

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.170 of 2009

Vidya Ashok Mankar	.. Appellant
Versus	
Maharashtra Mandal (BARC)	
Shikshan Sanstha, through the	
Secretary and others	.. Respondents

...

Mr. Mandar Limaye for the appellant.

CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.

DATED : 5th DECEMBER, 2019

P.C:-

1 Heard learned counsel for the appellant.

2 Unfortunately, there is no assistance from the respondents. The appellant joined services under the Nutan Vidya Mandir School established by Maharashtra Mandal (BARC) Shikshan Sansthan, a Society registered under the Societies Registration Act. Her services were terminated on 30th June 2008. She filed an Appeal before the School Education Tribunal which was allowed on 16th December 2008. Termination was set aside. Re-instatement was directed. Back wages were denied on the reasoning that the appellant did not

claim being without employment post her services being terminated.

3 The management accepted the decision and re-instated the appellant. The appellant was aggrieved by the denial of back wages and thus filed Writ Petition No.3021/2009 which has been dismissed by the learned Single Judge vide impugned order dated 8th April 2009.

4 The learned Single Judge has held that in view of the law declared by the Supreme Court in the decision reported in 2005(2) SCC 363, Kendriya Vidyalaya Sangathan Vs. S.C.Sharma, the initial onus is on the employee to establish being unemployed and only thereafter the management can be called upon to rebut the same.

5 Suffice it to state that where a large period intervenes between dismissal or termination and reinstatement, could it be argued that having sustained oneself, the presumption would be that the employee was gainfully employed. This presumption could also be justified on the argument that how the employee lasted for so long is a fact in the knowledge of the employee. But with the period interregnum the termination and reinstatement is short, such a presumption cannot be raised, for the reason to find immediate employment is not easy

6 In the instant case, period interregnum is for 5 ½ months.

7 Thus, we dispose of the Appeal and allow Writ Petition No.3021/2009 and in turn set aside the order dated 16th December 2008 passed by the School Tribunal to the extent it has denied back wages to the appellant. We direct Nutan Vidya Mandir as also the society which has established the same to pay wages for the said period. The wages to be computed to the appellant within six weeks from the receipt of authenticated copy of this decision. If not paid within said period i.e. six weeks, the same shall be paid with Simple Interest @ 9% p.a. reckoned six weeks after receipt of the authenticated copy of this order till date of payment.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE