

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

922 WRIT PETITION NO.11540 OF 2019
WITH CA/3098/2020 IN WP/11540/2019

NAVAYUVAK SHIKSHAN SANSTHA, THROUGH
SECRETARY AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mr A. N. Nagargoje, Advocate for petitioners;
Smt. V. S. Chaudhary, A.G.P. for respondent Nos.1 & 2
Mr S. G. Rudrawar, Advocate for respondent No.3

CORAM : RAVINDRA V. GHUGE, J

DATE : 8th March, 2022

PER COURT:

1. When this petition was heard by this Court at the time of issuing notice on 21/09/2019, the following order was passed :-

“1. The petitioner/Management is aggrieved by the judgment and order dated 08/02/2018 passed by the School Tribunal, Latur, by which Appeal No.11/2016 filed by respondent No.3/employee has been allowed. His termination dated 01/07/2015 is set aside and he is granted reinstatement on the post of “Peon” with continuity of service, back wages and consequential benefits.

2. The learned Advocate for the petitioners submits that the Management has still not implemented the impugned judgment despite passage of almost 18 months.

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3. *Issue notice to the respondents, returnable on 18/11/2019. The learned AGP waives service for respondent Nos. 1 and 2.*

4. *The learned Advocate for the petitioner submits that as the impugned judgment is an ex-parte judgment, the petitioners would be praying for a remand of the proceedings.*

5. *I am of the view that in such matters where an employee has lost his source of earning, a remand order cannot be casually passed. Hence, the petitioners shall deposit an amount of Rs.1,00,000/- towards costs and the said amount shall be deposited in this Court on or before 21/10/2019. On this condition, the proceedings initiated by the appellant u/s 13 of the M.E.P.S. Act, 1977, shall be adjourned.”*

2. In view of the above order, the petitioner Management deposited Rs.1,00,000/- in this Court, vide D.D. No.023092, dated 17/10/2019. Since the order of this Court was implemented, the petitioner was granted protection against the execution proceedings initiated by the respondent under Section 13 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

3. I have considered the strenuous submissions of the learned Advocate for the petitioners, the original appellant and the learned

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A.G.P. on behalf of respondent Nos.1 and 2.

4. There is no dispute that the petitioner/Management was served with the notice of the Tribunal in view of Appeal No.11/2016, having been filed by the appellant for challenging his otherwise termination. From April 2016 till 08/02/2018, the School Tribunal kept on adjourning the matter as the petitioner/Management was duly served with the Court notice and the Advocate had also entered an appearance. As the learned Advocate representing the petitioner did not attend the Court proceedings on almost 18 occasions, the School Tribunal finally closed the matter for delivering the ex-parte Judgment, which was pronounced on 08/02/2018. The respondent appellant/employee was granted reinstatement on the post of a 'Peon' with continuity of service and full back-wages.

5. In fact, there is hardly any justification on the part of the petitioner/Management in not attending the School Tribunal Proceedings on almost 18 dates over a period of one year and 10 months. In the absence of justification, the learned Advocate for the appellant would be right in contending that this Court should not entertain this petition. However, I find that there is one

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debatable/contentious issue involved in the matter, which would require a hearing and a decision on contest between the parties. The appellant submits that he was orally terminated on 01/07/2015. The Management has come with a case in this Court that the appellant was never terminated from employment. Since his appointment was on 'no grant basis', he lost interest due to the meager salary and stopped reporting for duties. After the petitioner/Management started receiving grants, that the appellant approached the School Tribunal.

6. In the peculiar facts of this case, while issuing notice on 21/09/2019, I had preempted the Management that the deposit of Rs.1,00,000/- would be a condition for protecting the Management against the execution and the said amount would be utilized as payment of costs to the appellant, in the event of this Court coming to a conclusion that the matter could be remanded for a hearing.

7. The learned Advocate for the petitioners submits that the costs may be reduced. The learned Advocate for the appellant submits that reduction in costs would amount to injustice to the appellant.

8. In view of the above, this petition is partly allowed.

The impugned Judgment dated 08/02/2018 is quashed and set aside, for the reasons assigned herein above and Appeal No.11/2016 is remitted to the file of the School Tribunal, Latur, on the following conditions:-

(a) The appellant, namely, Subhash Dhondiram Garibe would be at liberty to withdraw the amount of Rs.1,00,000/-, deposited in this Court, without conditions, towards costs for remanding the matter back to the School Tribunal, Latur. The said amount can be withdrawn under identification of the learned Advocate;

(b) By consent of the learned Advocate for the appellant, the amount of interest accrued on the deposited amount, is to be deposited with the Advocate's Association of Bombay High Court, at Aurangabad and the Registry shall accordingly transmit the interest amount to the Advocate's Association;

(c) The appellant, the petitioner/Management and the Education Officer shall appear before the School Tribunal at

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Latur, on 01/04/2022 and the notices need not be issued by the School Tribunal;

(d) The learned Advocate for the appellant graciously submits that the copy of the appeal paper book would be supplied to the learned Advocate for the petitioner/Management, on or before 17/03/2022;

(e) The petitioner/Management shall enter its written statement along with documents, if any, before the Tribunal on 22/04/2022;

(f) After granting reasonable opportunity of hearing to the parties, the learned School Tribunal would decide the appeal No.11/2016, as expeditiously as possible and in any case, on or before 30/08/2022.

9. Pending civil application does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)

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