

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

WRIT PETITION NO. 13056 OF 2019

THE JOINT DIRECTOR, VOCATIONAL EDUCATION AND
TRAINING AND ANOTHER

VERSUS

LIMBAJI DNYOBA PAWAR AND OTHERS

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Advocate for the Petitioners : Shri R. J. Godbole h/f.
Shri S. D. Patil

Advocate for Respondent No. 1 : Shri V. V. Bhavthankar
AGP for Respondent – State : Shri S. R. Yadav - Lonikar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 17th OCTOBER, 2019.

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PER COURT :

1. The petitioner is aggrieved by the order dated 05/09/2019 passed by the executing Court below Exhibit 27 in Regular Darkhast No. 53/2017. By the said order, the executing Court has issued an attachment warrant under Order XXI Rule 41 of the Code of Civil Procedure for attaching the properties of the petitioner establishment. Respondent Nos. 2 and 3 are unconcerned with the issue raised in this petition.

2. I have considered the strenuous submissions of

the learned Advocates for the respective sides and have gone through the record available, with their assistance.

3. The School Tribunal has allowed Appeal No. 4/2013 filed by the decree holder employee vide judgment dated 08/08/2014. It would be apposite to reproduce the operative part of the order as under :-

“The appeal is allowed with cost.

The impugned order of termination dated 28/1/2013 issued by the respondent no. 4 is hereby quashed and set aside and the appellant is hereby reinstated on the post of Bhandarpal/Clerk in the respondent No. 4 School with continuity of service and full back wages. (Judgment dictated and pronounced in open Court.)”

4. It is, therefore, apparent that while the termination order dated 28/01/2013 issued by respondent No. 4 Management was quashed and set aside, the decree holder was granted reinstatement in

service with continuity and full back wages. Respondent No. 4 Management was directed to reinstate the decree holder with continuity and full back wages.

5. The learned Advocate for the decree holder submits that the petitioners Joint Director, Vocational Education and Training and The District Vocational Education and Training Officer had made a commitment before the executing Court that they would pay the back wages to the Appellant.

6. I have perused the said purshis dated 08/03/2018 which was tendered by the petitioners before the executing Court. It was clearly stated that the monthly wages payable to the decree holder after his reinstatement would be paid from the month he was reinstated and the proposal for back wages would be sent to the Government for approval, as per rules. I, therefore, do not find any commitment being given by the petitioners that they had agreed to shoulder the burden of payment of entire back wages. It is

obvious that they had only forwarded the proposal which the Government was to consider as per rules.

7. The learned Advocate for the decree holder points out a communication dated 23/03/2018 issued by the Joint Director to the Director of Vocational Education and Training, Mumbai that the unpaid wages of the decree holder for the period 2005 to 2007-2008 has been granted approval and an amount of Rs. 2,10,907/- was already received by the Joint Director. He sought a green signal to proceed to make the payment as per the chart set out in the said communication which is at page 271 in the petition. In view thereof, the petitioners are obliged to make the said payment of about Rs. 2,10,907/- to the decree holder.

8. It is settled position of law that any educational institution which receives salary grants in aid, has to forward proposals for payment of salaries as per the rules. Such proposal has to be accepted by the appropriate authority of the Government and once

such an approval is granted, the payment is made through the salary accounts. If the approval is refused, the said payment will have to be made by the Management which had engaged the employee.

9. The learned Advocate for the petitioners points out a communication dated 24/11/2010 issued by the Inspector Vocational Education and Training Regional Office, Aurangabad addressed to the Headmaster of the School in which the decree holder was working, indicating that the approval to the service of the decree holder has been refused. Said document is at page No. 77 of the petition paper book. A further communication dated 09/03/2012 issued by the Joint Director addressed to the District Vocational Education and Training Officer, at page 83, would indicate that the approval for the four years was not granted.

10. Thereafter, the decree holder approached this Court in Writ Petition No. 11446/2014 and sought a direction that approval to the appointment may be granted and the salary bills from the academic year

2005-2006 onwards be sanctioned. However, the decree holder withdrew this petition. This is evident from the order passed by the learned Division Bench on 17/07/2018 permitting the petitioner to withdraw the petition. It does not appear from the said order that the decree holder had sought leave to avail of any other remedy. It is surprising that the Joint Director, Vocational Education and Training did not point out the communication dated 23/03/2018 issued by him to the Director seeking a final approval to make the payment of Rs. 2,10,907/-, which was already sanctioned and kept ready.

11. I find that the controversy can be put to rest by granting the payment of Rs. 2,10,907/- to the decree holder since the money has already reached the Joint Director, petitioner No.1.

12. Notice to Respondent Nos. 2 and 3, is not issued as the issue raised in this petition and the order passed, would not be of any concern to them.

13. This petition is, therefore, partly allowed. The

order dated 06/02/2019 which has been passed without taking into account the aforesaid factors, is quashed and set aside.

14. The petitioners shall deposit the amount of Rs. 2,10,907/- with the executing Court on or before 15/11/2019. The decree holder would be at liberty to withdraw the said amount towards the unpaid wages / back wages.

15. It is made clear that thereafter if the decree holder is not satisfied and is still aggrieved as regards any unpaid amounts, he would be at liberty to pursue the execution proceedings strictly as per the directions of the School Tribunal set out in the reproduced order hereinabove.

16. All the contentions of the litigating sides before the executing Court are kept open.

(RAVINDRA V. GHUGE, J.)

shp/-