

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3474 OF 2000
(The State of Maharashtra and another Vs.Laxmibai Namdeo Shikare
and others)

WITH

WRIT PETITION NO.3475 OF 2000
(The State of Maharashtra and another Vs. Bhavna Bhalchandra
Nanajkar)

WITH

WRIT PETITION NO.3476 OF 2000
(The State of Maharashtra and another Vs.Jagdish Wamanrao
Surwase and others)

Mr.A.R.Borulkar, Mr.S.P.Deshmukh and Mr.S.N.Morampalle, AGP's
for the petitioners/State.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 08/05/2017

PER COURT :

1. I have considered the submissions of the learned AGP in all these matters on behalf of the petitioner/State of Maharashtra. None have appeared on behalf of the respondents.

2. The petitioner is aggrieved by an order passed by the School Tribunal, Aurangabad on an interlocutory application dated 03/04/2000, by which respondent No.1 / employees had prayed for directions to release their salary from the date they were reinstated

under ad-interim stay orders and for the period they have worked after the said interim order.

3. For the sake of clarity, the identical order passed by the School Tribunal, is reproduced as under :-

“ORDER BELOW APPLICATION DATED 3.4.2000 FOR GRANT OF SALARY OF DUTY PERIOD (PASSED ON 10TH OF JULY,2000)

The appellants through their advocate filed application dated 3.4.2000, praying for directions to release their salary for the duty period. On hearing the learned advocate for the appellants, following order is passed :

ORDER

As by the stay order the appellant was re-instated to his post and performed duty, he is entitled for salary. In such circumstances the respondent No.4 is directed to pass bill if submitted by Respondent No.1 and 2 so as to pay salary to appellant within 20 days from the date of this order.”

4. Grievance of the petitioner/State is that on the same date 10/07/2000, when the above order was passed, the School Tribunal concluded by its order dated 10/07/2000 in all the 3 appeals filed by

the respondents as under :-

“ ORDER

- 1. The stay dated 17.7.1999 is vacated as their being no jurisdiction to this Tribunal to try this appeal.*
- 2. The appellant is at liberty to get return the appeal memo or to file a fresh appeal before the Divisional Social Welfare Officer, Aurangabad Division, Aurangabad.*
- 3. In case the appellant wants to get the appeal memo return, the office to supply him the original appeal memo with the documents and the written statements from the respondents. In this case the xerox copies of these documents be kept in the office.*
- 4. Parties to bear their own cost.”*

5. Learned AGP has rightly submitted that when the School Tribunal, Aurangabad concluded that the appeals of the respondents/employees were not maintainable under the The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 as it had no jurisdiction to try the appeal, it could not have directed the petitioner to make the payment for the period during which the respondents worked after the ad-interim order of reinstatement till vacating the order on 10/07/2000. The interim stay order is dated 17/07/1999.

6. Since these matters were being heard by this Court in the special sitting in vacation and as the respondents are not available, these petitions could not have been disposed of. However, when it was put to the learned AGP that, as a model employer being the State of Maharashtra, would it expect any employee to work without wages, it was submitted that the State of Maharashtra would never extract free work from any employee and refuse to pay him the wages/salary for the period he / she has worked.

7. The learned AGP further submits that none of the respondents have challenged the judgment of the Tribunal dated 10/07/2000 in this Court concluding that the Tribunal had no jurisdiction and the appeals were to be returned to the respondents/appellants.

8. There can be no dispute that once a forum concludes that it does not have jurisdiction, it cannot grant any relief to the complainant/applicant even on an interlocutory application. The impugned orders are, therefore, unsustainable. However, ends of justice would be met by directing the petitioner to pay the dues if not already paid as no employee can be made to work without payment of salary.

9. In the light of the above and to ensure that the respondents are not deprived of any amount due to be paid to them, I am partly allowing these 3 petitions with following directions :-

[a] The impugned directions are set aside.

[b] Considering that the School Tribunal did not have jurisdiction to entertain the appeals and has vacated the stay order dated 17/07/1999 on 10/07/2000, the petitioners shall be liable to pay unpaid wages/salaries to respondent No.1/ employees in all these matters within a period of 12 weeks from today, if not already paid to them.

[c] If some of the amounts are paid, the petitioners shall calculate the residual amount to be paid within the said time frame.

[d] Needless to state, the abovesaid amounts are to be paid only for the period during which the respondents have worked after the interim stay order dated 17/07/1999 till 10/07/2000.

10. Rule is made partly absolute accordingly.

(Ravindra V.Ghuge, J.)