

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2585 OF 2019

Shri A.P.D.Jain Pathshala, Solapur and anr. .. Petitioners

Vs.

Pradip Hanumantrao Ulagadde and anr. .. Respondents

Mr.Arvind Kothari I/b Mr.Sandeep R. Waghmare, for the
Petitioners.

Mr.Anant Vadgaonkar, for Respondent No.1.

Mrs.V.S.Nimbalkar, AGP for Respondent No.2.

CORAM : M.S.KARNIK, J.

DATE : 11th APRIL, 2019

P.C. :

. Rule. Rule is made returnable forthwith and heard finally by consent of the parties. Learned Counsel waives service of Rule on behalf of the respondents.

2. Heard learned Counsel for the petitioners and learned Counsel for the respondents. By this Petition filed under Article 227 of the Constitution of India, the petitioners challenge the order dated 24/08/2018 passed by the Presiding Officer, School Tribunal, Pune Region, Solapur. The respondent

No.1 was working as an Assistant Teacher with the petitioner institution. He was appointed on 01/01/2012. Pursuant to disciplinary inquiry held against the respondent No.1, on the finding of the inquiry committee, the services of the respondent No.1 came to be terminated with effect from 18/01/2016. The respondent No.1 filed an Appeal before the School Tribunal under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'Act'). The Tribunal for the reasons recorded set aside termination. The operative part of the order of the Tribunal reads thus :

“1. The appeal is allowed.

2. The inquiry against the appellant conducted by the Respondent Management and the punishment imposed to the appellant pursuant to the same is hereby quashed and set aside.

3. The appellant shall be reinstated on his original post along with full back wages and continuity of service within one month from today.

4. However, the Respondent Management shall be at liberty

to conduct fresh inquiry in respect of the subject matter of the above inquiry afresh.

5. No order as to costs.”

3. Learned Counsel for the petitioners submits that they are aggrieved by clause 3 of the operative portion of the order insofar as the direction of the Tribunal to award full back-wages with continuity of service of the respondent No.1. Learned Counsel would submit that they are willing to abide by the other clauses of the School Tribunal's order. In support of his contention that upon termination being set aside as a result of finding that the disciplinary proceedings are found to be defective, in which case, the Management is not liable to pay back-wages till the employee concerned is exonerated, learned Counsel would rely upon the following decisions :

1. Manohar Pandit Marathe Vs. President Sharda Vidya Prasarak Mandal 2014(4) Mh.L.J. 556;
2. Rangdas Swami Shikshan Vikas Mandal and ors. Vs. Mutyal Vilas Rambau and ors. 2011 (5) ALL MR 115;

3. President/Secretary Pioneer Education Trust Vs. Janardan Mitharam Jangale in W.P. No. 165 of 2008 dated 11/03/2008;
4. P. Karupaiah (d) thr. LRs. Vs. The General Manager, Thruuvalluvar Transport Corporation Ltd. 2018(6) ALL MR 482.

4. Learned Counsel also relied upon the Full Bench decision of this Court in the case of Saindranath s/o Jagannath Jawanjal Vs. Pratibha Shikshan Sanstha and anr. 2007(3) Mh.L.J. 753.

5. Without prejudice to this stand, learned Counsel for the petitioners, on instructions, fairly submitted that the petitioners are willing to deposit the amount of back-wages in separate fixed deposit account with a Nationalised Bank. Learned Counsel for the petitioners undertakes to file affidavit of compliance in this Court within a period of 4 weeks from today that they have invested the amount of back-wages from the date of termination of the respondent No.1 till his

reinstatement in a Nationalised Bank in a separate fixed deposit account.

6. Learned Counsel for the respondents supports the order passed by the Tribunal. Inviting my attention to the findings recorded by the Tribunal, learned Counsel would submit that when a defective inquiry is conducted, the consequence of which is reinstatement of the respondent, then, the respondent No.1 should not be deprived of the back-wages. He would further submit that the respondent No.1. was not under suspension and therefore the Tribunal has rightly awarded the back-wages. Learned Counsel relied upon the decision of the Hon'ble Supreme Court in the case of **Vidya Vikas Mandal and anr. Vs. Education Officer and anr. (2007) 11 Supreme Court Cases 352.**

7. I have heard learned Counsel for the parties. The petitioners are only aggrieved by that part of the order of the Tribunal granting back-wages to the respondents. Only question

for consideration is whether the back-wages as awarded by the Tribunal should be paid to the respondent No.1 during the pendency of the inquiry now to be held pursuant to the order of the Tribunal. This Court, in the case of **Manohar Pandit Marathe** (*supra*), after placing reliance on the judgment of the Hon'ble Supreme Court in the case of **Vidya Vikas Mandal and anr.** (*supra*), held that during the course of such inquiry, if the charges are proved against the employee and the employer decides to award punishment of dismissal, the employer is at liberty to challenge the decision and can also raise a comprehensive challenge as regards back-wages from the date of termination to the date of reinstatement as further inquiry is to be conducted upon reinstatement. Similar is the view taken by this Court in the case of **Rangdas Swami Shikshan Vikas Mandal** (*supra*), again placing reliance on the decision of the Hon'ble Supreme Court in the case of **Vidya Vikas Mandal and anr.** (*supra*). However, in view of the fair suggestion given by the learned Counsel for the petitioners, on instructions, the suggestion deserves acceptance. Hence, the following order.

ORDER

(i) The petitioners shall deposit the amount of back-wages for the period from the date of dismissal to the date of the reinstatement of the respondent No.1 in a separate Fixed Deposit Account in any Nationalised Bank.

(ii) The compliance affidavit to be filed by the petitioners within a period of 4 weeks from today.

(iii) Needless to mention that the amount so deposited will be subject to the order as may be passed in the departmental inquiry and obviously, the respondent No.1 can also raise comprehensive challenge as regards back-wages for this period before the Tribunal, in case he is dismissed upon completion of the inquiry.

(iv) The impugned order of the School Tribunal to the extent it has awarded back-wages is set aside and the Tribunal's order now stands substituted by the above directions.

8. Rule is partly made absolute with no order as to costs.

(M.S.KARNIK, J.)