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

WRIT PETITION NO.353/2010

PETITIONER : Rajeshkumar Omkarrao Pachpor
Age : 36 years, Occp: Service,
R/o at post – Telhara, Tq. Telhara,
Distt. Akola.

...VERSUS...

RESPONDENTS :
1. Late Narayanrao Bhihade Smruti Sanstha, Telhara, through its President, R/o At-post : Telhara, Tq. Telhara, Distt. Akola.

2. Late Narayanrao Bihade Vidyalaya, Warud Bu. Tq. Telhara, Distt. Akola, through its Headmaster.

3. The Education Officer (Secondary), Zilla Parishad, Akola, Tq. Distt. Akola.

Shri P.A. Kadu, Advocate for petitioner
Shri Sachin Zoting, Advocate for respondent nos.1 and 2
Shri S.A. Ashrigade, Addl. G.P. for respondent no.3

CORAM : AVINASH G. GHAROTE, J.
DATE : 09/08/2021

ORAL JUDGMENT

1. Heard Shri P.A. Kadu, learned Counsel for the petitioner, Shri Sachin Zoting, learned Counsel for the respondent nos.1 and 2

and Shri S.A. Ashirgade, learned Additional Government Pleader for the respondent no.3.

2. The petitioner, was appointed as an Assistant Teacher with the respondent no.1 on 25/6/1996, however, he came to be terminated by an order dated 8/11/2007, which was challenged before the learned School Tribunal by way of an appeal bearing Appeal No.36/2008. The learned School Tribunal, by judgment dated 29/11/2008, set aside the order of termination and directed reinstatement of the petitioner, within 30 days from the date of the judgment on the post of Physical Teacher/PTI, which he was holding prior to the date of termination. Further direction was issued to record the continuity of the service of the petitioner in the service book. The relief of back wages was denied.

3. Against the judgment of the learned School Tribunal granting reinstatement, the Management - respondent nos.1 and 2 preferred Writ Petition No.1289/2009, which came to be dismissed on 27/8/2009, and thus the relief of reinstatement as directed by the learned School Tribunal, came to be confirmed. This was not

challenged any further by the Management. As against the denial of the relief of back wages by the learned School Tribunal, the present petition has been filed.

4. A perusal of the impugned judgment, indicates, that no reasons whatsoever, have been given by the learned School Tribunal for refusal of the relief of back wages. Neither the impugned judgment records a contention on behalf of the Management that for the period the petitioner was out of employment, he was otherwise gainfully employed. In fact, the findings rendered by the learned School Tribunal point out that the petitioner, was forced to go on leave.

5. The reliance placed by the learned Counsel for the petitioner on ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, (2013) 10 SCC 324***, being material is quoted as under :-

> *" **38.3.** Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or*

was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

6. This Court, in judgment in Writ Petition No.1289/2009 has observed that the conduct of the Management and its incharge Headmaster, in the background as narrated therein, appeared to be most unfair and adamant and the refusal of the incharge Headmaster, to permit the petitioner, to resume duties when the Education Officer had visited the institution, having already granted approval to his appointment has been noted, in para 5 and 6 therein.

7. In the above view of the matter, it is my considered opinion that in view of the fact that the Tribunal has not given any reasons for denying back wages and so also there are no pleadings by the Management of the petitioner being gainfully employed for the duration when he was out of service, namely, between 8/11/2007 to 29/11/2008, I deem it appropriate that the petitioner is entitled to back wages, on par which he was getting prior to his date of termination.

8. The writ petition is accordingly allowed. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar