

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

17 WRIT PETITION NO.2941 OF 2018

RAVINDRA CHANDRAKANT DHOTRE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Ms. P. S. Talekar, Advocate for the Petitioner.

Mr. P. G. Borade, AGP for Respondents-State.

Mr. Santosh B. Pulkundwar, Advocate for Respondent Nos.5 and 6.

Mr. Pralhad D. Bachate, Advocate for Respondent No.7.

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**CORAM : S. V. GANGAPURWALA &
ANIL S. KILOR, JJ.**

DATED : 10th OCTOBER, 2019.

PER COURT:-

1. The present petition is filed for the limited purpose viz. payment of back wages from the date of termination till the date of reinstatement and the subsistence allowance during the period of suspension.

2. Ms. Talekar, learned counsel for the petitioner submits that the termination order has been set aside by the Appellate Authority. Upon the termination order being set aside, the petitioner is entitled for back wages. The petitioner was not gainfully employed during the relevant period. The learned counsel relies on the judgment of the Apex Court in case of **Deepali Gundu**

Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Others reported in 2013 10 SCC 324 and the judgment of the Apex Court in a case of **Hindustan Tin Works Pvt. Ltd. Vs. Employees of Hindustan Tin Works Pvt. Ltd.** reported in (1979) 2 SCC 80.

3. The learned counsel further submits that during the period of suspension the petitioner was never paid with the subsistence allowance. The respondent-Authority communicated that it is the Institution is liable to pay the subsistence allowance. However, no subsistence allowance was paid.

4. The learned A.G.P. submits that during the relevant period, the petitioner was gainfully employed. The same can be demonstrated by the letters annexed with the affidavit-in-reply filed by the Institution, wherein it is writ large that the petitioner was taking work from private agencies and getting it performed through the students. The letters show that the petitioner was gainfully employed.

5. Mr. Bachate, learned counsel for the Institution submits that the Institution has challenged the order allowing the Appeal filed by the petitioner by filing separate writ petition. The petitioner was gainfully employed. The initial burden is upon the petitioner to plead and prove that he was not gainfully employed. No such

pleading was made before the Appellate Authority. The Institution was ready to pay the subsistence allowance, but the petitioner did not accept it.

6. The learned A.G.P. and Mr. Bachate, learned counsel rely on the judgment of the Apex Court in a case of **Kindriya Vidyalaya Sangathan and Another Vs. S. C. Sharma** reported in (2005) 2 SCC 363 to contend that the initial burden is upon the employee and he has to plead and prove that he was not gainfully employed. As such, the petitioner is not entitled for back wages.

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

8. As far as payment of subsistence allowance is concerned, the petitioner would be entitled for the payment of subsistence allowance. The contention of the Institution is that the Institution was ready to pay the subsistence allowance, but the petitioner did not accept it. Whereas, according to the petitioner subsistence allowance was required to be deposited in the Bank account of the petitioner.

9. We need not enter into the said debate. The fact remains that the subsistence allowance is not paid by the Institution to the petitioner. The Institution shall pay the subsistence allowance to

the petitioner for the period the petitioner was under suspension that is from 07.07.2012 to 05.09.2013.

10. Now the only question remains of payment of back wages.

11. There is no straight jacket formula or blanket rule for payment of back wages. The payment of back wages depends upon the facts and circumstances of each case.

12. The Appeal filed by the petitioner against the order of termination has been set aside. The order of termination appears to have been set aside on the ground that the respondents did not follow the procedure. The enquiry committee was constituted without taking permission of respondent no.4 or any superior officer. On that count it has been held that the impugned order is illegal.

13. No doubt, initial burden is upon the employee to plead and prove that the petitioner was not gainfully employed. Once it is pleaded that the petitioner was not gainfully employed, the burden would shift on the respondents. The respondents are relying upon the letters issued by the respondent no.8 to respondent no.6 about the petitioner engaged in private work of electrification and engaging students for the same. The said letters are in respect of the period the

petitioner was in employment with respondent nos.6 and 7.

14. As referred to above, the payment of back wages has a discretionary element and has to be dealt with the facts and circumstances of each case and no straight jacket formula can be evolved.

15. In the present matter considering the allegations upon the petitioner and the order of the Appellate Authority setting aside the termination order on the technical ground that the enquiry committee was constituted without approval of respondent no.5, we are inclined to grant 50% back wages to the petitioner from the date of termination till the date of reinstatement.

16. Hence, we pass the following order:

ORDER

- (i) The respondent nos.7 and 8 shall pay the amount towards the subsistence allowance to the petitioner for the period 07.07.2012 to 05.09.2013. The said payment shall be made preferably within a period of three months.
- (ii) The respondents are liable to pay 50% back wages to the petitioner since the date of termination till the date of reinstatement.
- (iii) It is stated that the post on which the petitioner is working is grant-in-aid post.

The Institution shall submit the salary bills to the extent of 50% for the period 06.09.2013 till the date of reinstatement. The said bills be submitted to the competent authority preferably within a period of four weeks. The competent authority shall process the said bills thereafter and pass orders with regard to the sanction of the same preferably within a period of four months thereafter.

17. Writ Petition is partly allowed. No costs.

(ANIL S. KILOR)
JUDGE

(S. V. GANGAPURWALA)
JUDGE