

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.209 of 2009
IN
WRIT PETITION NO.7753 OF 2008**

Shri Sadhashiv Maruti Sangolkar .. Appellant
Versus
President Samajik Sanskrutik
Congress, Maharashtra, Mumbai
and others .. Respondents

...

Ms.Vriddhi Maria with S.R. Phanse for the appellant.
Ms.Nisha Mehra, AGP for respondent No.3.

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

DATED : 5th DECEMBER, 2019

P.C:-

1 Deciding the case of Mr.Pawar, we have today passed an order which reads as under :-

1 Service of the appellant working as a Peon with Ashokrao Desai Krishi Vidyalaya, Alegaon was terminated by an oral order dated 7th March 2008. Appeal filed by him was allowed by the School Tribunal on 19th September 2008 directing reinstatement. Only 30% back wages were granted. The reason why only

30% back wages were granted is in paragraph No.14 of the order dated 19th September 2008. The same shows that as per the appellant, he continued to work in the School even after 7th March 2008 but was denied the right to mark the attendance in the muster roll.

2 As per the School Tribunal, the appellant failed to do the same. In fact the decision dated 19th September 2008 shows that the case of the School was that the appellant voluntarily abandoned the duties and the case of the appellant was that he was not allowed to mark his attendance in the muster roll.

3 Challenge by the appellant to restrict back wages to only 30% met with a failure when the Writ Petition filed by him was dismissed vide impugned order dated 22nd July 2009. Before the learned Single Judge, the appellant relied upon an affidavit of some employees of the School to establish that he had been working in the School. The learned Single Judge has held that the affidavits dated 16th March 2008 were a few days after the termination and thus could not be treated as proof that the appellant had worked after he was terminated on 7th March 2008 till 19th September 2008 when he won before the School Tribunal.

4 Suffice it to state the appellant is responsible for denial of full wages by taking a plea that he was working in the School and thus should be paid wages for the period aforesaid.

5 The appellate order passed by the School Tribunal shows that the appellant had indeed not worked post 7th March 2008 and the dispute was the stand of the School the appellant voluntarily abandoned duties vis-à-vis the stand of the appellant that he was denied the right to work and marked his attendance in the muster roll.

6 *Under the circumstances, it has to be held that the appellant was denied the right to work and we note that within less than six months of being terminated from service, the appellant was reinstated.*

7 *It is difficult to find employment so easily. Of course, where there is a long time gap between termination and reinstatement, it could be argued that the workmen who has maintained himself and the family, perhaps was employed.*

8 *We dispose of the appeal setting aside the impugned order dated 22nd July 2009.*

9 *We allow Writ Petition No.7798/2009 filed by the appellant and modify the order dated 19th September 2008 passed by the School Tribunal, Solapur and award full back wages to the appellant for the period interregnum 8th March 2008 till he was reinstated and started receiving wages.*

10 *We direct Ashokrao Desai Krishi Vidyalaya to pay back wages to the appellant and foist joint liability on Samajik Sanskrutik Congress Maharashtra, the body corporate which has established the school.”*

2 Instant Appellant working as a Peon in the same school was visited with termination of his service on 20th February 2008. He won before the School Tribunal and earned reinstatement vide order dated 18th September 2008. Like Mr.Pawar even he was awarded only 30% backwages. There is complete parity in the two cases and thus instant Appeal is

allowed setting aside the impugned judgment dated 22nd July 2009.

3 Writ Petition filed by the appellant being WP No.7753/2008 is allowed modifying the order dated 18th September 2008 passed by the School Tribunal restricting back wages to 30%.

4 We grant appellant full back wages for the period interregnum his services be terminated till he was reinstated and started receiving wages.

5 We direct Ashokrao Desai Krishi Vidyalaya to pay back wages to the appellant and foist joint liability on Samajik Sanskrutik Congress Maharashtra, the body corporate which has established the school.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE