

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

WRIT PETITION NO. 8214 OF 2022

1. Sachin Shankarrao Tale  
Age : 46 years, Occu.: Advocate  
R/o "Godavari Niwas",  
Near Ram Mandir Yashwant Nagar, Nanded  
Tq. Dist. Nanded  
President,  
Rani Laxmibai Shikshan Sanstha  
Yeshwant Nagar, Nanded Tq. Dist. Nanded
2. Suryakant Naraba Sonkamble  
Age : 53 years, Occu. : Service  
R/o Bhimgad, Kandhar  
Tq. Kandhar, Dist. Nanded  
Head Master,  
Shiv Niketan Primary School,  
Herbal (Patii), Post Gaul,  
Tq. Kandhar, Dist. Nanded.

... PETITIONERS  
(Original Res. No. 1 & 2)

VERSUS

1. The Education Officer (Primary)  
Zilla Parishad, Nanded  
Office at Zilla Parishad Building,  
Near Railway Station Nanded  
Tq. & District Nanded
2. Hanumant Shyamrao Shinde  
Age : 45 years, Occu.: Teacher  
R/o Laxmi Nagar, Near Tiny English School  
Pawadewadi Naka,  
Nanded, Tq. Dist. Nanded.

... RESPONDENTS  
(Original Appellant)

Shri. Dhananjay M. Shinde, Advocate for the petitioners  
Shri. S. B. Pulkundwar, AGP for respondent No.1

Shri. S. R. Kedar, Advocate for respondent No.2

**CORAM : M. G. SEWLIKAR, J.**  
**RESERVED ON : 25<sup>th</sup> AUGUST, 2022**  
**PRONOUNCED ON : 7<sup>th</sup> SEPTEMBER, 2022.**

**JUDGMENT :-**

1. Rule. Rule made returnable forthwith. With the consent of the parties taken up for final hearing at the admission stage.

2. Facts necessary for the decision of this petition are in brief as under:-

(i) Respondent No.2 was working as Assistant Teacher since 1993. Permanent approval was granted to him in the year 1998. Since he did not succumb to the pressurizing tactics of the management, in the year 2000 he was transferred to a school run by petitioner No.1 at Herbal, Kandhar, Tq.Kandhar, Dist. Nanded. He was subjected to humiliation. He was not allowed to sign muster roll since 26<sup>th</sup> July, 2004. Leave was not sanctioned to him. Salary bills were not sent. He was shown absent from duty. Since 26<sup>th</sup> July, 2004 respondent No. 2 was not allowed to sign muster roll. This amounted to otherwise termination. Therefore, the respondent No. 2 preferred appeal before the School Tribunal

contending that his otherwise termination order dated 26<sup>th</sup> July, 2004 be quashed and set aside and for the reinstatement of respondent No.2.

(ii) Petitioners appeared in the appeal before School Tribunal and filed their written statement. It was contended by them that in the year 2003 by misguiding the respondent No.1 the Education Officer, respondent No.2 got salary for the period from June, 2003 to November, 2003 even he was absent from the duty during that period. From 26<sup>th</sup> July, 2004, respondent No. 2 was absent from the duty without any prior permission or intimation. He wrote a letter to respondent No.1 alleging that the school management and the Head Master of the school were not allowing him to enter the school premises and did not allow him to sign the muster roll. Respondent No.2 preferred an appeal after a period of 7 years. He sought condonation of delay and the delay was condoned by the Presiding Officer of the School Tribunal. It was challenged by the petitioners in Writ Petition No. 9711 of 2013 which was dismissed vide order dated 14<sup>th</sup> January, 2016 observing that the School Tribunal shall decide the

issue of back wages in accordance with law if respondent No.2 succeeds in his claim of otherwise termination. They contended that respondent No. 2 did not join the duties since 26<sup>th</sup> July, 2004 and therefore, the management terminated the services by publishing a news in daily "Prajawani". They contended that there was no otherwise termination. On the contrary respondent No. 2 remained absent voluntarily. Respondent No. 2 was communicated by letter dated 1<sup>st</sup> March, 2005 that it was a last chance to join the duty. The work of the respondent No. 2 was not satisfactory. His salary was withheld because of his absenteeism. Therefore, notice was published in the newspaper on 5<sup>th</sup> February, 2005 and 23<sup>rd</sup> July, 2005. Since respondent No. 2 did not join the duty, his services were terminated with effect from 23<sup>rd</sup> July, 2005. On these allegations respondent No. 2 sought dismissal of the appeal.

(iii) Learned School Tribunal after hearing both the parties came to the conclusion that enquiry was necessary as per Rule 28(5)(C) of the Maharashtra Employees of Private School Act 1977 & Rules 1981. There ought to have been full

fledged enquiry for willful absenteeism of respondent No.2. Therefore, learned School Tribunal set aside the order of otherwise termination dated 26<sup>th</sup> July, 2004 and 23<sup>rd</sup> July, 2005 and directed to reinstate the respondent No. 2 with effect from 26<sup>th</sup> July, 2004 with continuity of service and 75% backwages. This decision is impugned in this writ petition.

3. I have heard Shri. D. M. Sinde, learned counsel for the petitioners, learned AGP Shri. S. B. Pulkundwar for respondent No.1 and learned counsel Shri. S. R. Kedar for respondent No.2.

4. Learned counsel Shri. Shinde for the petitioners submitted that the respondent No. 2 was absent from duty from November, 2001 to May, 2003. Therefore, notice was issued to respondent No.2 to join the duty. But the respondent No. 2 did not join the duty and therefore notice was published in the newspaper on 23<sup>rd</sup> July, 2005 and therefore his services were terminated with effect from 23<sup>rd</sup> July, 2005. He submitted that respondent No. 2 habitually remained absent. He sent reply to the notice but did not join the duty. He submitted that, therefore, the management had no alternative but to terminate the services of the respondent

No.2. He submitted that enquiry ought to have been held but it was not held. He further submitted that respondent No.2 did not plead in the appeal memo that he tried for alternative employment after his termination but did not get any job. Since he did not plead and prove petitioner is not entitled to any backwages. He submitted that at the most he may be entitled to 50% of backwages. For this purpose he placed reliance on the cases of **Anjuman-E- Taleem & Anr. Versus State of Maharashtra & anr** reported in **2015(4) All M.R. 19, Senapati Prataprao Gujar Education Society, Kandewadi and Another Versus Keshav Pandharinath Deshmukh and others** reported in **2019(1) Mh.L.J. 727** and in the case of **Rajasthan State Road Transport Corporation, Jaipur Versus Phool chand (Dead) Through Legal Representatives** reported in (2018) 18 Supreme Court Cses 299. Shri. Shinde, learned counsel submitted that the respondent No.2 approached the School Tribunal after a period of 7 years of his termination. Therefore, these 7 years need to be excluded from the computation of backwages.

5. Learned counsel Shri. Kedar for respondent No. 2 submitted that enquiry was not held in accordance with the rules

and therefore School Tribunal was perfectly justified in setting aside the termination on this ground. He further submitted that delay of 7 years was condoned by the Presiding Officer of School Tribunal and this decision was confirmed by this Court in Writ Petition No. 9711 of 2013. He submitted that the respondent No.2 did not plead in the appeal memo that the respondent No.2 was unable to get any employment despite his best efforts. However in his affidavit he has mentioned that respondent No.2 did not get any employment despite trying hard. He submitted that therefore there is compliance and respondent No.2 is entitled to backwages. Since the delay is condoned respondent No.2 is entitled to backwages.

6. I have given thoughtful consideration to the submissions of the learned counsel of both the sides.

7. The allegations of the petitioners against respondent No.2 are that respondent No.2 was habitually absent. He did not remain present since 26<sup>th</sup> July, 2004. There was no oral termination. Since he did not join duty despite sending letters, services of respondent No.2 were terminated on 23<sup>rd</sup> July, 2005 by

publishing a notice in daily newspaper Prajawani. These allegations clearly show that respondent No.2 was habitually absent from duty. It is well settled that when there are allegations of willful absenteeism, it is obligatory on the part of the employer to hold enquiry. In the case at hand no enquiry was held in terms of Rule 28(5) r/w Rule 33 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 for the reasons best known to the respondent No.2. It is also pertinent to note that notice was sent to respondent No.2 and he answered the notice. It goes to show that respondent No. 2 did not avoid acceptance of notice. Even then a novel method was adopted for termination of services of respondent No.2. A notice was published in the newspaper about termination of service of respondent No. 2. To say the least it cannot be said that it is a valid termination order. It is the case of the respondent No.2 that he was not allowed to join the duties from 26<sup>th</sup> July, 2004. On this background it was essential for the management to hold enquiry for the absenteeism of respondent No. 2. Since enquiry was not held against respondent No. 2, it cannot be said that learned School Tribunal committed any error in setting aside the termination.

8. Now the question is of backwages. Learned counsel Shri. Shinde for the petitioners placed reliance on the case of **Rajasthan State Road Transport Corporation, Jaipur Versus Phool Chand (Dead) Through Legal Representatives** (supra) it has been held that it is necessary for the workman to plead and prove with aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. In that case the Hon'ble Apex Court granted 50% backwages. Similar principle has been laid down in the case of **Anjuman-E- Taleem & Anr. Versus State of Maharashtra & anr** and **Senapati Prataprao Gujar Education Society, Kandewadi and Another Versus Keshav Pandharinath Deshmukh and others** (supra).

9. It is pertinent to note that the respondent No.2 has not pleaded in the appeal memo that he was not gainfully employed after his termination from service. Therefore, he is not entitled to backwages to the extent of 75%. He is entitled to 50% backwages.

10. It is worth noting that the respondent No.2 was

terminated according to him on 26<sup>th</sup> July, 2004. He did not file the appeal immediately. For 7 years he did not file the appeal. According to him he was pursuing the matter with the Education Officer. Learned School Tribunal has observed that the proper remedy is by way of appeal before the School Tribunal and not pursuing with the Education Officer. It is true that delay of 7 years has been condoned. However, management cannot be penalized for inordinate delay of 7 years in filing the appeal for this reason also, he is not entitled to 75% backwages. In the circumstances since the respondent No.2 has not pleaded that he was not gainfully employed after termination from service, he is entitled to 50% backwages and not 75% backwages as is directed by the learned Tribunal. In view of this, petition is partly allowed. Order of the School Tribunal is modified. Respondent No. 2 is entitled to 50% backwages with effect from the date of the otherwise termination from the service i.e. on 26<sup>th</sup> July, 2004. Rule made partly absolute. No costs.

**[M. G. SEWLIKAR, J.]**

ssp