

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

WRIT PETITION NO.4787 OF 2008

[Vijay s/o Ramkrushna Godbole .vs. Samaj Sewa Mandal, Dhanora and others]

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

Court's or Judge's orders

Shri Vishal Gangane, AGP for R-3.

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CORAM : KUM. INDIRA JAIN, J.

DATED : JUNE 19, 2017.

This petition takes an exception to the judgment and order dated 22.7.2008 passed by the learned Presiding Officer, School Tribunal, Amravati in Appeal No.5/2008 denying backwages to the petitioner though his termination was held illegal and he was directed to be reinstated in service.

The facts giving rise to the petition may be stated in brief as under :

In the year 1992, petitioner was appointed as Assistant Teacher. He joined his duties on 7.1.1992. Education Officer granted approval to his appointment. The services of petitioner came to be orally terminated and taking it as otherwise termination with effect from 6.2.2006, he filed an appeal before the School Tribunal.

Appeal was partly allowed by the learned Presiding Officer of School Tribunal with direction to reinstate the petitioner with continuity in service. However, backwages claimed by petitioner were denied. Being aggrieved with the rejection of backwages, petitioner has approached this court for

invoking extra-ordinary jurisdiction.

With the assistance of the learned AGP, this court has gone through the reasonings recorded by the School Tribunal.

Issue no.5 relates to entitlement to the reliefs sought by petitioner and this issue is answered partly in affirmative by the Tribunal. The Tribunal, in paragraph no.12 reproduced below, observed thus :

“It has been proved that the appellant was the permanent and confirmed employee. It has also proved that his services was not terminated by conducting the inquiry. It has also proved that his service has been illegally and otherwise terminated wef. 6.2.2006. Therefore, the said impugned termination order is liable to be quashed and set aside and the appellant is entitled to reinstatement in service and other service benefits as continuity of service. I agree with the submission of the respondent's advocate as to backwages. From the record it reveals that since beginning the appellant is negligent to get decide this appeal on merits. From the record it reveals that appeal has been filed on 21.02.2006. However, he has not paid process fee in time so as to serve notices to respondents. The notices were sent to the respondents on 18.07.2006 i.e. near about more than three and half months because of delay of process fee. The respondents appeared on 20.07.2006 and filed Pursis Exh.08 stating therein, that the service of the appellant has not been terminated and requested this Tribunal to issue directions to the appellant to join duties within 24 hours. However, my learned predecessor

ordered as Pursis is filed stating therein that this Tribunal is having no jurisdiction to issue such directions and respondents were directed to file their written statement. Though this Tribunal has passed such order, it was expected from the appellant to resume the duty in view of said pursis filed by the respondents. However, the appellant has not made even attempt to join on the basis of said Pursis. It is not case or document on record that the appellant had made attempt to join and the respondents have not allowed to join after filing said pursis on record. It clearly shows that the appellant was reluctant and disinterested to resume the duties. It is pertinent to note that the appellant was a permanent employee and his service was terminated without conducting the inquiry. Thus, he was having good case to ask stay order U/S. 10 (1) of the Act, 1977. However, he has not given such application. Thereafter, respondents filed their written statement exh.10 on 18.06.2007. Thereafter, this appellant by one or other reason, had sought adjournment to the arguments and final hearing by number of applications. Considering these circumstances and as the appellant has not denied that he is a law graduate, therefore, it appears that the appellant must have earned by some other work may not be as an advocacy as alleged by the respondents. Therefore, applying principle of 'no work no salary' alongwith the other reasons stated earlier, I am of the view that the appellant is not entitled to backwages. Thus, the appellant is entitled to reliefs as claimed excluding backwages. Hence, I answer Issue No.5 partly in the affirmative."

The reasonings recorded are based on the facts established on record. Petitioner was asked from time to time by the school authority to join his duties. He failed for the same. He could not prove that during the relevant period he was without work. Considering these aspects, learned Presiding Officer of School Tribunal has held that petitioner was not entitled to backwages. The reasons are in consonance with the material placed on record. No error is noticed with the reasons recorded by the School Tribunal. Hence, no interference is warranted in extra-ordinary jurisdiction. Writ Petition No. 4787/2008 stands dismissed. No costs.

JUDGE