

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**CIVIL APPLICATION (CAW) NO. 418/2020 IN
WRIT PETITION NO. 4391/2017 (D)**

1. Vidya Vikas Mandal, Lakhandur,
Dist. Bhandara, through its Secretary,
Sadashiv S/o Shivaji Donadkar,
Aged about 85 years, R/o. Navegaon,
Post Mudza, Dist. Gadchiroli.
2. Mahatma Gandhi Vidyalaya,
through its Headmaster,
Murkhala, Tq. & Dist. Gadchiroli.

**.... PETITIONERS/
APPLICANTS**

// VERSUS //

1. Rajani D/o Wamanrao Hemke,
Aged about 58 years, Occ. Service,
R/o. C/o. Shri W.A. Hemke, Gandhi
Ward, Gadchiroli, Tah. & Dist. Gadchiroli.
2. Education Officer (Secondary),
Zilla Parishad, Gadchiroli,
3. Presiding Officer, School Tribunal,
Nagpur.

**.... RESPONDENTS/
NON-APPLICANTS**

Shri R. L. Khapre, Senior Advocate assisted by Shri D.R. Khapre, Advocate for petitioners/applicants.

Mrs. U. A. Patil, Advocate for respondent/non-applicant No. 1.

Mrs. M. Deshmukh, A.G.P. for respondents/non-applicant Nos. 2 and 3.

**CORAM : V. M. DESHPANDE AND
VINAY JOSHI, JJ.**

DATED : 18.12.2021

JUDGMENT (PER VINAY JOSHI, J.)

Heard.

2. Rule. Rule is made returnable forthwith.

3. This is an application for recalling the order dated 02.08.2019 passed in Writ Petition No. 4391/2017, under which writ petition came to be dismissed on the basis of statement that petition became infructuous. Precisely, it is contended that though the cause canvassed in Writ Petition No. 4391/2017 was very much subsisting, the petitioners' learned counsel made erroneous statement resulting into dismissal.

4. Briefly stated, the applicant is the Management running Educational Institute, whilst respondent is employee – teacher. Respondent (Teacher) was appointed in the year 1990 as an Assistant Teacher in School run by the applicant (Management). She suffered with a notice of dismissal in the year 1992 and accordingly, she was out of service. Being aggrieved by the termination, respondent - teacher had approached to the School Tribunal for reinstatement (appeal No. 23/1992), however it was dismissed vide order dated 25.04.2007. The said rejection was challenged in Writ Petition No. 4492/2007

which was came to be partly allowed by Co-ordinate Bench of this Court. While disposing writ petition, Co-ordinate Bench has directed the Management to reinstate the respondent – Teacher within a period of 30 days and remanded the matter back to the School Tribunal for deciding the teacher's entitlement for back-wages in accordance with law. Though the Management sought review of said order, it was rejected vide order dated 22.02.2018.

5. In pursuance of order passed in Writ Petition No. 4492/2007, the matter was remitted to the School Tribunal for deciding the limited issue of teacher's entitlement for back-wages. Despite opportunity, the Management did not participate in the proceeding. The School Tribunal by allowing teacher's claim, directed Management to pay back-wages for the period from 05.06.1992 to 16.11.2015 vide its order dated 09.08.2016.

6. The Management has challenged the order of payment of back-wages in Writ Petition No. 4391/2017 by raising several ground on merits. However, on 02.08.2019, learned counsel appearing for applicant Management made a statement that the petition has become infructuous. In view of that Co-ordinate Bench of this Court recorded the submission and dismissed the petition. By this application, the

Management is seeking for withdrawal of the statement and restoration of Writ Petition No. 4391/2017 for deciding on merits.

7. It emerges that after disposal of Writ Petition No. 4391/2017, the Management has filed one another Writ Petition No. 226/2020 raising the same challenge to the order dated 09.08.2016 passed by the School Tribunal in appeal No. 23/1992. However, the Management withdraw said writ petition, as already same grievance was challenged in earlier petition No. 4391/2017 which was disposed of. Withdrawal application states that under misconception, writ petition No. 4391/2017 was withdrawn. Since for the same cause of action, latter petition No. 226/2020 was filed hence sought withdrawal. Co-ordinate Bench of this Court vide order dated 29.01.2020, has disposed of the petition No. 226/2020 as withdrawn with liberty to avail appropriate remedy available under law. In such background, the applicants – Management has urged for recalling the statement made in writ petition No. 4391/2017 dated 02.08.2019 and for its restoration.

8. The first and foremost contention is that under misconception, mistakenly statement was made in earlier petition that it has become infructuous. Learned senior counsel for the

Management has canvassed that the order of the School Tribunal directing to pay back-wages is very much subsisting since the teacher is pursuing for its execution. It was purely a factual mistake in making statement, therefore, the matter be restored by recalling earlier order.

9. Learned counsel for the Teacher resisted the application by contending that the Management was throughout negligent. It is argued that almost in all the proceedings, the Management did not participate which resulted into the adverse orders against the Management. It is submitted that the Management was aware about the order passed by the School Tribunal, however, they did not bother to prosecute the legal remedy. When attachment warrant was issued in execution proceeding, the Management has come up to this Court for restoration of Writ Petition No. 4391/2017. It is submitted that, it was not a mistaken statement but a total negligent attitude of Management.

10. We have taken a resume of the history of the litigation. So far as the reinstatement of Teacher is concerned, it has attended finality. As per order passed in Writ Petition No. 4492/2007 dated 18.04.2015, the Teacher was reinstated on 16.11.2015 in the School. It is informed that the Teacher has retired by way of superannuation. While deciding Writ Petition No. 4492/2007, Co-ordinate Bench of this

Court has kept open the issue of back-wages. In-turn, the School Tribunal has allowed back wages as aforesaid mentioned vide order dated 09.08.2016. There is no dispute that the order of the School Tribunal directing to pay back-wages is in-existence. Rather it cannot be denied since the Teacher is pursuing for its execution. Therefore, apparently, the cause which was challenged in Writ Petition No. 4391/2017 was very much subsisting. In the circumstances, it is apparent that the statement made by the learned counsel for the Management that petition has become infructuous was totally erroneous.

11. Learned Senior counsel for the Management by placing reliance on the decision in case of **Jet Ply Wood Pvt Ltd and Anr. Vs. Madhukar Nowlakha and Ors., AIR 2006 SC 1260** would submit that in absence of specific statutory provision in the Civil Procedure Code ('Code'), the inherent powers under Section 151 of the Code can be invoked to subserve the interest of justice. In said case, the Supreme Court has explained the purpose and scope of Section 151 of the Code by stating that when the provisions of Code are silent, the inherent powers of the Court would come to the aid to make real and substantial justice between the parties. On the same line, reliance has

been placed of the decision of the Supreme Court in case of **Rattan Bai and Anr. Vs. Ram Dass and Ors, AIR 2012 SC 1476**, which supports the contention that nothing in law prevents the parties to withdraw their application for the withdrawal of a suit. In short, the learned senior counsel for the Management endeavoured to impress that in order to do substantial justice, the Court should step in, to exercise its inherent powers.

12. The School Tribunal has directed the Management to pay back-wages for long period of 23 years i.e. from 05.06.1992 to 16.11.2015 which roughly comes to the tune of Rs. 56 lakhs. The Management has essentially disputed the teacher's entitlement for full back-wages for the grounds raised in Writ Petition No. 4391/2017. The order of the School Tribunal granting full back-wages has not been tested on merits in this Court. The Management though earlier misdirected by withdrawing the petition, however intends to test the legality of said order before this Court.

13. On the other hand a teacher who is armed with order of payment of full back-wages which runs into Rs. 56 lakhs and odds is totally away from its yield. Moreover, according to Teacher, the

Management is not forwarding her pension papers, in the result, neither she got back-wages nor pension. At this juncture, learned senior counsel appearing for the Management has made a statement upon instructions that in case of restoration of Writ Petition no. 4391/2017, the Management would pay Rs. 10 lakhs to the Teacher and would facilitate for release of pension. Upon additional instructions, statement is made that pension is already sanctioned and they would facilitate for its regular disbursement.

14. It is submitted by the Management that in execution proceeding, attachment warrant was issued for attaching school furniture. In that case, there would be no option for Management than to close the school which would be at the detrimental of students as well as other Teachers.

15. Undeniably, the order of School Tribunal for grant of full back-wages was decided without contest. The Management remained negligent in prosecuting before the School Tribunal. Resultantly, the order of the School Tribunal was not filtered in this Court since petition was disposed without adjudication. It is apparent that though the cause survived, mistakenly, petition was got disposed of. Always law prefers to decide the lis on merits rather than to through away on

technicalities. In order to make justice in real sense, it would be desirable to permit the Management to exercise its legal right to challenge the order of the School Tribunal in writ petition. On restoration ultimately, the petition would be decided on merits and nothing else.

16. Having regard to all above facts, we are inclined to restore the petition on certain terms. Hence, following order:-

- (i) Application stands allowed and disposed of.
- (ii) The order dated 02.08.2019 passed in Writ Petition No. 4391/2017 is recalled.
- (iii) Writ Petition No. 4391/2017 is restored on the same stage on condition of applicants – Management depositing amount of Rs. 10 lakhs in this Court within 30 days from today.
- (iv) The restoration of writ petition shall be subject to the deposit of amount.
- (v) The Non-applicant No. 1 – Teacher is at liberty to withdraw deposited amount on simple undertaking that withdrawal shall be subject to the final outcome of the writ petition.

(vi) The pending execution proceeding shall stand stayed for a period of 40 days from today.

(vii) If the amount is not deposited within 30 days, the order dated 02.08.2019 would stand revived.

17. Rule is made absolute in above terms.

JUDGE

JUDGE

Gohane.

JITENDRA
BHARAT
GOHANE

Digitally signed
by JITENDRA
BHARAT
GOHANE
Date:
2021.12.23
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