



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

WRIT PETITION NO.3957 OF 2018

1. Mahatma Fule Magasvargiya
Kalyankari Mandal, Tuljapur (Railway),
Tahsil -Seloo, District : Wardha,
through its President/ Secretary.
2. Swargiya Laxmanrao Mankar (Guruji),
Adiwasi Aashram Shala, Wadgaon
(Jangali), Tahsil : Seloo, District :
Wardha, through its Principal.

.... **PETITIONERS.**

// VERSUS //

1. Ku. Shobha D/o. Ramchandra Paliwal,
(Shobha Wd/o.Rajendra Paliwal)
Aged 38 years, Occ. Service,
R/o. Kelzar, Tahsil : Wardha,
District : Wardha.
2. The Project Officer,
Ekatmik Adiwasi Vikas Prakalp
Karyalaya, Opposite to RTO Office,
Giripeth, Nagpur.
3. Additional Commissioner,
Ekatmik Adiwasi Vikas Prakalp
Karyalaya, Opposite to RTO Office,
Giripeth, Nagpur.

.... **RESPONDENTS.**

Shri M.V.Samarth, Sr. Adv. a/b Shri Tejas Patil, Advocate for Petitioners.
Smt.S.W.Deshpande, Advocate for Respondent No.1.
Ms Hemlata Jaipurkar, A.G.P. for Respondent Nos. 2 and 3.

CORAM : ANIL S. KILOR, J.
DATED : AUGUST 28, 2023

ORAL JUDGMENT :

1. Heard.

2. The judgment and order dated 31/08/2017 passed by the Presiding Officer, Additional School Tribunal, Chandrapur in Appeal STC No. 49/2004, quashing and setting aside the termination order of the respondent No.1 as Assistant Teacher and thereby directing the petitioner/ management to reinstate the respondent No.1 with continuity of service and full back wages with all pecuniary benefits from 31/08/2004 to 02/09/2008, is under challenge in this writ petition.

3. This is a third round of litigation. Earlier, the Tribunal allowed the appeal vide judgment and order dated 30/11/2013 directing to pay 50% back wages, which was set aside by this Court and remanded the matter back to the Tribunal to decide the same afresh.

4. Thereafter, the Tribunal decided the appeal vide judgment and order dated 27/03/2015 dismissing the appeal and it was set aside by this Court and remanded the matter back to the Tribunal to decide it afresh.

5. Accordingly, the Tribunal decided the appeal directing reinstatement with full back wages. Hence, this petition.

6. Shri Samarth, learned Senior Advocate appearing for the petitioners, has stated that the present writ petition is restricted only to the directions issued by the Tribunal to the petitioner No.1-Management to pay full back wages. Whereas, the payment of back wages is the liability of the State Government. For this purpose, he has placed reliance on the judgment of the Co-ordinate Bench of this Court in the case of *Sonali Mallikarjun Bedgnur.vs..The Secretary, Dnyansampada Shikshan Prasarak Mandal and Ors.*, reported in **MANU/MH/1703/2022**.

7. It is submitted that after the termination of the respondent No.1 on the ground that she does not possess requisite qualification as observed by the Project Officer while denying the approval, nobody was appointed in her place and therefore, the State Government is liable to pay the back wages.

8. In the reply filed by the Project Officer to the present writ petition though he is saying that the respondent No.1 was not qualified

as she does not possess the requisite qualification to teach English subject, nothing has been brought on record before this Court or before the Tribunal to show that her appointment as Assistant Teacher was for English subject.

9. Furthermore, no record is produced either before the Tribunal or before this Court to show that the denial of approval beyond 30/04/2001 on the ground that she was not possessing the qualification to teach English subject, was based on certain material available with the Project Officer.

10. In the circumstances, as the Ashram School, wherein the respondent No.1 was appointed, is receiving grants from the Government, the management may claim amount directed to be paid by the Tribunal towards back wages to the respondent No.1.

11. However, it is well settled law that the primary responsibility of payment of back wages or salary is of the management and therefore, I do not find any error committed by the Tribunal in directing the petitioner No.1 to pay full back wages to the respondent No.1.

12. Hence, I am of the opinion that, the learned Tribunal ought to have granted liberty to the management in view of the judgment in the case of *Sonali Mallikarjun Bedgnur* (supra) to make a representation to the Project Officer for reimbursement of the amount after payment of back wages.

13. In the circumstances, I am of the considered view that with such modification in the impugned judgment and order dated 13/08/2017 this petition can be disposed of. Accordingly, I pass the following order:

i) Clause (4) of the impugned order dated 31/08/2017 is hereby modified to the following effect :

“(4) The Respondent No.1 shall pay full back wages with all the pecuniary benefits from 31/08/2004 to 02/09/2008 to the appellant and thereupon the respondent No.1 is at liberty to make a representation to the Project Officer for reimbursement of the amount paid to the appellant towards back wages. On receiving such representation, the Project Officer shall take decision on it within three months from the date of submission of such representation.”

ii) The petitioners are at liberty to file appropriate proceedings, as permissible under law, in case the decision of the Project Officer goes against them.

- iii) The points, in respect of recovery of the amount from the Project Officer or entitlement of the Petitioner-Management to receive such amount, is kept open.

The Writ Petition is **disposed of** accordingly. No order as to costs.

(ANIL S. KILOR, J)

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