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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9110 OF 2017

Madanlal L. Nipane

... Petitioner

vs.

The President

... Respondents

Navkokan Education Socceity Chiplun & Ors.

.....

Mr. Satyajeet A. Rajeshirke for the Petitioner.

Mr. Harshad Bhadbhade for Respondent nos. 1 to 3.

Ms. Vaishali Nimbalkar – AGP for Respondent no. 4.

.....

CORAM : A.K. MENON, J.

DATE : 29th JANUARY, 2018

P. C.

1. By this writ petition the petitioner impugns an order dated 3rd May, 2017 which set aside an order of termination of the services of the petitioner dated 9th March, 2015 while remanding the matter with liberty to conduct a fresh inquiry on terms set out in the impugned order. Clause 3(f) of the impugned order reads as follows :

“3(f) If disciplinary inquiry committee exonerates the Appellant or management chooses not to conduct enquiry, then management has to decide about the back wages of Appellant.”

2. It is stated across the bar by both the Counsel that the disciplinary committee has conducted a fresh inquiry since and the services of the petitioner have been

terminated by order dated 7th July, 2017 which forms subject matter of Appeal No. 5 of 2018 filed before the School Tribunal, Kolhapur. Mr. Rajeshirke, learned counsel for the petitioner submits that since clause 3(f) contemplates a fresh enquiry, on the issue of back wages of the appellant, the order of termination which is subject matter of challenge under Appeal no. 5 of 2018 which Mr. Rajeshirke states has been paid may not entitle him to claim back wages for the period from 9th March, 2015 which was subject matter of order dated 3rd May, 2017. This is the limited protection that he seeks. This petition can therefore be disposed finally by protecting the right of the petitioner to claim such back wages. Mr. Rajeshirke states that he will make appropriate application for amending the appeal now pending before the School Tribunal. Learned Counsel for the respondent states that if such application for amendment is made before the School Tribunal, his client will not oppose the same.

3. In the circumstances, I pass the following order : -

- (i) In the pending Appeal No. 5 of 2018 it will be open for the petitioner to claim back wages due to him, if any, for the period prior to termination vide order dated 3rd May, 2017 as contemplated in the Appeal no. 19 of 2015.
- (ii) Liberty granted to make appropriate amendment and claiming back wages as contemplated in Appeal No. 19 of 2015.
- (iii) Petition is disposed of in the above terms.
- (iv) No order as to costs.

(A.K. MENON, J.)