

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

**WRIT PETITION NO. 2778 OF 2019**

Dattatraya Shikshan Sanstha and anr\_\_ Vs. \_\_ Dinkar Sitaram Jadhav and ors

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

Court's or Judge's orders

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Mr. S.S.Deshpande, Advocate for petitioner  
Mr. G.G.Mishra, Advocate for respondent No.1  
Mrs. M.A.Barabde, AGP for respondent Nos. 2 & 3/State.

**CORAM : AVINASH G. GHAROTE, J.**  
**DATE : 28/02/2023**

1] Heard Mr. Deshpande, learned counsel for the petitioner and Mr. Mishra, learned counsel for respondent no.1, learned AGP for respondent nos. 2 & 3.

2] The petition challenges the judgment dated 7.3.2019 passed by the learned School Tribunal (pg. 85) whereby the respondent no.1 is held entitled to 50% of the back-wages from the date of his termination i.e. 20.6.2005 to the date of reinstatement i.e. 20.6.2015. The judgment further permits the management to request the Education Officer for reimbursement of the amount and in case the management fails to comply with the said direction of payment, the respondent no.3 is directed to deduct the said amount from the grant due and payable to the respondent no.1 management and pay the back salary amount to the appellant.

3] In so far as the direction to pay the arrears of salary for the aforesaid period, Mr. Deshpande, learned counsel for the petitioner submits that the salary was not paid on account of non- approval by the respondent no.3 and therefore, the Management be absolved of the responsibility. He further submits that the direction to pay back salary was not justified, as the Respondent no.1/appellant had not tendered any services for the aforesaid duration.

4] So far as the entitlement is concerned, the termination of the respondent no.1 has been set aside which has become final. The respondent no.1 has thereafter been reinstated. The only question involved is regarding the quantum of back-wages awarded. The respondent no.1 in his submission has categorically made a statement that during the period of his termination and reinstatement, he was not gainfully employed. Once that statement is there, the burden is upon the management to show that the position was otherwise.

5] It is not disputed by Mr. Deshpande, learned counsel for the petitioner that there is no material on record brought by the management to indicate the gainful employment of the respondent No.1 during the aforesaid period. The position would therefore be covered by the judgment of the Hon'ble Apex Court in **Armed Forces Ex Officers Multi Services Co.Op Society**

**vrs. Rashitriya Mazdoor Sangh, (2022) 9 SCC 586**, in view of which, I do not see any reason to disturb the findings of the learned School Tribunal, in this regard.

6] In so far as the plea that the liability to pay the back-wages was that of the respondent No.3 is concerned, the Id School Tribunal in para 12 to 14 has considered the conduct of the management in the matter of pressuring the respondent no.1 in giving an undertaking that the respondent no.1 would not claim backwages in case he is reinstated, after considering which the claim for back-wages has been awarded and therefore, I do not see any reason to interfere in the findings rendered by the School Tribunal.

7] The amount deposited in this Court along with accrued interest, if any, be paid over to respondent no.1 which shall be deducted from the entire back-wages due and payable to the respondent no.1.

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8] Petition is dismissed. No costs.

**JUDGE**

*Rvjalit*