

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

WRIT PETITION NO. 1529 OF 2019

KHAN IMRAN S/O. KHAN UMAR AND OTHERS
VERSUS
GULSHAN SHIKSHAN PRASARAK MANDAL AND OTHERS

...
Advocate for Petitioners : Mr. Ajay S. Deshpande
Advocate for Respondents No. 1 & 2 :
Mr. Zaidi Ali Zeeshan M.
Addl.G.P. for Respondents No. 3 to 6 :
Mr. S. B. Yawalkar
...

**CORAM: S. V. GANGAPURWALA &
AVINASH G. GHAROTE, JJ.**

Reserved for orders on:	12.12.2019
Order Pronounced on:	19.12.2019

ORDER (Per S. V. Gangapurwala, J.):

1. The petitioners are the Assistant Teachers with respondent no. 2 / school. They were appointed in the year 2006 to 2008. The petitioners were suspended in the month of May-June-2015 in contemplation of departmental enquiry. On conclusion of the departmental enquiry, the petitioners were terminated from service. The petitioners challenged the orders of

the termination before the School Tribunal, Aurangabad by filing Appeal U/Sec. 9 of Maharashtra Employees of Private Schools (Condition of Service) Act, 1977. The appeals of the petitioners were partly allowed. The orders of termination were quashed and set aside and the management was directed to conduct denovo enquiry. The said judgment was delivered on 30.08.2016. The petitioners challenged the judgment of the school tribunal to the extent of denovo enquiry before this Court. The learned Single Judge of this Court set aside the order of the school tribunal and directed the school tribunal to hold the enquiry before it. The respondent / management challenged the order of the learned Single Judge of this Court before the Hon'ble Apex Court by filing Special Leave to Appeal (C) Nos. 5142-5145 of 2017. The Hon'ble Apex Court under its order dated 23.04.2018 appointed a retired judicial officer of the rank of Additional District and Sessions Judge to be appointed as an enquiry officer. The Hon'ble Apex Court observed that the

Principal District Judge may take necessary steps in that regard. It further directed the management that subsistence allowance if any is required to be paid to the respondents i.e. the employees the same shall be paid within six (06) weeks. Pursuant to the order of the Hon'ble Apex Court, retired District Judge Shri Uttam Laxmanrao Telgaonkar was appointed as an enquiry officer. The retired District Judge conducted the enquiry and submitted the report. The enquiry officer came to the conclusion that the management thoroughly failed to prove the allegations leveled against the employees viz. The petitioners. The enquiry officer exonerated the petitioners.

2. The school tribunal had set aside the termination order of the petitioners. The High Court did not interfere with the said order of setting aside the termination orders. The Hon'ble Apex Court directed the retired District Judge to conduct the enquiry. The retired District Judge upon conclusion of the enquiry exonerated the

petitioners. The conclusion drawn by the enquiry officer is reproduced as under-

" **CONCLUSION**

91) Shaikh Yusuf Shaikh Chand was serving as Asst. Teacher in Saraswati Bhuvan High School, Aurangabad. He formed two Education societies namely

1) Gulshan Shikshan Prasarak Mandal, Aurangabad

2) Rajdhani Education Society, Aurangabad.

He was the Sole authority of these two Education Societies. Gulshan Shikshan Prasarak Mnadal, Aurangabad runs following Schools.

1) Rajdhani Urdu Primary School, Aurangabad.

2) Rajdhani Urdu High School, Aurangabad.

3) Nehru Memorial Primary School, Aurangabad.

92) Rajdhani Education Society runs a school named Lal Bahadur Shastri Urdu Primary School Aurangabad. In addition to that Shaikh Yusuf was running a School named Shahajahan Feroz Urdu School, Jyogeshwari, Waluj, Tq. Gangapur, Dist-Aurangabad."

93) Shaikh Yusuf Shaikh Chand was having all over control on the above said institutions. He is secretary of Gulshan Shikshan Prasarak Mandal. He is Head master of Rajdhani Urdu High School Aurangabad. He was using the same staff for all the institutes. Common registers were maintained.

94) In the light of above discussion I came to the conclusion that the management utterly failed to prove the allegations leveled against these employees. There is no breach of Code of Conduct U/s. 4 of The Maharashtra Employees of Private Schools Regulation Act, 1977 and Under Rule 22 of the Maharashtra

Employees of Private Schools (Conditions of Service) Rules, 1981. Hence the Report."

3. The petitioners have filed the present writ petition seeking reinstatement in service, payment of salary since the date the petitioners were placed under suspension till reinstatement and unpaid salary from April-2009 to December-2009.

4. During the pendency of the writ petition, the petitioners are reinstated and have joined the respondent institution. The Education Officer had already submitted the report that the petitioners have joined on 07.10.2019. We had to pass the order that the petitioners shall join in the presence of the Education Officer because of the allegations made by the parties against each other i.e. the petitioners averred that management is not allowing them to join whereas the management averred that the petitioners did not report for joining. On 21.09.2019 we had passed the following order-

"1. Pursuant to the order of the Apex Court, the retired Principal District Judge has

conducted the enquiry. It appears from the report that the petitioners are exonerated. The order of termination was already set aside by the School Tribunal in its earlier order.

2. In view of that the petitioners are entitled to be reinstated.

3. The learned Counsel for respondent – management submits that the petitioners may give application and within two weeks, the respondent-management would reinstate the petitioners.

4. The petitioners shall report before respondent no. 2 school on 26th September 2019 and submit the joining report. The respondent no. 2 shall allow the petitioners to join. Place the matter on 30th September 2019.

*5. The learned Counsel for the petitioners made submissions on the payment of salary from the date of termination and relied on the judgment of the Apex Court in case of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and ors.**, reported in (2013) 10 SCC 324.*

6. The learned Counsel for respondent – management seeks time to make submissions on that.

7. Stand over to 30th September 2019."

5. Thereafter, on 30.09.2019, we had passed the following order-

"1. On 21.09.2019, after hearing, the following order was passed:

"1. Pursuant to the order of the Apex Court, the retired Principal District Judge has conducted the enquiry. It appears from the report that the petitioners are exonerated. The order of termination was already set aside by the School Tribunal in its earlier order.

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6. The learned Counsel for respondent – management seeks time to make submissions on that.

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2. Additional affidavit is filed by the petitioners stating that as per order of this Court, they had been to the school at 9.45 a.m. They had given letter dated 26.09.2019 to permit them to allow to join. However, the respondent no. 2 – school did not allow the petitioners to join.

3. Learned Advocate for respondents no. 1 and 2 submits that the petitioners did not approach the school to join.

4. In that event, we would ask the Education Officer/his representative to remain present in the respondent no. 2 – school.

5. The petitioners shall remain present with their joining letters in respondent no.2-school on 7th October 2019. Respondent no. 3 Education Officer (Secondary), Zilla Parishad, Aurangabad and/or his

representative shall remain present at respondent no. 2-school at 10.30 a.m. on 7th October 2019. The petitioners, at 10.30 a.m. on 7th October 2019 shall present themselves at respondent no. 2 school for joining. As agreed by respondents no. 1 and 2 through their Counsel, on 7th October 2019, they will allow the petitioners to join. The respondent no. 3 – Education Officer shall submit report to this Court about the events that take place on 7th October 2019 at 10.30 a.m. The further contentions would be considered after the report is received from the Education Officer/his representative.

6. Place the matter on 14th October 2019."

6. The petitioners now are reinstated. The only issue would be the payment of backwages to the petitioners since the date of termination till reinstatement.

7. Mr. Deshpande, learned Counsel for the petitioners submits that the enquiry officer has concluded that the false and frivolous charges are leveled against the petitioners. The management and office bearers were demanding 10% from the salary received by the petitioners every month and none of the charges leveled against the petitioners by the institution were proved. As the suspension and subsequent termination of the

petitioners were illegal and malafide the petitioners are entitled for 100% backwages. To substantiate his contention the learned counsel relies on the judgment of the Apex Court in case of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others* reported in *(2013) 10 SCC 324* and another judgment of the Apex Court in case of *Raj Kumar Dixit Vs. Vijay Kumar Gauri Shanker, Kanpur Nagar* reported in *(2015) 9 SCC 345*.

8. Mr. Zaidi, learned Counsel for respondents no. 1 and 2 submits that the petitioners were not willing to join the duties. As the petitioners did not join the duties, the management is not responsible to pay salary on the principle of no work no pay. The learned counsel submits that the petitioners were gainfully employed during the interregnum period. In view of that also the respondents are not liable to pay backwages. The learned counsel further submits that the respondent is a minority institution. It does not have funds to make payment to the petitioners. The

petitioners are doing private jobs. It is just to harass the management and other teachers the petition is filed.

9. We have considered the submissions canvassed by the learned counsel for respective parties.

10. As far as salary for the period April-2009 to December-2009 is concerned, the learned counsel for the management has contended that salary bills are already submitted to the Education Officer for payment. In light of that, the Education Officer shall process the said salary bills as directed by us under order dated 27.11.2019. In fact, the same ought to have been processed by now.

11. The only question germane for consideration is the payment of the salary to the petitioners from the date of termination till reinstatement.

12. The enquiry officer in his report has concluded that the charges framed against the petitioners are not proved. There is nothing on

record to suggest that the petitioners were employed gainfully in some employment. The petitioners on oath have stated that they were not gainfully employed during the interregnum. The respondent management has contended in the affidavit that the petitioners were doing private jobs, however have not substantiated the same by any documents or evidence. The Apex Court in case of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others (supra)* has observed that in case of wrongful termination of service, reinstatement with continuity of service and backwages is the normal rule. The Hon'ble Apex Court, however observed that while deciding the issue of backwages, the Court may take into consideration the length of service of the employee / workmen, nature of misconduct; if any proved against the employee, the financial condition of the employer and similar other factors and it further observed that if the employer is guilty of victimising employee, then

Court will be justified in directing payment of full backwages.

13. It has been held by the enquiry officer that none of the charges leveled against the petitioners are proved. On the contrary, has in the enquiry report observed that the positive evidence adduced by the employees that Secretary was extracting 10% amount from their salary each month remained unchallenged because the institution has declined to cross examine them. Therefore, there is no reason to disbelieve the employees.

14. The respondent institution has put forth the ground of financial stringency. The respondent appears to be a minority institution as contended by the respondents. The amount will have to be paid by the respondents no. 1 and 2 from their own sources. No straight jacket formula exists with regard to the payment of backwages. The same depends upon the facts and circumstances of each

case. As observed supra, the respondent has taken a plea of financial stringency.

15. Considering the above conspectus and the ground of financial constraint we find it appropriate to direct respondents no. 1 and 2 to pay 50% backwages to the petitioners from the date of termination till the date of reinstatement. The said payment shall be made within six (06) months. For the period between suspension and termination the decision shall be taken by the management within four (04) months. Naturally, the petitioners would be entitled for continuity in service.

16. Writ Petition allowed accordingly in above terms. No costs.

[AVINASH G. GHAROTE, J.] [S. V. GANGAPURWALA, J.]

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