

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

WRIT PETITION NO.5417/2015

1. Bhiwapur Education Society, through
Its Secretary, Bhiwapur, Tahsil Bhiwapur,
District Nagpur.
2. Bhiwapur Education Society's Boys High
School and Junior College (Vocational Course)
Bhiwapur, through its Principal, Tahsil Bhiwapur,
District Nagpur.**PETITIONERS**

...VERSUS...

1. Shri Vikas s/o Janardhan Pillewan,
aged about 47 years, Occ. Terminated
Teacher, r/o Bhiwapur, Dist. Nagpur.
2. Deputy Director of Vocational Education
and Training, Nagpur Division, Nagpur.
3. The Hon'ble Presiding Officer,
School Tribunal, New Administrative
Building, 2nd Floor, Civil Lines, Nagpur. ...**RESPONDENTS**

Mr. B. G. Kulkarni, Advocate for petitioners.
Mr. Prashant Thakare, Advocate for respondent no.1.
Mrs. M. A. Barabdhe, A.G.P. for respondent no.2.

CORAM:- V. M. DESHPANDE, J.
DATED :- 04.02.2021

ORAL JUDGMENT

1. By this writ petition, the petitioners-management
challenge the judgment and order passed by learned Presiding
Officer, School Tribunal, Nagpur in Appeal No. STN 22/2013,

whereby the appeal filed by respondent no.1 was partly allowed. The order of termination dated 20.03.2013 was quashed and set aside. The present petitioners, who were respondent nos.1 and 2 before the Tribunal were directed to reinstate respondent no.1 (appellant before the Tribunal) on the same post with continuity in service and 50% back wages within a period of one month from the date of the judgment.

2. This petition was filed in the year 2015. Notices were issued on 28.09.2015. The writ petition was admitted on 27.10.2015. On the said day, as it could be seen from the order, this Court observed that the petitioners and respondent no.1 filed Joint Pursis, incorporating consent terms, which was signed by the petitioners as well as respondent no.1. This Court (Coram: R. K. Deshpande, J.) observed that the consent terms are accepted and parties to act accordingly. In view of this, the Court has granted stay to the order passed by Tribunal to the extent it directs payment of back wages to respondent no.1.

3. A statement is made that pursuant to the compromise, the petitioners have reinstated respondent no.1 on 30.10.2015.

4. The matter was then listed on 08.12.2020 for disposal of the writ petition in view of the compromise. The learned A.G.P. appearing for respondent nos. 2 and 3 raised a specific objection to the effect that when original order of School Tribunal directs the management to make payment of 50% back wages, such terms could not have been incorporated in the compromise pursis. Thereafter, the matter was taken up for filing affidavit on behalf of respondent nos.2 and 3. Accordingly, Assistant Director authorised by Joint Director of Vocational and Technical Education and Training, Nagpur Division, Nagpur, filed the affidavit. By the said, clause (4) of the compromise pursis is strongly objected. Clause (4) of the compromise pursis is reproduced hereinbelow :

“4. However, since the date of termination of respondent No.1 (20.03.2013) till the date of reinstatement (30.10.2015) the post was not filled in and no salary payment was drawn by petitioner Nos. 1 and 2 for the said period from respondent No.2. Hence petitioner Nos. 1 and 2 shall submit the salary bills of respondent No.1 for the period from 20.03.2013 to 30.10.2015 to respondent No.2 for being sanctioned by respondent No.2 as per Rules. The amount after sanction of bills shall be released directly in the account of respondent No.1.”

5. This clause is objected by respondent nos.2 and 3, mainly on three grounds, viz.

(i) the compromise pursis is signed by petitioners and respondent no.1 and their respective counsel. The respondent nos. 2 and 3 are not party to said compromise, therefore, compromise is not binding on them;

(ii) learned Presiding Officer, School Tribunal directed the petitioner management to pay 50% of the back wages. And,

(iii) during the period from 20.03.2013 i.e. the date of termination of respondent no.1 till he was reinstated on 30.10.2015, he was not working. Therefore, on the principle of 'No work no pay', State exchequer cannot be liable for payment.

6. True it is, respondent nos. 2 and 3 are not signatory of the compromise pursis dated 17.12.2019, which is signed by the petitioners, respondent no.1 and their counsel. Since respondent nos. 2 and 3 are not party to the compromise, not a single word stated in the compromise pursis is binding on respondent nos. 2 and 3 or any other State authority.

7. The compromise was entered into privately between petitioners and respondent no.1. It is always open for them to act upon their own compromise but, by no stretch of imagination, it can be said that by their compromise, the State exchequer or any department of the State is liable to pay, even remotely.

8. Mr. B. G. Kulkarni, learned counsel for petitioners and Mr. Prashant Thakare, learned counsel for respondent no.1 submit that this writ petition be disposed of in view of the compromise pursis and it is the submission of Mrs.Barabdhhe, learned A.G.P. for respondent nos. 2 and 3 that if interests of respondent nos. 2 and 3 are protected then this writ petition can be disposed.

9. In that view of the matter, the Writ Petition is disposed of in view of compromise that took place between the petitioners on one hand and the respondent no.1 only on the other.

Clause 4 of compromise pursis, which is reproduced *supra*, shall not be binding on respondent nos. 2 and 3 and/or any other department of the State. By virtue of that compromise in general and clause 4 in particular, the State will not be responsible for payment of salary to the respondent no.1.

It shall be open for the petitioners to submit salary bills to respondent nos.2 and 3. Upon such submission of the salary bills of respondent no.1 by the petitioners, it shall be open for respondent nos.2 and 3 to decide as to whether respondent no.1 is entitled to salary from the State exchequer.

It shall be open for the respondent nos. 2 and 3 or any other department of the State either to accept or reject salary bills submitted on behalf of petitioners in respect of respondent no.1.

Rule is made absolute in the above terms. No order as to costs.

JUDGE

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