

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 922 OF 2000

1. Seva Shikshan Prasarak Mandal
Anandi Bazar, Near Congress House,
Ahmednagar, Through its Secretary

2. The Head Mistress
Nutan Madhyamik Vidyalaya,
Nitya Seva Housing Society,
Vasant Tekdi, Ahmednagar.

..Petitioners

Versus

1. Vivekanand Narayan Kale
Age 29 years, Occ. Service
R/o Hivare, Taluka and
District Ahmednagar.

2. The Education Officer (S),
Zilla Parishad, Ahmednagar.

..Respondents

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Advocate for Petitioners : Shri. V.S.Bedre
AGP for Respondent 2 : S.R.Yadav Lonikar
Advocate for Respondent 1 : Shri S.K.Shinde

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 20, 2018

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ORAL JUDGMENT :-

1. The petitioner / management is aggrieved by the judgment and order dated 16.10.1999, delivered by the School Tribunal, Solapur by which Appeal No.117 of 1996 filed by respondent No.1 herein, has been allowed and he has been

granted reinstatement with continuity and full backwages.

2. After an amendment was permitted in this petition, this Court has heard the respective sides extensively on 24.1.2001 and has passed a detailed order concluding that the respondent / employee will be at liberty to rejoin the petitioner / school, keeping in view that he had taken up an alternate employment and was working in another school. Interim relief was refused at that stage. Thereafter, while admitting the petition on 21.2.2001, this Court stayed the impugned order keeping in view that the said employee was working with another school, was granted permanency and his appointment was also approved.

3. Learned counsel for the petitioner has strenuously contended that as the respondent was not working during the intervening period from 30.3.1996 till 13.6.1998, no backwages are required to be paid since the post was reserved for a Scheduled Caste category and the employee was appointed only for an academic year.

4. Learned counsel for the employee points out from the conclusions drawn by the School Tribunal in paragraph 21 of the impugned judgment, by which, the Tribunal concluded that the

copy of the appointment order dated 13.6.1995 was a forged document and hence it cannot be accepted that the employee was appointed against the vacancy reserved for the Scheduled Caste category.

5. When the Tribunal decided the appeal on 16.10.1999, it was unaware that the employee had taken up an alternate employment from 14.6.1998. A litigant must always approach the Court with clean hands and should not suppress information which would impact the outcome of any proceedings. When the respondent / original appellant had taken up employment on 14.6.1998 in a different school, in which, he has subsequently been regularized and an approval was accorded, he should have brought it to the notice of the Tribunal when it decided his appeal on 16.10.1999.

6. The said employee withheld this information from the Tribunal and, in a way, is guilty of suppression in the light of the judgment delivered by the Honourable Apex Court in the matter of Bhaskar Laxman Jadhav and Ors. Vs. Karamveer Kakasaheb Wagh Education Society and Ors. [AIR 2013 SC 523]. The Honourable Apex Court has concluded that it is not left to a litigant to decide what information he will convey to the Court.

If any fact needs to be brought to the notice of the Court, a litigant is duty bound to do so. If by suppression of such facts, a litigant derives an undue advantage, he deserves to be deprived of any relief.

7. Learned counsel for the employee pleads that he had taken up an employment in another school on 14.6.1998, but was not drawing any salary and was not paid any wages for the said period of working. This Court has already noted in the order dated 21.2.2001 that the concerned employee always would be at liberty to recover the salary from the management which may not have paid the same though he had worked.

8. Considering the above conduct of the employee and taking into account the detailed orders passed by this Court on 24.1.2001 and 21.2.2001, this petition is partly allowed only to the extent of the backwages that have been granted to the respondent / employee. I am, therefore, reducing the payment of full backwages to the payment of 50% backwages for the period of 1.5.1996 till 13.6.1998. The respondent / employee would be entitled only for 50% backwages for this period. It is made clear that continuity of service having been granted, he would be deemed to be in the employment of the petitioner from the date

of his appointment till 13.6.1998 as he has joined another school on 14.6.1998.

9. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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