

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 260 OF 2004

1. Paschim Khandesh Zilla Peoples
Education Society, Chalisgaon Road,
Dhule, through it's Chairman.

2. The Chairman,
School Committee,
Lalit Makhan Prathamik Vidyalaya,
Chalisgaon Road, Dhule.

3. The Secretary,
Paschim Khandesh Zilla Peoples
Education Society, Chalisgaon Road,
Dhule

4. The Headmaster,
Lalit Makhan Prathamik Vidyalaya,
Chalisgaon Road, Dhule.

5. The Administrator
(Deputy Education Officer,
Zilla Parishad, Dhule)
Paschim Khandesh Zilla Peoples
Education Society, Chalisgaon Road,
Dhule

..Petitioners

Versus

1. Anil Yashwant Desale
Age 30 years, Occ. Service
R/o Wadjai, Tq. and Dist. Dhule.

2. Smt. Vaishali Prabhakar Patil
Age 32 years, Occ. Service
R/o Sanjay Anandnagar,
Opp. Indira Uddyan, Deopur,
District Dhule.

3. Khushal Ramdas Chitte
Age 33 years, Occ. Service
R/o Room No.182,

West Hudco Colony,
Chalisgaon Road,
Dhule.

4. The Administrative Officer,
Municipal School Board, Dhule.

..Respondents

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Advocate for Petitioners : Shri V D Hon, Sr. Adv i/b Shri A.V.Hon
Advocate for Respondents 1 to 3 : Shri S.P.Brahme
Advocate for Respondent 4 : Shri A.P.Yenegure h/f Shri P.S.Patil

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 23, 2018
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ORAL JUDGMENT :-

1. The petitioner / management has challenged the judgment and order dated 16.10.2003 passed by the School Tribunal, Nasik, by which, respondent Nos.1 to 3 have been granted reinstatement with continuity and full backwages by setting aside their termination dated 5.10.2001.

2. This matter was admitted on 5.7.2005 and interim relief was not granted. Consequentially, these original appellants were reinstated in service by the petitioner. It is informed that after their reinstatement, the petitioner lost it's recognition for the said School. These appellants were absorbed in other schools and they are in employment.

3. Considering the subsequent events as recorded above, the only issue that survives is as regards the backwages from the date of the termination of these appellants till their reinstatement. Shri Hon, learned Advocate points out that the issue of backwages is being seriously contested as none of these appellants are entitled for any backwages by applying the principle of "No Work - No Wages".

4. Since the appellants have been reinstated in service and owing to the subsequent events, have been absorbed in other schools, I do not find that it would be appropriate to entertain this petition of an institution, which has lost recognition of the said school and which is since un-operationable, as against the order of reinstatement.

5. It requires no debate that the law on back wages has undergone a change. Earlier, the moment the termination was held to be illegal, backwages used to be granted as a matter of course. The Honourable Apex Court in the matter of J.K.Synthetics Ltd vs. K.P. Agrawal and another [(2007) 2 SCC 433], has observed in paragraph No.18 that the least that is expected, while considering the claim for backwages, is that the employee should step into the witness box and lead evidence

that he is not gainfully employed, he attempted to secure alternate employment and despite his efforts was unsuccessful in getting any employment.

6. In the instant case, though the management has not come forward with the case that these appellants are gainfully employed, the fact remains that none of them brought evidence on record to indicate that they had tried to secure an alternate employment. In these circumstances, in my view, an equitable order could be passed by reducing the backwages to 50% and the said amount of backwages would be paid to these appellants by the petitioner No.1 / educational society.

7. The record reveals that this management had earlier terminated these three appellants on the ground that they had resigned from service. They established before the School Tribunal that there was force and coercion exerted on them and they were in fact terminated. They succeeded before the Tribunal. The management approached this Court in Writ Petition Nos. 2994, 2995 and 2996 of 2000. By judgment dated 30.1.2001, this Court dismissed the petition filed by the management and sustained the order of reinstatement.

8. Considering the above, this petition is partly allowed. The judgment of the Tribunal to the extent of reinstatement and continuity in service is sustained. The direction to pay full backwages is modified and the petitioner No.1 / management would pay 50% backwages to these appellants along with interest @ 6% per annum from the date of the Tribunal's judgment on the said amount of 50% backwages.

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

(RAVINDRA V. GHUGE, J.)

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akl/d