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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4321 OF 2001

1. Rayat Shikshan Sanstha
having its registered office
at Satara, through its Secretary,
Dr. Shri Prataprao Nanasaheb Mane.

2. The Head-Master
Karmaveer Bhourao Patil Vidyalay,
Bhuinj, At & Post Bhuinj,
Taluka : Wai, District : Satara.

...Petitioners

VERSUS

1. Smt. Kamal Jagannath Chimangaonkar
Aged : Adult,
residing at "Hari Niwas", 221-A,
Guruwar Peth, Satara City – 415 002.

2. Education Officer (Secondary)
Zilla Parishad, Satara
having its office at Zilla Parishad
Building, at Satara.

3. Deputy Director of Education
Kolhapur Division, Kolhapur,
having its office at Kolhapur.

4. The Learned Presiding Officer,
School Tribunal, Kolhapur Division,
at Kolhapur.

5. The State of Maharashtra
(Notice of this petition in
respect of respondent nos.3 to 5
to be served on the Additional
Government Pleader (Writ Cell),
Appellate Side, High Court,
Bombay.

...Respondents.

ALONG WITH

WRIT PETITION NO.5421 OF 2001

Mrs. Kamal Jagannath Chimangaonkar
Age : 55 years, Occ. : Service,
residing at "Hari Niwas", 221-A,
Guruwar Peth, Satara City – 415 002.

...Petitioner
(Ori. Appellant)

VERSUS

1. The Rayat Shikshan Sanstha,
having its registered office at :
Satara, through its Secretary,
D.P.N. Mane.

2. The Head Master,
Karmaveer Baurao Mahavidyalaya
At : Bhuij, Tal. Wai, Dist. Satara.

...Respondents
(Ori. Deft.)

Ms. Devyani Kulkarni, Advocate appointed by Court for
Petitioner-in-person.
Petitioner-in-person in W.P.No.5421/2001 and Respondent-in-
person in W.P.No.4321/2001- Mrs. Kamal J. Chimangaonkar is
present.

**CORAM : A.A.SAYED AND
M.S.KARNIK, JJ.**

RESERVED ON : 6th JULY 2017

PRONOUNCED ON : 13th JULY 2017

ORDER (PER M.S. KARNIK, J.) :-

The petitioner in Writ Petition No.4321/2001 is an Educational Institution in which the respondent no.1 was working as an Assistant Teacher. For the convenience the petitioner in Writ Petition No.4321/2001 is referred to as the Management and respondent no.1 is referred to as the Assistant Teacher. The Assistant Teacher has also filed Writ Petition No.5421/2001 challenging the order of the School Tribunal. The School Tribunal by the impugned order granted reinstatement to the Assistant Teacher with full backwages from 1/10/1994 upto 30/8/1997 and at the rate of 25% backwages from 1/9/1997 till her reinstatement. The impugned judgment and order of the

Tribunal is dated 23rd April, 2001. The Management as well as Assistant Teacher both have challenged the order of the School Tribunal by these Petitions.

2. Pursuant to the admission of these petitions the Assistant Teacher came to be reinstated and the Management paid over to the Assistant Teacher the back-wages as directed by the School Tribunal and as directed by this Court pending decision of these Petitions. The Assistant Teacher has since retired from services.

3. The Management appointed the Assistant Teacher in 1974 in one of the Secondary School run by it. On 1st February 1994, the Assistant Teacher was transferred to its Secondary School at Village Bhuinj in Taluka- Wai, District – Satara. The Assistant Teacher's husband was also serving in the school run by the Management. The policy of the Management was to post the husband and wife at one place. According to the Assistant Teacher her request for posting at the place where her husband

was posted was never considered. Upon acquisition of requisite qualification she was given B.Ed. Scale for one year. Without any rhyme and reason she was given D.Ed. Scale. The Assistant Teacher proceeded on hunger strike and also made representation. It is alleged by the Assistant Teacher that the Management was harassing her by frequently transferring her at odd places. On 25/8/1994, the Assistant Teacher proceeded on medical leave upto 22/9/1994. After completion of her leave period the Assistant Teacher went to join her duties on 1/10/1994, but she was not allowed to resume her duties and she was prevented from signing the muster roll. According to her, she was not allowed to join duties with effect from 1/10/1994 and therefore, she filed the Appeal before the School Tribunal for reinstatement with back-wages and consequential benefits as it was her case that she was otherwise terminated from 1st October, 1994.

4. The Management filed the reply denying the Assistant teacher's contention that she was otherwise

terminated. According to the Management they never terminated her service and therefore no cause of action accrued in her favour to file the Appeal. The stand of the Management was that the Assistant Teacher remained absent from the duties without taking prior permission of the concerned authorities as a result the students suffered as they were not in position to complete the regular portion.

5. Heard the Learned Counsel. The Tribunal has taken into consideration that the Assistant Teacher filed applications for leave and though she was on medical leave with prior approval, she was shown absent from duties from 25/8/1994. Learned Tribunal recorded a finding that when the Assistant Teacher was not allowed to join her duties she reported about the same to her superiors by writing letters. Based on the material on record the School Tribunal has found that the Management prevented the Assistant Teacher from joining her duties on 1/10/1994 and stopped paying her salary also. The Tribunal has also observed that though the regular Head Master

was not on duty on 1/10/1994, the letter under his signature was already kept prepared and therefore, the Management was pre-determined to take action against the Assistant Teacher. The Tribunal has arrived at a finding of fact that the services of the Assistant Teacher were otherwise terminated with effect from 1/10/1994 and she was not allowed to join her duties and therefore entitled for reinstatement. We do not find any perversity or error in the view taken by the Tribunal.

6. In so far as the grant of backwages is concerned the Tribunal has recorded that the Management issued a letter to the Assistant Teacher on 26/8/1997 directing her to resume duties on or before 1st September 1997. The Management also filed an application (Exh.20) before the Tribunal requesting the Presiding Officer to direct the Assistant Teacher to resume her duty. Even during the course of arguments before the Tribunal the Management showed their willingness to allow the Assistant Teacher to resume the duty. The Assistant Teacher refused to join duty on the ground that the Appeal before the School

Tribunal is at the final stage and the matter be decided on merits. The Tribunal in these circumstances has granted full backwages from 1/10/1994 upto 30/8/1997 and at the rate of 25% for the subsequent period i.e. 1/9/1997 till the Assistant Teachers' reinstatement. We find that initially the Management prevented the Assistant Teacher from joining her duties, however, w.e.f. 1st September, 1997 atleast, the Management was inclined to allow the Assistant Teacher to join duty. During the pendency of the petition, the petitioner has superannuated. By virtue of interim directions the entire backwages were directed to be paid over to the Assistant Teacher. We are therefore not inclined to interfere with the order passed by the Tribunal in exercise of the writ jurisdiction under Article 226 and Article 227 of the Constitution of India.

7. The Writ Petitions are accordingly dismissed with no order as to costs.

8. Rule to stand discharged.

9. In these matters we had requested Ms. Devayani Kulkarni, learned Counsel to assist us on behalf of the Assistant Teacher as she is not in a position to engage a Lawyer. She graciously accepted our request and argued these petitions at length. We place on record our appreciation for the able assistance rendered by Learned Counsel Ms. Devayani Kulkarni.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)