition). The petitioners who have been represented through counsel having an opportunity to counter the submission made on behalf of the respondent no. 1, but no attempt to counter that submission before the Presiding Officer, School Tribunal was made and now in this petition, this stand is being taken to oppose the prayer for withdrawal of the amount.

Considering the fact that the petition is admitted by this Court referring to the grounds raised in the petition and the fact that the respondent no. 1 submitted before the Tribunal that he was out of employment and further it is submitted before this Court that there is no other source of employment to the respondent no. 1 as he is sole bread winner, in my opinion, the interest of justice can be served by permitting the applicant to withdraw part of the amount deposited by the petitioners subject to filing of an undertaking before this Court that in case, the petition is allowed, the respondent no. 1 would return the amount within stipulated time. Thus, the application is partly allowed.

The applicant is permitted to withdraw an amount of Rs. 1,00,000/- out of Rs. 4,00,000/-

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subject to filing of an undertaking above before this Court within three weeks from today.

The application is disposed of in above terms.

JUDGE

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