

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

901 WRIT PETITION NO.10239 OF 2015

THE CHAIRMAN A CHRISTIAN MINORITY PRIVATE INSTITUTION  
OF DIOCESE OF AURANGABAD AND OTHERS  
VERSUS  
VERONICA PREM KUMAR AND ANOTHERS

...

Advocate for Petitioners : Mr. V. S. Kadam  
Advocate for Respondent No.2 : Mr. B. A. Shinde

CORAM : RAVINDRA V. GHUGE, J.

DATE : 25th March, 2022

**ORDER:**

1. In this petition, a caveat was filed by Advocate Mr. P. N. Kalani who appeared in the matter. This Court passed an order dated 15.10.2015 as under:-

“1. The petitioner is challenging the Judgment & order dated 20.8.2015, delivered by the School Tribunal, Latur in Appeal No.7/2014, by which the appeal has been allowed.

2. Issue notice before admission to the respondents returnable on 27.11.2015. Mr Kalani learned Advocate appears on caveat and waives service for respondent No.1.

3. Till the next date of hearing in this matter, the respondent shall not initiate steps for implementation and execution of the impugned Judgment.”

2. On 22.03.2016, Mr. Kalani was replaced by Advocate Mr. N. L. Jadhav, which was noted in the order passed on the said date. Since it was informed that respondent No.1 appellant expired on 29.04.2016, the legal heirs were permitted to be brought on record. None appeared for the legal heirs on 07.09.2016. Civil Application No. 11363/2016 for bringing the legal heirs on record was allowed.

3. In the order dated 06.03.2017, it was recorded that the learned Advocate Mr. S. J. Jain has appeared and hence, the appearance of Advocate Mr. N. L. Jadhav was discharged. On 14.12.2017, none appeared for the legal heirs. On 08.03.2022, I passed the following order:-

“1. The learned Advocate for respondent No.1-A was absent yesterday and is also not available today.

2. List this petition on 15/03/2022.

3. If none appears for the legal heirs of the original employee, this petition would be considered with the assistance of the learned Advocate for the petitioners.”

4. On 15.03.2022, I passed the following order:-

“1. Advocate Mr.S.J.Jain appearing for the LR's of the deceased original appellant is not available today. He was absent on 07.03.2022 and also on 08.03.2022.

2. The period of purported unemployment of the deceased appellant was from 11.01.2014 and she passed away on 29.04.2016. The School Tribunal has granted reinstatement in service, continuity and full back wages. She would be, at best, entitled for back wages for this period.

3. The learned Advocate for the Management seeks time to take instructions.

4. List this petition on 25.03.2022 in the "passing orders" category.

5. Yet, none appears for the legal heirs.

6. In the above circumstances, I have considered the strenuous submissions of the learned Advocates for the petitioner and on behalf of respondent No.2 Education Officer. With their assistance, I have gone through the petition paper book and the record available.

7. It is contended by the petitioner that the deceased appellant was appointed by the petitioner as an Assistant Teacher on 12.06.2006, without conducting any selection process. She had acquired qualifications of M.A.B.Ed. After working in the academic year 2006-07, she was again appointed as teacher for the academic year 2007-08. Thereafter, she was again appointed in a similar fashion for the academic years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14. According to the petitioners, these were temporary appointments for 11 months on each occasion and termination has

occurred by efflux of time after 30th April in each year or after the end of the academic year.

8. It is the case of the petitioners that the deceased submitted a resignation letter on 11.01.2014 as she was suffering from diabetics. She requested to be considered for the pre-primary school which would carry a lesser load. Her resignation was accepted on the same day i.e. on 11.01.2014. On 15.04.2014, she moved a representation to the management praying for an appointment in the pre-primary school. Since the said order of appointment was not issued, she approached the School Tribunal on 06.02.2014 and filed Appeal No.07/2014. By the impugned judgment dated 20.08.2015, her resignation was treated as otherwise termination and was quashed and set aside. She was granted reinstatement with continuity, full back wages and all consequential benefits.

9. The strenuous submission of the learned Advocate for the petitioners is that the appellant had merely pleaded in her appeal that her resignation be quashed and set aside and she may be reinstated in service as an Assistant Teacher in the same school on the same salary and to pay her back wages from 11.01.2014 till her reinstatement. It is, therefore, submitted that she had not prayed for continuity in service.

10. Insofar as the last submission of the petitioners as recorded above is concerned, it would amount to taking a pedantic approach in concluding that a specific word "continuity" was not set out in the prayer clause. When a litigant prays for quashing of the termination and further prays for reinstatement with entire back wages, payment of back wages cannot be without granting continuity in service. Moreover, if the termination of an employee is held to be illegal and the relief of reinstatement is granted, continuity in service is a normal relief. The same cannot be said about payment of back wages since it depends upon whether an employee has produced some evidence or has at least made a statement on oath that he/she was not gainfully employed during the period of unemployment. The onus and burden of proving this aspect lies on the shoulders of the employee who has put forth such assertion. The onus would then shift on the employer to establish that the employee was gainfully employed.

11. From the record, it does appear as under:-

- (a) There was no selection process preceding the appointment of the petitioner.
- (b) The Education officer has filed an affidavit before the tribunal contending that neither any permission for recruitment was taken nor was there a proposal for approval.

- (c) The appellant commenced her duties as a teacher from June, 2006 for the academic year 2006-07 and she continued as such until the academic year 2013-14.
- (d) She had thus worked for a period of almost eight years.
- (e) The appellant tendered a resignation dated 11.01.2014 so as to be relieved from the school and to be absorbed in a pre primary school. It was a conditional resignation.
- (f) The management accepted the resignation instantaneously.

12. In the light of the above, keeping in view that the petitioner is a non grant-in-aid Institution and has a status of minority Institution, it could not have accepted the resignation of an employee instantaneously. The procedure for resigning is set out in Section 7 of Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977. So also, in my view, such resignation would not amount to be a resignation free of any conditions. As the appellant has not denied her resignation letter, it appears that the same has been issued under distress of being a severe diabetic patient. She expected mercy and a humane approach from the management by relieving her from her duties and absorbing her in the pre primary school. That was the condition set out in the resignation letter. If the management did not intend to recruit her in the pre primary school, it could have made

it clear to the appellant and probably the appellant would then have withdrawn her resignation letter as it was an unconditional resignation from her duties. Moreover, Rule 40 of the MEPS Rules, 1981 does not permit the management to accept the resignation instantaneously. Hence, the conclusion drawn by the School Tribunal, while setting aside the acceptance of resignation, cannot be faulted with.

13. In the above backdrop, the appellant was working for almost 8 years. She has passed away on 29.03.2016. When the impugned judgment was delivered on 20.08,.2015, she could have been reinstated in service.

14. The learned Advocate for the petitioners has criticized the impugned judgment on two counts, that (1) the appellant was entitled for back wages and that (2) she cannot be continued in service.

15. Insofar as back wages are concerned, the learned counsel for the petitioners submits on instructions that the management, which is a non grant-in-aid institution, is willing to pay 50% of the back wages. He, however, opposes continuity in service.

16. In my view, as there was no specific pleading or an affidavit by the employee before the tribunal, the proposal put forth by the management agreeing to pay 50% of the back wages can be appreciated.

17. Insofar as the aspect of continuity is concerned, the appellant is no more. She was issue less and her husband who was 56 years of age in 2016, is the legal heir on record. He is around 62 years of age today. The tenure of employment of the appellant is quite short, in the sense that continuity of service in the peculiar facts and circumstances of the case, would be impracticable. Her termination dated 11.01.2014 till her demise on 29.04.2016 would fetch her 50% back wages and if continuity is granted, her legal heir would be entitled for gratuity. If she is entitled for pensionary benefits, her legal heir would be able to receive the benefits. So also, it is well settled that a break in service during the summer vacation is not to be construed as a break and hence, her service could be reckoned with from 12.06.2006 till 29.04.2016 which is a period of almost 10 years.

18. In view of the above, the writ petition is partly allowed.

19. Though the impugned judgment is sustained, the direction to pay fullback wages, stands modified to the extent of granting 50% back wages for the period 11.01.2014 till 29.04.2016. The said back wages can be computed by the petitioners and a demand draft can be delivered on the address of the legal heir of the deceased appellant, on or before 31.05.2022. The petitioners would calculate the gratuity and pay the said amount to the Legal heir along-with the back wages.

20. If the demand draft vide which the payment is made, is not delivered to the legal heir of the deceased appellant and the same is returned to the management, the management would be at liberty to approach this Court with a civil application for seeking further directions.

21. No order as to costs.

( RAVINDRA V. GHUGE, J. )

JPC