

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5375 OF 2016

1. Gramin Shikshan Prasarak Mandal
Walandi, Tq. Devani, Dist. Latur
Through its President,
Dharmaji Girjappa Sonkawade,
Age 62 years, Occ. Agriculture,
R/o Walandi, Tq. Devani, Dist.Latur.

2. In-charge Principal,
Balaji Junior College,
HSC Vocational, Walandi,
Tq. Devani, Dist. Latur.

..Petitioners

Versus

1. Rajkumar Chandbas Dive
Age 45 years, Occ. Service
R/o Panchincholi, Tq. Nilanga,
District Latur.

2. The Deputy Director of
Vocational (MCVC), Regional
Office, Bhadkal Gate,
Aurangabad.

..Respondents

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Advocate for Petitioners : Shri Gunale V.D.
a/w Shri Sabnis A.N.
Advocate for Respondent 1 : Shri Kuptekar S.V.
h/f Shri Salunke V.D.
AGP for Respondent 2 : Shri Bhagat N.T.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 13, 2017

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner, which is 100% grant in aid institution is aggrieved by the judgment of the School Tribunal dated 14.8.2015, by which, Appeal No.37 of 2014 filed by the respondent has been allowed and he has been granted reinstatement with continuity and backwages.

5. I have considered the submissions of the learned Advocates for the respective sides at length and have gone through the record available with their assistance.

6. Respondent No.1 was appointed as a Full Time Teacher with the petitioner / institution on 12.10.1993. The competent authority approved his services initially as a probationer and thereafter, as a permanent employee.

7. It was contended by the appellant before the School Tribunal that after completing 12 years in service in 2008, he had requested for his senior pay scale. The Education Department granted him the pay scale as on 16.7.2012. He had to struggle against the

management for acquiring the said benefits.

8. On 7.11.2012, the management restrained him from signing the muster roll. Despite making grievances and representations, since the management did not respond, he filed Appeal No.44 of 2012 on 6.12.2012. Same was allowed on 14.6.2013. He was reinstated as per the order of the School Tribunal on 17.7.2013 and Writ Petition No.9749 of 2013, filed by the petitioner / management was dismissed by this Court on 9.4.2014.

9. It was averred in the Appeal that the management again troubled him with regard to the payment of backwages. It was contended that he was paid vide a cheque and then was directed to deposit the amount in cash with the management. He refused to do so and retained the backwages.

10. In the above backdrop, the management again restrained him from signing the muster rolls from 16.6.2014. He approached the School Tribunal and by the impugned judgment, his Appeal No.37 of 2014 was allowed.

11. Shri Gunale, learned Advocate for the petitioner / management and the institution has strenuously criticized the impugned judgment. Contention is that the respondent / employee

was never terminated. He has a habit of averring that the management prevents him from reporting for duties. He likes to remain absent, does not work and then by filing an Appeal, he claims reinstatement with continuity and backwages.

12. It is further contended that notices were issued to the respondent to report for duties and instead of reporting for duties, he has approached the School Tribunal. To the extent of earlier backwages, it is submitted that Rs.1,50,000/- were paid to the respondent by way of an account payee cheque on 19.7.2014.

13. I have considered the impugned judgment in the light of the submissions of the petitioner. I find from the record that in 2012, the petitioner / management had resorted to a similar *modus operandi* of preventing the employee from signing the muster roll and then contending that he is remaining absent. It was under the orders of this Court in Writ Petition No. 9749 of 2013, filed by this management which was dismissed, that the management paid the backwages to the respondent.

14. The present cause of action appears to be a repetition of the same earlier strategy of the management. The employee was constrained to rush to the School Tribunal, because the management refused to allow him to sign the muster roll, which appears to be a

pressure building strategy, so as to compel the employee to give up the earlier backwages. From 16.6.2014, he was restrained from signing the muster roll. On 19.7.2014, the backwages were paid only after the respondent / employee filed his present appeal on 10.7.2014 before the School Tribunal and challenged the oral refusal of the petitioner / management. Even in this case, the petitioner has taken a stand that the respondent was never terminated and he has a habit of remaining absent. From both these occasions, it is evident that as the management has developed antipathy and prejudice against the employee, they have been tormenting him with the above mentioned acts.

15. In the light of the above, I find that the School Tribunal has rightly set aside the oral termination, which is on account of the oral refusal of work. That the direction to reinstate the respondent with continuity of service cannot be faulted and is sustainable.

16. In so far as backwages are concerned, the Honourable Apex Court in the following judgments has looked into the facts of each case and has granted backwages ranging from 25% to 100% :-

- i. Gauri Shankar Vs. State of Rajasthan
[2015 II CLR 497],
- ii. Nicholas Piramal India Ltd. Vs. Harising
[2015 II CLR 468],

- iii. Mackenzi Mackinnon Mackenzie and Company Limited
Vs. Mackinnon Employees Union [(2015) 4 SCC 544] and
- iv. Deepali Gundu Surwase Vs. Kranti Junior Adhyapak
Mahavidyalaya (D.Ed.) and others [(2013) 10 SCC 324].

17. The contention of the petitioner / management that full backwages ought not to be granted, can be tested by the credentials of this management. In 2012-13, by similar *modus operandi* the employee was restrained from working and made to sit idle. Unemployment was foisted upon him. Full backwages were granted by the Tribunal and sustained by this Court. It appears that the management has not learnt a lesson from the earlier litigation and once again decided to experiment its strategy as noted above. Once again unemployment is forced upon the employee.

18. Considering these peculiar facts of the case, I find it appropriate to hold that the law laid down by the Honourable Apex Court in the Deepali's case (supra) needs to be followed. The grant of 100% backwages by the Tribunal, therefore, cannot be faulted.

19. In the light of the above this petition being devoid of merits, is therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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