

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

**CIVIL APPLICATION (CAW) NO. 776 OF 2021
IN
WRIT PETITION NO. 5297 OF 2019**

Mahesh Vidya Prasarak Shikshan Sanstha, Nagpur

Vs.

Sou. Meena Laxmikant Jumde and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. B.G. Kulkarni, Advocate for petitioner.
Mr. P.D. Meghe, Advocate for respondent No.1.
Mr. D.P. Thakare, AGP for respondent/State.

CORAM : MANISH PITALE J.
DATE : 29.03.2022.

This is an application filed on behalf of the petitioner seeking specific direction to the respondent No.2 – Education Officer in the context of the liability to pay back-wages to the respondent No.1, in the light of the directions given by the School Tribunal.

2. The applicant/petitioner i.e. the Management has stated on affidavit in this application that during specific periods when the service of respondent No.1 was terminated and the matter was pending before the School Tribunal, the post of Headmistress, which was occupied by the respondent

No.1 remained vacant. The periods during which the said post remained vacant have been specifically stated and on the basis of certain judgments of this Court, it is contended that when the post in question was a sanctioned post and it remained vacant for specific period of time, for the said period the liability to pay backwages would rest with the State, considering the fact that the School in question is admittedly a grant-in-aid School.

3. In this regard, reliance was placed on the judgment of the Division Bench of this Court in the case of *Kohali Rural Education Society and anr. Vs. The State of Maharashtra and Others* (judgment and order dated 24.08.2016) passed in Writ Petition No.6274/2015. Reliance was also placed on the judgment of a learned Single Judge of this Court dated 10.12.2019 passed in Writ Petition No.5108/2013 (*Nutan Vidarbha Shikshan Mandal and anr. Vs. Ambadas Sitaram Satange and anr.*) and connected petitions.

4. On the basis of the aforesaid judgments, learned counsel appearing for the petitioner submitted that the petitioner would forward bills pertaining to the said period when the post had remained vacant, to the respondent No.2– Education Officer. It is submitted that

the respondent No.2 – Education Officer may be directed to examine the bills to be forwarded by the petitioner – Management in a time bound manner so that the respondent No.1 can get appropriate relief insofar as backwages are concerned. It is also stated on behalf of the petitioner that the respondent No.1 was permitted to join service on 31.01.2017 i.e. the day she was to superannuate and thereupon the respondent No.1 stood retired from service. On this basis, it is submitted that the petitioner could also forward pension papers of respondent No.1 to respondent No.2 – Education Officer for further processing.

5. Mr. P.D. Meghe, learned counsel appearing for respondent No.1 does not have any specific objection to the prayers made in the present application, but he has invited attention of this Court to the aspect that the backwages payable to the respondent No.1 would include the entitlement of respondent No.1 to arrears as payable under recommendations of the 6th Pay Commission, which was even prior to the termination of service of respondent No.1 on 02.03.2009. The learned counsel for the petitioner has assured this Court that even the said aspect of the matter would be covered in the bills that would be forwarded to the respondent No.2 – Education Officer.

6. Mr. Thakare, learned Additional Government Pleader appearing on behalf of respondent Nos.2 submits that if such a proposal along with bills is forwarded by the petitioner – Management, the respondent No.2 – Education Officer would consider the same and pass appropriate orders.

7. This Court has considered the judgments on which reliance is placed by the learned counsel appearing for the applicant/petitioner. In the case of ***Kohali Rural Education Society and anr. (Supra)***, while considering a similar situation on the question of liability of the State Government to pay amounts towards back-wages, in a situation where the post in question was found to be undisputedly a sanctioned post and the said post had remained vacant, it was held by the Division Bench of this Court as follows :

“On hearing the learned Counsel for the parties, we find that it would be necessary to direct the respondent nos.1 and 2, in the circumstances of the case, to release the salary in favour of the respondent no.3. In the case before the Hon'ble Supreme Court, the liability to pay the salary was specifically fastened on the Management and the State Government was discharged of its liability to pay the salary. Such is not the case here. In the case before the Hon'ble Supreme Court, the Management had sought the salary by filing a petition and the said petition was withdrawn before a second petition for the same relief was

filed. Though in the peculiar facts before the Hon'ble Supreme Court, the Hon'ble Supreme Court had held that the Management would be liable to pay the salary and the State Government would not be liable to reimburse it to the Management, the Hon'ble Supreme Court has observed that generally it would be for the State Government to release the salary to a discharged employee of a grant-in-aid school. In the instant case, though this Court had directed the Management to pay the salary to the respondent no.3, this Court had kept the issue in regard to the reimbursement of the salary by the petitioners from the State exchequer, open. The issue in regard to the payment of salary by the Management was not foreclosed by the judgment in the writ petition. It is rightly submitted on behalf of the petitioners that since the petitioners had not employed any other employee in the place of the respondent no.3 as the Headmaster and had not secured the salary for such other employee, it would be necessary for the respondent nos.1 and 2 to pay the salary of one employee i.e. the respondent no.3 in this case. The post on which the respondent no.3 was appointed was a sanctioned post and his promotion was approved. If that is so, the respondent no.2 could not have declined to reimburse the salary to the petitioners. In the facts of this case, we are of the view that it would be necessary for the respondent nos.1 and 2 to pay the salary to the respondent no.3.”

8. The learned Single Judge of this Court in the case of ***Nutan Vidarbha Shikshan Mandal (supra)***, on the aforesaid aspect of the liability of the State to reimburse private management in similar facts, held as follows:

“In the impugned judgment there is a direction to pay back-wages to the respondent No.1 from 23/05/2011 till his reinstatement. By the interim directions issued by this Court in Writ Petition No.3382/2015 the respondent No.1 is receiving his regular salary pursuant to his reinstatement. Insofar as the question of back-wages is concerned the Education Officer would be required to examine the entitlement of the Management to receive grants for that period. If it is found that there was no other appointment made on the post that was held by the respondent No.1 and further his post was duly sanctioned, then the Education Officer would be liable to release salary grants in that regard.”

9. In view of the above quoted position laid down by the Division Bench of this Court and followed by the learned Single Judge of this Court, there does not appear to be any impediment in granting the prayers made in the present application.

10. Accordingly, the application is allowed in terms of the prayers made therein. Consequently, the petitioner is directed to forward proposal along with bills to the respondent No.2 – Education Officer, giving all the details regarding the post in question being sanctioned and the periods during which it remained vacant. The proposal and bills would also include the claim of respondent No.1 as regards arrears in terms of recommendations of the 6th Pay Commission. The petitioner shall prepare the

proposal and the bills in consultation with respondent No.1 to obviate any further dispute in the matter. Such proposal shall be forwarded by the petitioner along with the bills within a period of two weeks from today. Upon receipt of such proposals and bills, the respondent No.2 – Education Officer shall examine the same and pass appropriate orders, in the light of the above referred position laid down by the Division Bench and learned Single Judge of this Court, within a period of eight weeks of receipt of the proposal.

11. In addition, in the light of submissions made on behalf of the petitioner and respondent No.1, the petitioner shall also forward pension papers within a period of four weeks concerning the case of respondent No.1, to the respondent No.2 – Education Officer. Upon receipt of such pension papers, the respondent No.2 – Education Officer shall pass appropriate orders within a period of eight weeks of receipt of such pension papers from the petitioner – Management.

12. The application stands disposed of.

JUDGE