

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

WRIT PETITION NO. 3308 OF 2021

Gajanan S/o Totaram Tamaskar Vs. Jyoti Shikshan Prasarak Mandal
and Others

WITH

WRIT PETITION NO. 1966 OF 2022

Jyoti Shikshan Prasarak Mandal and Another Vs. Gajanan S/o
Totaram Tamaskar and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

WP No. 3308/2021

Mr. V.A. Kothale, Advocate for Petitioner

Mr. C.A. Joshi, Advocate for Respondent No.1

Mrs. S.S. Jachak, AGP for Respondent No.3

WP No. 1966/2022

Mr. C.A. Joshi, Advocate for petitioners

Mr. V.A. Kothale, Advocate for Respondent No.1

Mrs. S.S. Jachak, AGP for Respondent Nos.2 & 3

CORAM : MANISH PITALE, J.

DATE : 24th JUNE, 2022

WRIT PETITION NO. 3308 OF 2021

By this petition, the petitioner is aggrieved because despite the fact that the appeal filed by the petitioner stood allowed by the Tribunal and interim order of reinstatement was confirmed along with continuity of service from the date of termination of service, there was no consequential direction

issued by the Tribunal in respect of entitlement towards 100% salary.

2. This direction according to the petitioner was necessitated in the backdrop of the directions issued in the interim order dated 02/08/2016, passed by the Tribunal during pendency of the appeal. It is submitted that a perusal of the aforesaid interim order would show that while directing reinstatement of the petitioner at interim stage, it was directed that during pendency of the appeal, the petitioner will be entitled to receive 75% of the salary. It is submitted that while confirming the interim order, a consequential direction ought to have followed for balance 25% of the salary, particularly, because the petitioner actually worked pursuant to the reinstatement granted by the interim order dated 02/08/2016.

3. This Court has perused the interim order dated 02/08/2016, which reads as follows :

- “1) Ex-parte ad interim order passed in favour of the appellant.
- 2) The effect of order dated 21.07.2016 is hereby stated till further order.
- 3) The respondent is directed to reinstate him immediately and continue his services on his post of assistant teacher till further order.
- 4) The appellant is entitled to received 75% of his salary till further order.
- 5) The appellant should make the compliance of Order XXXIX Rule 3 by communicating the order to the respondents through registered post immediately within 2 days and compliance be reported.”

4. The appeal stood allowed by order dated 26/03/2021, passed by the Tribunal in the following terms :

- “1) The interim order of reinstatement dated 02.08.2016 passed below Exh.3 is hereby confirmed.
- 2) The appellant is entitled for continuity of service from the date termination till today. The respondents to take necessary entries in the record.
- 3) Copy of this order be sent to the Education Officer for information and necessary action.
- 4) See order below Exh. No.3 dated 02.08.2016.”

5. A perusal of the above quoted two orders clearly shows that there is substance in the contentions raised on behalf of the petitioner. Having confirmed the interim order and allowed the appeal filed by the petitioner, the Tribunal ought to have granted consequential order of balance 25% salary, particularly when there is no dispute about the fact that the petitioner did work upon being reinstated as per the aforesaid interim order dated 02/08/2016.

6. In view of the above, the writ petition is allowed and impugned order is modified to the extent that additionally it is directed that the respondent – management shall pay balance 25% salary to the petitioner from 02/08/2016, till the date of his superannuation, i.e. 31/03/2021. The said amount be disbursed within a period of six weeks from today.

7. It is further directed that in the light of the appeal of the petitioner being allowed by the impugned order, there ought to be no impediment for the respondent - management to forward the pension papers of the petitioner within four weeks, if not already forwarded.

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By order dated 06/06/2022, by way of indulgence, this Court had granted time till 15/06/2022, to the petitioner – management to deposit amount as directed by the earlier order dated 19/04/2022. It was specifically observed that in case of failure to deposit the amount by 15/06/2022, the petition would stand dismissed without reference to the Court.

2. It is an admitted position that the petitioner - management failed to abide by the said direction. Hence, the petition stands dismissed in terms of the order dated 06/06/2022.

JUDGE