

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12269 OF 2019

DHARMARAJ ASHOK HONMANE
VERSUS

PATODA GRAMVIKAS MANDAL THROUGH SECRETARY AND OTHERS

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Advocate for the Petitioner : Shri P.G. Tambade h/f Shri S.S.Jadhavar

Advocate for Respondents 1 and 2 : Shri R.J. Godbole

AGP for Respondent 3 : Ms.V.S. Choudhary

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th March, 2022

Per Court:

1. I have heard the extensive submissions of the learned advocates for the respective sides and the learned AGP on behalf of the respondent/ State.

2. By this petition, the petitioner, original appellant in Appeal No.8/2017, is aggrieved by the order dated 17.01.2019 passed by the learned School Tribunal, Aurangabad vide which, Miscellaneous Application No.1/2018 filed by the respondent/ Management praying for recalling of the ex-parte judgment dated 22.11.2017, was allowed on imposition of costs of Rs.1500/- only.

3. Having considered the extensive submissions of the learned advocates, I find from the record that the court notice was said to have been offered to the Secretary as well as the Headmaster of the

respondent/ Education Society (both are real brothers) on 20.07.2017 as per the remark of the Postman. The Postman has written on the envelope as “refused” and the date is 20.07.2017. After the ex-parte judgment was delivered on 22.11.2017, these two brothers, Secretary and Headmaster, presented the Miscellaneous Application on 03.01.2018 contending therein that the First Information Report was registered against them in the Jamkhed Police Station on 02.07.2017 invoking Sections 143, 147, 148, 149, 323, 324, 504 and 506 of the Indian Penal Code. They applied for leave to the President of the Institution and in order to avoid arrest, they left Patoda taluka and were residing with their relatives at Aranwadi, Taluka Dharur. They got anticipatory bail on 16.09.2017. They were unaware of the proceedings before the School Tribunal. After the petitioner approached the Institution with the judgment of the School Tribunal dated 22.11.2017, they realized that the School Tribunal has decided the matter. Therefore, they approached the School Tribunal on 03.01.2018.

4. No doubt, the respondents have made out a case for restoration of the appeal, which was lodged on 13.04.2017 and was decided on 22.11.2017. It is always in the interest of justice that the proceedings are decided after contest on merits. It is only in certain glaring cases that an ex-parte judgment is not required to be recalled since the reasons cited by the aggrieved party are such that the aggrieved party

does not deserve any sympathy.

5. In the instant case, the postal envelope indicates the remark of the postman as “refused”. This remark has presumptive value as it indicates that the addressee has refused to accept the envelope when offered to him. However, these respondents have produced certain records, which has been adverted to by the School Tribunal in paragraph 9 of the impugned order. In these circumstances, the School Tribunal has recalled the ex-parte judgment and restored the appeal. I do not find that any error has been committed by the School Tribunal in passing the impugned order. However, after considering the presumptive value of the postal remark “refused” and the counter evidence produced by these respondents, the benefit of doubt can be given to these respondents and the petitioner can be compensated by slightly increasing the costs.

6. In view of the above, since both these respondents are representing the Institution as the Secretary and the Headmaster before the School Tribunal, both of them would deposit Rs.5000/- each before the School Tribunal within 30 days from today or directly handover the amount to the learned advocate for the petitioner/ appellant before the School Tribunal and the appellant shall execute a receipt of having received the amount. The amount of Rs.1500/- already paid, shall stand adjusted in the above amount.

7. At this stage, Shri Godbole, the learned advocate representing

the respondents/ Management, raises an issue which needs consideration. He submits that as the petitioner/ appellant approached this Court and had prayed for some relief and this Court had directed the School Tribunal to adjourn the appeal proceedings. This order was passed on 09.10.2019 and therefore, the appeal proceedings have been adjourned till this date. Tomorrow if the appellant succeeds in the appeal, he would seek back wages from the Management even for this period.

8. The learned advocate for the petitioner/ appellant strenuously opposes the said request and submits that he had approached this Court as he was aggrieved by the impugned order.

9. In the light of the above, I find that the contention of Shri Godbole is sustainable. It is on the request of the petitioner/ appellant that this Court has passed the order and it is on account of the pendency of the writ petition, that the appeal proceedings were adjourned. In these circumstances, if the appellant succeeds before the School Tribunal, he would not be entitled for back wages for the period 09.10.2019 till the passing of this order today.

10. The School Tribunal is requested to decide the Appeal No.8/2017 within a period of 12 months.

11. The Writ Petition is, accordingly, disposed off.