

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4333 OF 1997

1. Naigaon Education Society,
Through its President,
Mr.Dattatraya Waman Patil,
At Naigaon, Taluka and
District : Dhule

2. The Head-Master,
Gangamata Vidyalaya,
Warkhede,
Taluka and Dist. Dhule

-- PETITIONERS

VERSUS

1. The State of Maharashtra

2. Dnyaneshwar Poonam Marathe,
R/o Warkhede, Taluka
and District Dhule

-- RESPONDENTS

Mr.A.V.Hon, Advocate for the petitioner.
Mr.Raj Devdhe h/f Mr.S.P.Brahme, Advocate for respondent No.2.
Respondent No.1 is deleted.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 12/01/2017

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment dated 15/02/1996 delivered by the School Tribunal by which the Appeal No.15/1992 filed by the respondent was partly allowed and considering that he had secured employment elsewhere, he was granted back wages from 01/04/1992 upto 01/03/1993.

2. This Court admitted the petition on 18/04/1998. Prior thereto, by order dated 31/01/1998, the impugned order was stayed after hearing both the sides.

3. I have considered the submissions of Mr.Hon, learned Advocate for the petitioners and Mr.Brahme, learned Advocate on behalf of the respondent No.2.

4. A short issue is to be dealt with in this petition as regards payment of full back wages from 01/04/1992 upto 01/03/1993.

5. There is no dispute that the respondent proceeded to pursue his studies for acquiring the decree of Bachelor of Education as a Full Time Student. It is undisputed that a written permission to hold lien on the job and pursue B.Ed. full time was not granted by the petitioner / Management.

6. The respondent acquired his B.Ed. qualification on 31/03/1992 and reported back for duties on 01/04/1992. The petitioner took a stand that he had voluntarily left employment since he proceeded to pursue B.Ed. as a Full Time Student and thus left

his employment. By the time the School Tribunal decided the appeal filed by the respondent on 15/02/1996. He was already selected in another Organization and was regularized in service. The Tribunal held that as he was selected on 25/02/1993 by another organization, he would be entitled for salary from 01/04/1992 till 01/03/1993.

7. I find that the respondent was selected on 17/06/1992 in the Academic Year 1992-93 as a Teacher with another Organization. The select list was declared and the respondent was one of the selected candidate. By that time, his appeal before the Tribunal was pending. The probability of joining a hostile Management like the petitioner was minimal in the case of the respondent as he was selected on 17/06/1992 in another Organization.

8. It is also undisputed that because he had joined the 2 years B.Ed Course as a Full Time student without authorization of the petitioner on 06/09/1991 after putting in about 6 years service, it could be presumed that he had left employment. Nevertheless, as he was selected on 17/06/1992, I am of the view that the ends of justice would be met by awarding 6 months wages to the respondent instead of 11 months, as is granted by the Tribunal. So also, he would be entitled for gratuity considering his service from 01/07/1985 to

06/09/1991.

9. In the light of the above, this petition is partly allowed. The impugned order dated 15/02/1996 is modified and the respondent would be entitled for 6 months wages alongwith gratuity calculated on the basis of his last drawn salary in the academic year 1991-1992. Same shall be paid within a period of 12 weeks from today failing which the petitioner shall pay interest @ 6% from the date of the judgment of the Tribunal.

10. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)