

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 938 OF 2017
IN WP/11951/2015**

**RIZWANA PARVEEN SAYED AHMED
VERSUS
MILANSAR SHIKSHAN PRASARAK MANDAL THROUGH ITS SECRETARY
MOHAMMAD GAUS ABDUL GAFFAR AND OTHERS.**

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Advocate for the Applicant : Shri Ghatge Mahesh V.
Advocate for Respondents 1 and 2 : Shri V.R.Dhorde.
AGP for Respondent 3 : Shri N.T.Bhagat.

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**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 15th September, 2017**

Per Court:

1 On 28.03.2016, this Court had passed the following order:-

- "1. Pursuant to the orders dated 15.12.2015 and 8.3.2016, Shri Dhorde, learned Sr. Advocate for the petitioner / institution submits that the School Tribunal has not specifically concluded as regards the calculation of full backwages. Normally, full backwages are calculated on the basis of the last drawn salary of an employee, which in the present case was Rs. 1500/- per month. Consequentially, Rs.49,500/- has been rightly deposited by the petitioner.
2. He further submits that the calculation of the respondent / employee that her backwages would be about Rs. 10,89,579/- is a wrong calculation and is a mis-conception. The said calculation appears to be on the basis of the salary payable to an approved Head Mistress as on date. He, therefore, submits that the petitioner cannot be said to have deliberately deposited a less amount.
3. Shri Ghatge, learned Advocate for the respondent / employee submits that when the School Tribunal has

directed payment of backwages, it ought to be at the rate as is presently payable to an approved Head Mistress. Merely because the respondent was being paid a paltry amount of Rs.1500/- per month would not mean that her backwages should be calculated at the same rate.

4. *I am of the view that it would be reasonable and appropriate to ensure that an amount of Rs.4,00,000/- is deposited by the petitioner in this Court. Rs. 49,500/- has already been deposited by the petitioner. As such, the petitioner is directed to deposit an amount of Rs. 3,50,500/- in two equal installments in this Court. The first installment of Rs.1,75,250/- shall be deposited in his Court on/or before 15.4.2016 and the second installment shall be deposited on/or before 2.5.2016.*
5. *This matter is being heard finally at admission stage. Considering the order dated 4.10.2014, passed by the learned Judicial Magistrate (First Class), Parbhani below Exhibit 1 in RCC No. 718 of 2012, thereby issuing process against respondent No.1 employee for offences punishable under Sections 420, 467, 468, and 471 of the Indian Penal Code in relation to alleged preparation of forged appointment orders and documents, respondent No.1 is precluded from withdrawing the amount deposited by the petitioner in this Court, until further orders.*
6. *It is made clear that if this order is not complied with by the petitioner and if there is a default in paying even one installment, the interim relief granted on 15.12.2015 shall stand vacated without reference to this Court.*
7. *S.O. 4.5.2016."*

2 Thereafter, this Court has passed orders on different dates indicating that the request for withdrawal of money could be considered after the Regular Criminal Case No.718/2012 is decided.

3 The learned Advocate for the Applicant/ Employee submits

that the said criminal proceedings have been decided and the Applicant has been acquitted. The Applicant, therefore, renews the request for withdrawal of the entire amount of Rs.4 lac which is towards her back-wages keeping in view the arrears of back-wages today are some where around Rs.21 lac.

4 Shri Dhorde, learned Advocate for the Management, has vehemently opposed this application. He submits that an appeal against acquittal is being preferred and the Management has every hope that they will succeed and would prove the offence committed by the Applicant. It is further stated that the judgment in favour of the Applicant delivered by the School Tribunal, has resulted in the grant of back-wages. This is the subject matter of Writ Petition No.11951/2015. The Applicant may not be permitted to withdraw any amount as it would be difficult to recover the said amount from her. He refutes the contention that the back-wages would be about Rs.21 lac.

5 I have considered the submissions of the learned Advocates and their comparative hardships. The Applicant has been acquitted in the criminal proceedings. In the event, the Applicant succeeds in the petition filed by the Management, she would stand to earn all the service benefits. The component of back-wages is claimed to be about Rs.21 lac. During the pendency of these proceedings, the Applicant is left without any source of income.

6 As such, this Civil Application is partly allowed on the following conditions:-

- (a) The Applicant may withdraw an amount of Rs.3 lac by tendering an application along with the affidavit-cum-undertaking declaring that if she fails in the Writ Petition and is not held entitled for any benefit, she would return the entire amount without interest by depositing it in this Court within twelve weeks from the date of the decision in the Writ Petition.
- (b) While making an application as stated in clause (a) above, the Applicant shall place on record her recent photograph and photocopies of her Voters Identity Card issued by the Election Commission of India, Adhaar/ PAN Card and the present residential address proof.
- (c) Needless to state, the withdrawal of this amount shall be subject to the result of the Writ Petition.

7 In the event, the Writ Petition is not heard and decided finally for a period of about six months, the Applicant may renew her request for withdrawal of the residual amount.