

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 25 OF 2015

Ku. Pushpa d/o Punjaramji Chambhare,
Aged about 47 years, Occupation – Nil,
R/o C/o. Shri D.B. Dandekar, Umap
Niwas, Gondpipari, Tahsil – Gondpipari,
District – Chandrapur.

.... **PETITIONER**

VERSUS

- 1) Krishi Jiwan Vikas Pratishthan,
Yenbondi, Tahsil and District
Chandrapur, through its Secretary,
Shri Vijay Wasade.
- 2) Dalit Mitra Shri V.T. Nagpure,
D.Ed. College, Gondpipari, District-
Chandrapur, through its Principal.
- 3) Deputy Director of Education,
Nagpur Division, Nagpur.
- 4) The Education Officer (Secondary),
Zilla Parishad, Chandrapur.

.... **RESPONDENTS**

Mr. PN. Shende, Counsel for the petitioner,
Mr. M.R. Joharapurkar, Counsel for respondents 1 and 2,
Ms. T.H. Khan, AGP for respondents 3 and 4.

WITH

WRIT PETITION NO. 1158 OF 2016

- 1) Krushi Jiwan Vikas Pratisthan,
Yenbodi, Tahsil and District
Chandrapur, through its Secretary,
Shri Vijay Wasade.

2) The Principal,
Dalit Mitra V.T. Nagpure D.Ed. College,
Gondpipari, Tahsil & District Chandrapur **PETITIONERS**

VERSUS

1) Pushpa Punjaramji Chambhare,
R/o at Post - Gondpipari, Tahsil and
District – Chandrapur.

2) The Deputy Director of Education,
Nagpur Region, Nagpur.

3) The Education Officer (Secondary),
Zilla Parishad, Chandrapur. **RESPONDENTS**

Mr. M.R. Joharapurkar, Counsel for the petitioners,
Mr. P.N. Shende, Counsel for respondent 1,
Ms. T.H. Khan, AGP for respondents 2 and 3.

CORAM : ROHIT B. DEO, J.
DATED : 28th APRIL, 2022

ORAL JUDGMENT :

These petitions emanates from the judgment dated 28-8-2014 rendered by the School Tribunal, Chandrapur whereby the School Tribunal, Chandrapur decided Appeal (STC) 279/1996 and directed the management to pay back-wages to the teacher for the period September, 1996 to August, 2006 and May, 2008 to November, 2009 and further from September, 2011 till the date of reinstatement.

2. The backdrop in which the decision supra is rendered, is that the

employee preferred Appeal 279/1996 assailing her oral termination dated 11-9-1996. The Tribunal dismissed the appeal vide judgment dated 21-9-2005 on the premise that the teacher was appointed as In-charge Principal without she possessing the requisite qualification. The judgment of the School Tribunal was challenged in Writ Petition 1656/2012. The High Court set aside the judgment of the Tribunal by order dated 04-12-2013 after recording a finding that the substantive appointment of the teacher was as Assistant Teacher in the school and she was only assigned the charge of Principal of the D.Ed. College. The High Court did not agree with the finding recorded by the Tribunal that the teacher did not hold the requisite qualification. The High Court remitted the matter to the Tribunal for the limited purpose of determining the back-wages.

3. The teacher stepped into the witness box and was subjected to cross-examination. The management did not adduce evidence in rebuttal and rested on the admissions extracted during the cross-examination of the teacher.

4. The Tribunal held the teacher entitled to back-wages for the period noted supra. The Tribunal directed that back-wages be paid at the rate of Rs.3,061/- (Rupees Three Thousand Sixty One) per month

for the period noted supra on the premise that the teacher admitted her signature on the pay register from which it is discernible that from June 1994 to September, 1994 she received Rs.3,061/- (Rupees Three Thousand Sixty One) per month. The teacher is aggrieved to the extent the back-wages are directed to be paid at the rate of Rs.3,061/- (Rupees Three Thousand Sixty One) per month and has preferred Writ Petition 25/2015, while the management is assailing the order of the Tribunal in entirety in Writ Petition 1158/2016.

5. After hearing the learned Counsel for the management Mr. M.R. Joharapurkar and the learned Counsel for the teacher Mr. P.N. Shende, I am satisfied that the Tribunal committed a patent illegality in restricting the back-wages to Rs.3,061/- (Rupees Three Thousand Sixty One) per month on the premise that the management paid the teacher said amount during June, 1994 to September, 1994. The termination of the teacher is held illegal. I need not delve deeper in the submission canvassed by Mr. M.R. Joharapurkar that the school was unaided. It is too well settled to warrant a debate that even employees of an unaided educational institution which is governed by the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules framed thereunder are entitled to payment of salary at par with teachers working with aided institutions.

No distinction muchless discrimination can be made on the basis of the institution receiving or not receiving a grant-in-aid. The Tribunal clearly failed to appreciate that the teacher was entitled to be paid back-wages on the basis of the pay scale prescribed. The fact that the management illegally paid the teacher a paltry amount during a particular period is of no relevance.

6. As noted supra, the management has not adduced evidence in rebuttal. The teacher has candidly disclosed in her affidavit in lieu of oral examination-in-chief that during certain period of her forced unemployment due to the illegal termination, she was working with some institutions. The teacher has further disclosed the amount of honorarium received by her during the period of the forced unemployment. It appears that the Tribunal has totally ignored and kept out of the consideration the entire period during which the teacher was working without realising that a terminated employee cannot be expected to starve and that the Tribunal or Court determining the back-wages is expected to adjust the amount received by the terminated employee while she was engaged in work during the period of her forced unemployment due to the illegal termination. The other submission canvassed by Mr. M.R. Joharapurkar is that the teacher admitted that she acquired LL.B. qualification, and applied and was

granted licence to practice by the Bar Council of Maharashtra and Goa in the year 2005. This admission will have to be read holistically along with the subsequent denial of the teacher of the suggestion given by the counsel for the management that the teacher was, as a fact, earning. The teacher has categorically stated that while she did apply and obtain the *Sanad*, she did not practice law nor did she earn as an advocate. In the absence of any rebuttal by the management, it would be difficult to record a finding that the fact that the teacher obtained licence to practice *ipso facto* leads to the inference that she was a practicing advocate.

7. Considering the evidence on record holistically, I have no option but to set aside the judgment impugned to the extent the back-wages are restricted to a particular period and are made payable at the rate of Rs.3061/- (Rupees Three Thousand Sixty One) per month.

8. The judgment of the Tribunal is set aside and is substituted by the following order :

- (a) The teacher shall be entitled to 100% back-wages for the period from her termination till her reinstatement, in accordance with the prescribed pay scale.
- (b) The amount earned by the teacher during the period

referred to in the operative part of the judgment impugned shall be deducted from the back-wages payable to the teachers.

- (c) The Deputy Director of Education, Nagpur is directed to workout the back-wages receivable by the teacher on the basis of the pay scales applicable from time to time, for the relevant period and to ensure that the amount found due and payable is paid by the management to the teacher, within ninety days of such determination.
- (d) The Deputy Director of Education, Nagpur shall complete the exercise of determination of the back-wages payable to the teacher, within the next sixty days.
- (e) If the back-wages are not paid by the management within the period stipulated supra, the amount shall carry interest at the rate of 9% per annum.
- (f) At this stage, the learned Counsel for the teacher Mr. P.N. Shende points out that even after the teacher was reinstated during the pendency of the petition, she has not received a single rupee towards salary from July, 2016 and even for the earlier period she has not received salary in accordance with the pay scale prescribed.
- (g) The Deputy Director of Education, Nagpur shall also look

into the said grievance and determine the amount due and payable to the teacher after her reinstatement during the pendency of the petition, and if any amount is found due and payable, the management shall pay the same to the teacher, within ninety days of such determination.

- (h) The teacher and the management are at liberty to appear before the Deputy Director of Education, Nagpur and place on record their respective stands in the enquiry/determination which may be conducted/done by the said authority.

9. Writ Petition 25/2015 preferred by the teacher is allowed in the afore-stated terms.

10. Writ Petition 1158/2016 preferred by the management is dismissed.

11. No costs.

JUDGE

adgokar