



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

Writ Petition (WP) No. 4275 of 2019

Ku. Rashmi Sadanand Charde

Versus

**General Awari Smruti Shikshan Sanstha, through its President, New
Nandanwan, Nagpur and others**

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Prashant P. Thakare, Advocate for the petitioner.

Ms. H.N.Jaipurkar, AGP for the respondent no.4/State.

Shri N.D.Khamborkar, Advocate for the respondent no.6.

CORAM : ANIL S. KILOR, J.

DATED : 12th SEPTEMBER, 2023.

Heard.

2. The denial of grant of backwages to the petitioner on the ground that there is no affidavit filed by the petitioner to the effect that she was not gainfully employed elsewhere from the date of termination vide impugned judgment dated 30th January, 2019 passed by the learned School Tribunal, Nagpur in Appeal No. 18 of 2016, is under challenge in this writ petition.

3. It is the case of the petitioner that there are two rival groups in the Management and one of the groups terminated services of the petitioner w.e.f 27th

June, 2014 which was challenged before the learned School Tribunal by filing the appeal namely School Tribunal Appeal No. 18 of 2016.

4. It is submitted that other group has supported the case of the petitioner and stated before the learned School Tribunal that the services of the petitioner were never terminated and she is continued in service. Hence, it is submitted that, once it has come on the record that the petitioner was working in the school even after the alleged termination, the question of filing of any affidavit saying that the petitioner was not gainfully employed does not arise.

5. Shri Thakare, learned counsel for the petitioner has further pointed out that the termination order was issued on 27th June, 2014 and she received the salary from the Government exchequer till January, 2016 which shows that she was continuously working in the school.

6. Learned counsel for the petitioner has further drawn attention of this Court to the muster roll which shows that the petitioner was working continuously. However, on a specific query put to the learned counsel for the petitioner that whether the muster roll was produced before the School Tribunal,

the learned counsel for the petitioner fairly states that it was not produced before the Tribunal.

7. Be that as it may. The pursis filed by the Management and the fact that the petitioner was receiving the salary even after termination till January, 2016, ought to have considered by the learned School Tribunal, while denying the backwages.

8. However, it is apparent that only because the salary was not paid after January, 2016, the learned School Tribunal ignoring the pursis filed by the Secretary of the Management, denied the backwages to the petitioner.

9. In the circumstances, I am of the opinion that matter needs to be remanded back to the learned School Tribunal for re-consideration of the issue in respect of the backwages by taking into consideration the above referred facts.

10. The learned School Tribunal shall decide the said issue after considering the above referred material and on filing of muster roll by the petitioner on the record of the learned School Tribunal, within three months from the date of appearance of the parties. Accordingly, I pass the following order.

i. The writ petition is partly allowed;

ii. The impugned order dated 30th January, 2019 passed by the learned School Tribunal, Nagpur in Appeal No. 18 of 2016 is hereby quashed and set aside to the extent that the backwages are denied to the petitioner.

iii. The matter is remanded back to the learned School Tribunal for limited purpose to decide the entitlement of the petitioner as regards the backwages from January, 2016 till the date of re-instatement.

iv. The parties shall appear before the learned School Tribunal on **10th October, 2023** at 11 am. Thereupon the learned School Tribunal shall decide the point of back wages within three months from the date of appearance of the parties.

v. The petitioner is at liberty to produce the copies of the muster roll on record of the learned School Tribunal, if she, so desires.

[ANIL S. KILOR, J.]