

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

Writ Petition 1652 of 2022

Pankaj s/o Shriram Bende vs. Vrundavan Shikshan Va Bahuddeshiya Sanstha & others

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

Court's or Judge's Orders

Mr. Pankaj Jibhkate, Advocate for the Petitioner.
Mr. S.D. Chande, Advocate for Respondent 1.
Mr. N.S. Rao, A.G.P. for Respondents 3 to 5.

CORAM : ROHIT B. DEO AND Y.G. KHOBRAGADE, JJ.

DATE : 1st FEBRUARY, 2023.

The grievance in the petition is that the name of the petitioner is not included in the 'Shalarth Pranali', as a result, the petitioner has neither received the arrears of salary due and payable in accordance with the judgment and order of the learned School Tribunal, Amravati ('Tribunal' for short) in Appeal No.20/2017, nor the petitioner is being paid regular salary.

02] It is not in dispute that vide judgment and order dated 04/02/2019, the Tribunal set aside the termination order dated 21/06/2017 and directed the Management to reinstate the petitioner with continuity in service and full back wages.

03] According to the petitioner, he was reinstated on 15/03/2019. The Education Officer (Secondary) directed the Management to submit the bills from the date of his reinstatement in order to facilitate the payment of the financial dues.

04] The Management challenged the judgment of the Tribunal in Writ Petition 5012/2019 and this Court stayed the order of payment of full back wages subject to the Management depositing Rs.2,50,000/- in the Court. It is common ground that Writ Petition No.5012/2019 is dismissed as withdrawn.

05] It does not appear to be in dispute that the school, in which the petitioner was working, was receiving 20% grant-in-aid since the academic session 2017, and the school has closed down in May, 2022. Insofar as the back wages part is concerned, the petitioner has already initiated contempt of court proceedings and we are, therefore, not called upon to touch the said aspect. However, the petitioner has not received the salary due and payable from the date of the reinstatement till the closure of the school.

06] Learned A.G.P. Mr. Rao fairly states, on the basis of the instructions received, that the State shall make the payment of its part i.e. 20% grant-in-aid due and payable from the academic session 2017 till the date of closure of the school. We accept the said statement.

07] Insofar as the balance 80% of the salary from the date of reinstatement till the date of closure of the school, it is the obligation on the Management to pay the same. While learned Counsel Mr. Chande for respondent 1 does make an attempt to submit that the closure of the school was in part due to the negligence or misconduct of the petitioner, and further the petitioner did not attend duty, we are not inclined to accept such submission. If the petitioner did not report for

duty, it was open to the Management to proceed against the petitioner in accordance with law. Nothing is brought to our notice to suggest that any disciplinary action is initiated against the petitioner after he was reinstated, on the premise that he did not discharge his duties.

08] Mr. Chande would submit that the school is not in a financial position to make the payment. It is well settled that the dues of the employees cannot be hostage to the financial inability of the employer. We outrightly reject the submission of Mr. Chande that the salary cannot be paid since the Management is not in a position to do so.

09] In the result, we allow the petition in part.

10] We accept the statement made on behalf of the State that the 20% grant-in-aid payable towards the salary of the petitioner shall be directly paid to the petitioner for the period academic session 2017 till the closure of the school within the next six months.

11] We further direct the respondents 1 and 2 to pay its 80% contribution of the salary for the academic session 2017 till closure of the school directly to the petitioner within the next six months.

(Y.G. Khobragade, J.)

(Rohit B. Deo, J.)

**sandesh*