

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 7168/2017

Adarsh Shikshan Prasarak Mandal & anr.

..VS..

Shri Rakesh Sadashiv Tade & anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.
DATED : 03/01/2019

Pursis (St.) No. 08/2019

The learned advocates representing the petitioners have filed this *pursis* seeking permission to withdraw the Vakalatnama. Alongwith the *pursis*, the copy of notice sent by the advocate to the Secretary of the petitioner no. 1 – Society and the copy of the postal acknowledgment is placed on record. In the *pursis*, it is stated that the petitioners are not responding and giving instructions.

In the facts pointed out by the learned advocates, they are discharged from appearing in the matter.

The *pursis* is **disposed** accordingly.

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None appears for the petitioners.

Heard Ms. K. Satpute, Advocate for the respondent no.1 and Ms. T.H. Khan, AGP for the respondent no. 2.

By this petition, the employer has challenged the order passed by the School Tribunal by which the appeal filed by the respondent no. 1 – employee under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 is allowed, the order terminating the services of the employee is set aside and the management is directed to reinstate the employee with continuity of service and to pay full backwages.

The learned advocate for the respondent no. 1 has submitted that the respondent no. 1 is reinstated as per the impugned order, he is discharging his duties and is receiving regular salary from the date of reinstatement i.e. from 25/05/2017.

Even otherwise, the conclusions of the Tribunal recorded in para nos. 18 to 21 are based on proper appreciation of material on record and the provisions of Rule 16 (3) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. Hence, I see no reason to interfere with the order passed by the Tribunal directing reinstatement of the respondent no. 1 with continuity of service.

As far as the directions given by the Tribunal to the employer to pay full backwages are concerned, the considerations are in para no. 22 of the impugned order. The employee had filed an affidavit before the Tribunal stating

that he was not in gainful employment from the date of his termination. The employee discharged the preliminary burden. The employer failed to discharge the burden placed on it and to rebut the claim of the employee that he was not in gainful employment during the period of his termination. Even before this Court, in the writ petition, nothing is brought on record to create any doubt about the veracity of the claim of the employee that he was not in gainful employment after the date of the termination of his services. Hence, this part of the order also does not require any interference.

In view of the above, the writ petition is **dismissed** with costs quantified at Rs. 20,000/- (Rs. Twenty Thousand) to be paid by the petitioner no. 1 – Management to the respondent no. 1.

The petitioner no. 1 shall pay the amount of costs to the respondent no. 1 by demand draft and produce receipt, showing that the amount of costs is paid alongwith the photo copy of the demand draft, on record of this petition within one month.

JUDGE

Ansari