

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6733 OF 2014
WITH CA/929/2018 IN WP/6733/2014

SHRIRAMPUR EDUCATION SOCIETY AND ANOTHER
VERSUS
HEMLATA BALKRISHNA KUDAL AND ANOTHER

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Advocate for Petitioners : Shri Barde Parag Vijay
Advocate for Respondent 1 : Shri V.P.Golewar h/f Shri A.R.Joshi
AGP for Respondent 2 : Shri Badakh V.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 15, 2018

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PER COURT :-

1. This matter was heard at length on 13.2.2018 and today. I have gone through the petition paper book in the light of the extensive submissions of the learned Advocates.

2. The departmental enquiry conducted by the petitioner / management against the respondent No.1 / employee / original appellant was set aside on the ground that a retired State Awardee Teacher was a member of the enquiry committee and the School Tribunal concluded that the enquiry is vitiated as the enquiry committee was illegally constituted. However, the learned Full Bench of this Court in Shikshan Prasarak Mandal and another Vs. Ramesh Bhimraon Narayankar and others [2016

(3) All MR 375], has concluded that while considering the composition of the enquiry committee, the nomination of a National / State Awardee teacher, would not necessarily mean that he should be an in-service candidate. A retired teacher, who is a National / State Awardee, can be a member of the enquiry committee.

3. Considering the above, the impugned judgment of the School Tribunal, concluding that the enquiry is vitiated, could be set aside. If that is so done, the matter will have to be relegated to the Tribunal for considering it afresh. However, learned Advocates for the management and the appellant / employee jointly submit that it would be very cumbersome for both the sides if they are relegated to the Tribunal keeping in view that the appellant was reinstated in service on 26.11.2015 pursuant to the judgment of the Tribunal dated 29.3.2014, and since then she was working and has superannuated on 31.7.2017.

4. In this backdrop, learned counsel for the appellant submits, on instructions, that she desires to waive the backwages for the period 28.10.2013 when she was terminated till the judgment of the Tribunal, which is a period of about 5 months. Learned counsel for the management submits that continuity of

service from the date of termination would be granted to the appellant and she shall be deemed to be in service.

5. The litigating sides, therefore, pray that this matter can be disposed off by recording the above statements and the salary of the appellant from the date of judgment of the Tribunal till actual reinstatement on 26.11.2015 could be paid to the appellant. The management would raise a bill since it is a grant-in-aid institution and submit the same to the Education Department for approval.

6. An amount of Rs.3,00,000/- have been deposited by the management towards the backwages from the date of termination till the judgment of the School Tribunal, which amount the appellant has waived. She however, prays for salary as per the VI Pay Commission's recommendations and all increments along with allowances for the period April 2014 till November 2015.

7. It cannot be ignored that the appellant was willing to work and she was not reinstated for a period of about 18 months. Learned AGP submits that the claim of the appellant would cause a heavy financial burden on the State exchequer,

though the appellant has not actually worked. He submits that the management can be penalized for keeping the appellant away from work on the pretext of the pendency of this Writ Petition.

8. Considering the above, I find that an equitable order can be passed, considering the statements recorded and in pursuance to the earlier order passed by this Court dated 30.10.2015, as under:-

(A) The appellant shall be granted continuity of service from 28.10.2013 till 26.11.2015 and there shall be no break in service.

(B) The appellant would withdraw Rs.1,00,000/- out of the amount deposited by the petitioner in this Court, without conditions, upon being identified by her Advocate and on tendering identity proof in the nature of her Election Commission Voter ID card as well as a copy of the PAN Card.

(C) After the appellant has withdrawn Rs.1,00,000/-, the remainder amount can be withdrawn by the petitioner / management along with the accrued interest by specifically authorizing a person to withdraw the said amount along with the proof of authorization and identity.

(D) The management shall forward a bill for the salary of the appellant for the period April 2014 to November 2015 on the basis of the last drawn salary by the appellant in October, 2013, to respondent No.2 / Education Officer within a period of one month and complete in all respects.

(E) Since no person was engaged in place of the appellant and no salary equivalent to the claim of the appellant was paid from the salary grants of the petitioner / school to any other teacher, the Education Department shall consider the said bill and shall clear the same for making payment of salary to the petitioner within four months thereafter, keeping in view that the sanction from the State is required.

(F) The earlier rejection of such bill by the Education Department, vide their communication dated 11.2.2016, needs to be ignored as it was on the basis of a mis-conception that the appellant was suspended when in fact, the appellant was not placed under suspension as per the statement of the management.

9. Pending Civil Application does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)

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