

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

C.A.W. NO.322/2016
IN
WRIT PETITION NO.1821/2015

Ravindranath Tagore Bahuuddeshiya Shikshan Sanstha, Pulgaon and another
 ..Vs..

Ku. Chhaya D/o Anandraoji Hage and another
Applicant : Gajanan Punbaji Kadu (in C.A.W. No.322/2016)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri C.B. Dharmadhikari, Advocate for the petitioners.
 Shri P.D. Meghe, Advocate for respondent No.1.
 Mrs. M.A. Barabde, A.G.P. for respondent No.2.
 Shri A.D. Mohgaonkar, Advocate for applicant. (C.A.W. No.322/2016).

CORAM : Z.A. HAQ, J.
DATE : 4.10.2017.

1. The learned Advocate for the applicant-intervenor, on instructions, seeks permission to withdraw the application with liberty to seek redressal of grievance of the applicant in appropriate proceedings as permissible in law. The application is **disposed of** as withdrawn with liberty as prayed for.

WRIT PETITION NO.1821/2015

2. Heard.

3. The petitioners / employer have challenged the order passed by the School Tribunal by which the

appeal filed by the respondent No.1 is allowed, the order of termination dated 22nd January, 2012 is quashed and the employer is directed to reinstate the employee on her post with continuity in service and to pay full back-wages.

4. According to the respondent / employee she was working in the school administered by the petitioner No.1 / Society since 22nd July, 2009, an advertisement was issued on 7th January, 2006 for the post of 'Shikshan Sevak', she applied and got selected and was given an appointment order dated 20th January, 2009, pursuant to which she joined the service on 21st January, 2009. It is undisputed that the respondent / employee continued to serve in the school till 20th January, 2012. According to respondent / employee she was restrained from attending the duties from 21st January, 2012 and treating this as otherwise termination, the respondent / employee approached the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "The Act of 1977").

The Tribunal considered the rival submissions and concluded that the appointment of the respondent / employee was made after following the prescribed procedure as laid down by Section 5 of the Act of 1977. The Tribunal concluded that the termination of services of respondent / employee is illegal.

5. According to the petitioners the performance of the respondent / employee, who was on probation, was not satisfactory, she was given five notices which she refused to accept and then considering her performance, the Management decided that she should not be given appointment order on regular basis as contemplated by Clause (5) in appointment order dated 20th January, 2009. It is submitted that the respondent / employee made a false claim before the Tribunal that her services were terminated. According to the Management, it is not a case of termination of services of respondent / employee but the services of respondent / employee are discontinued because her performance was not satisfactory during the probation period.

As far as the directions given by the Tribunal regarding payment of back wages are concerned, the submission on behalf of the petitioners is that they are unsustainable as the respondent / employee has failed to discharge the burden of proving that she was not gainfully employed during the relevant period.

6. The learned Advocate for the respondent / employee and the learned A.G.P. have supported the impugned order.

7. With the assistance of the learned Advocates for the respective parties, I have examined the documents placed on the record of the petition and have

gone through the impugned order.

The learned Presiding Officer has succinctly culled out the reasons for allowing the appeal, in paragraph No.2 of the impugned order. The conclusions of the Tribunal are based on proper appreciation of the material on record and they cannot be faulted with. The petitioners have not been able to point out any illegality or perversity in the impugned order which necessitates interference by this Court in the extra-ordinary jurisdiction.

As far as the directions given by the Tribunal regarding payment of full back-wages are concerned, the same are in consonance with the facts on record. The respondent / employee had filed an affidavit stating that she was not gainfully employed during the relevant period. The petitioners have neither filed any counter affidavit nor have placed any material on record on the basis of which the claim made by the respondent / employee could have been discarded.

8. In view of the above, I do not see any reason to interfere with the impugned order. The petition is **dismissed**. In the circumstances, the parties to bear their own costs.

9. At this stage, the learned Advocate for the

respondent / employee has made a grievance that inspite of the fact that the impugned order is passed on 11th December, 2014 and there had been no interim order in the petition, the petitioners have not complied with the order passed by the Tribunal. If the respondent / employee is not reinstated forthwith and the amount of back-wages is not given within three months, the petitioner No.1 / Management will be liable to pay interest at the rate of 9% per annum on the amount receivable by the respondent / employee, the interest being chargeable from 1st January, 2015 till the amount is paid to the respondent / employee.

It is clarified that the above directions will become effective in case of non-compliance of any one of the directions given by the Tribunal.

JUDGE