

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

LETTERS PATENT APPEAL NO. 18 OF 2010

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| 1 | The Principal, West Khandesh
Bhagini Seva Mandal's Arts &
Commerce College for women,
Vocational Courses, Dayasagar
Educational Campus, Dhule,
District Dhule | APPELLANTS |
| 2 | The Chairman, West Khandesh
Bhagini Seva Mandal's Arts &
Commerce College for women,
Vocational Courses, Dayasagar
Educational Campus, Dhule,
District Dhule | |

V E R S U S

Shri Rajendra Janardan Baviskar, aged 45 years, Occupation Self employed [Business], Resident of 2609, Lane No.5, Near Mirchya Maruti Temple, Dhule	RESPONDENT
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Mr. Mukul S. Kulkarni, Advocate for the Appellants
Mr. R.J. Godbole, Advocate, holding for
Mr. C.V. Dharurkar for the respondent
Mr. S.P. Brahme, Advocate for the Applicant
in Civil Application No. 10433 of 2009

**CORAM : T.V. NALWADE AND
SUNIL K. KOTWAL, JJ.**

DATE : 21st MARCH, 2018

ORAL JUDGMENT : [PER: T.V. NALAWADE, J.]

This appeal is filed to challenge the Judgment and order passed by the learned Single Judge of this Court, delivered in Writ Petition No. 2066 of 1996, dated 4th April, 2009. Both the sides are heard.

2. The Writ Petition was filed by the present appellants against the respondent to challenge the decision given by the School Tribunal, Bombay, in Appeal No. GEN/303-DHL-6 of 1990. The Appeal was filed by the present respondent to challenge the order of his termination. The Tribunal has set aside the order of termination and has directed the present appellants to re-instate the respondent and to pay him arrears of salary [Back Wages] from the date of termination from service till the re-reinstatement on the original post.

3. The respondent was appointed as a full time teacher to teach Vocational Course for Marketing and Salesmanship by the appellant first on 7th August, 1990

and then for the academic year 1990-91. On both the occasions, the authority [Incharge Deputy Director of Education Department, Nasik Division] had given an approval to the appointment of respondent made by the appellants. The respondent came to be terminated on 11th October, 1990. For issuing order of termination, Memo was issued in the past for late coming, but no inquiry as such has been held. The termination order was signed by the Principal and not by the Management. Due to all these circumstances, the order of termination of the respondent came to be set aside. This Court confirmed the order of the School Tribunal. Said matter was taken up to the Supreme Court by the Appellants, but the Supreme Court did not interfere with the order made in favour of the respondent-employee.

4. The present proceeding is filed to challenge the order of the learned Single Judge and also the order of the School Tribunal, due to which, the appellants will be required to pay 100% back wages to the respondent. Various contentions are made to

challenge the said order.

5. At first instance, it needs to be mentioned that the Writ Petition was filed by the present appellants under Article 227 of the Constitution of India and this Court has the supervisory jurisdiction over the School Tribunal. The petition is dismissed by the learned Single Judge of this Court. There is no dispute over the jurisdiction of the School Tribunal for making the orders of aforesaid nature. Thus, there is a question of tenability of the present matter.

6. On facts, it can be said that there is no ground for interference in the order made by the School Tribunal. The Appeal was filed immediately after termination of the respondent and the Appeal came to be decided by the School Tribunal on 30th December, 1991. In view of the aforesaid circumstances, in ordinary course, the appellants ought to have allowed the respondent to join the duty, but they did not do so. They filed the proceeding like

Writ Petition in this Court and then they went up to the Supreme Court. Due to this proceeding also and due to the interim relief granted by this Court in the Writ Petition, the respondent could not resume the duty. Thus, there was no fault on the part of the respondent, and only due to approach of the appellants, the respondent could not resume the duty. As there was order of reinstatement, it is not open to the appellants to say that there was interim order in their favour, and so, they cannot be made liable to pay the back wages. The interim order was subject to final decision of the matter, and in view of the aforesaid circumstances, it can be said that the appellants had taken the risk, and due to them, the respondent has been prevented from resuming the duty. No record whatever is with the Management to show that, during the period i.e. from the date of termination of the respondent till the date when appellants allowed the respondent to resume the duty, the respondent was gainfully employed.

7. Learned counsel for the respondent placed

reliance on the observations made by the Apex Court in the case reported as **1993 DGLS [Soft.] 30 [Manorma Verma Versus State of Bihar]** and also observations made in the case reported in **2006 [4] Mh.L.J. 747 [Hinghanghat and others vs. Nitin Krishnarao Nimbalkar and others]**. In both the cases, it is observed that if the termination was illegal and the employee was forbidden from performing the duty, the Management will be liable to pay the entire back wages. There cannot be dispute over this proposition. Thus, on merits also, it is not open to interfere in the impugned order. In the result, Appeal stands dismissed.

8. The learned counsel for the appellants requested for continuation of the interim relief as the appellants want to challenge the decision of this Court. On his request, interim relief is continued for a period of one month from today.

(**SUNIL K. KOTWAL, J.**)

(**T.V. NALWADE, J.**)

