

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2202 OF 2004

1 The Chairman,
Kai.Shrimant Sow Manikraje Shivrao
Pawar Vishwasrao Educational and
Historical Trust, Nagardeola,
Taluka Pachora, District Jalgaon.

2 The Secretary,
S.S.M.S.PV. Educational and
Historical Trust, Nagardeola,
Taluka Pachora, District Jalgaon.

...PETITIONERS

-VERSUS-

1 Sharad Fulchand Salunkhe,
Age : 35 years,
Occupation : Service,
R/o At and post Samner,
Taluka Pachora,
District Jalgaon.

2 The Education Officer (Secondary),
Zilla Parishad, Jalgaon.

3 Vivekanand Vikas Pratisthan,
Parola, District Jalgaon.
Through its Chairman.

...RESPONDENTS

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Advocate for the Petitioners : Shri H.B.Nandgawale h/f Shri V.G.Sakolkar.

Advocate for Respondent 1 : Shri R.S.Devdhe h/f Shri S.P.Brahme.

AGP for Respondent 2 : Shri S.K.Tambe.

Advocate for Respondent 3 : Shri L.V.Sangit.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd March, 2018

Oral Judgment :

1 The Petitioner/ Management is aggrieved by the judgment of the School Tribunal dated 08.10.2003 by which, Appeal No.JAL-51/1999 filed by Respondent No.1/ original Appellant/ Employee has been allowed and he has been granted reinstatement with continuity and full back wages.

2 I have considered the strenuous submissions of the learned Advocates for the respective sides and have gone through the record available.

3 It is informed that the termination of the employee is with effect from 01.02.1999. He preferred the appeal on 16.09.1999. Delay of six months has been condoned. The School Tribunal delivered its judgment on 08.10.2003 and this Court did not grant interim relief to the Management. The Employee has been reinstated in service on 22.02.2007 only because this Court delivered an order on 09.02.2007 in Civil Application No.10754/2006 directing the Management to reinstate Respondent No.1/ Employee and on the condition of reinstatement, the payment of back wages was stayed.

4 It is thus, obvious that the Employee has been in continuous

service in the light of the impugned judgment of the School Tribunal. It appears that he is in employment from 22.08.1994 for the past about 24 years.

5 The issue, therefore, would be as regards the back wages for the period 16.09.1999 when the Employee preferred his appeal till his reinstatement on 22.02.2007. It is settled law keeping in view the judgment of the Honourable Supreme Court in the matter of *J.K. Synthetics Limited vs. K.P.Agrawal*, 2007(2) SCC 433, that the least that is expected of the employee praying for back wages is that he should step into the witness box and he should aver that he was not in employment after his termination, had attempted to acquire an alternate employment and despite his efforts, he was not successful in getting any employment. Thus, an employee is required to prove that he has made every attempt to secure an alternate employment post termination. It is equally settled that the Management has to prove that the terminated employee is in gainful employment, after he has discharged the initial burden cast upon him.

6 In the instant case, I do not find any such observation in the impugned order. The Employee does not contend that such evidence was led so as to prove that he was not in gainful employment though he attempted to seek an alternate employment. As such, in my view, to balance the equities, 50% back wages would be appropriate so as to reduce the rigours of unemployment and litigation suffered by the

Employee and to penalize the Management for its illegal act of termination. I am, therefore, depriving the Employee of 50% back wages since no evidence was brought on record to indicate the factum of his unemployment and whether, he made any attempt to seek an alternate employment.

7 Considering the above, this Writ Petition is partly allowed only to the extent of back wages granted by the School Tribunal. The direction of the School Tribunal is modified and the Petitioner/ Management is directed to pay 50% back wages from 16.09.1999 till 22.02.2007 within a period of SIX WEEKS FROM TODAY to Respondent No.1/ Employee, failing which, the said amount would carry interest at the rate of 6% per annum from the date of the judgment of the School Tribunal, which is 08.10.2003.

8 Rule is made partly absolute in the above terms.

9 The record and proceedings be returned to the School Tribunal.