

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

**WRIT PETITION NO. 405 OF 2017**

- PETITIONERS:**
- 1] Shri Satya Sai Ram Shikshan Prasarak Mandal, through its President, Ukali-Pen, Tq. And Dist. Washim.
  - 2] Shri Chatrapati Shivaji Vidyalaya and Junior College, Rajgaon, through its Head-Mistress, R/o. Rajgaon, Tq. And Dist. Washim.

**...VERSUS...**

- RESPONDENTS:**
- 1] Prabhakar Pralhadrao Kawrakhe, Age – 35 years, Occ. Service, R/o. At Post – Goregaon, Tq. Sengaon Dist. Hingoli
  - 2] Ku. Bhavana Uttamrao Daberao (Petition is dismissed against R-2 as per Registrar (J) Order dt. 9.2.18)
  - 3] Education Officer (Sec.) Zilla Parishad, Washim, Tq. And Dist. Washim.

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Mr. P.S.Patil, Advocate for Petitioner  
Mr. V.G.Wankhede, Advocate for Respondent No. 1.  
Ms. T.H.Khan, AGP for Respondent No3

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**CORAM : AVINASH G. GHAROTE, J.**  
**DATE : 15/03/2023.**

1]            Heard Mr. Patil, learned counsel for the petitioners and Mr. Wankhede, learned counsel for respondent no.1.

2]            Mr. Patil, learned counsel for the petitioners at the outset, upon instructions, restricts the claim of the petitioners to the quantum of backwages awarded by the learned School Tribunal in its judgment dated 6.8.2016, as the respondent no.1 in consequence to the order dated 6.8.2016 was reinstated and thereafter again terminated, in respect of which the proceedings are going on before the learned School Tribunal. The statement is accepted to be the statement to the Court and the matter is being heard only on the point of backwages, keeping all the questions open for the petitioners to be agitated in the appeal under Section 9 of the M.E.P.S. Act, which is pending before the learned School Tribunal, as may be permissible in law.

3]            The learned School Tribunal while setting aside the order of termination dated 30.4.2012 by the impugned

judgment dated 6.8.2016, has awarded 75% backwages to the respondent no.1 from the date of his termination i.e. from 1.5.2012 till the date of reinstatement.

4] It is contended that there was no averment in the memo of appeal regarding the respondent no.1 not being gainfully employed during the aforesaid duration, nor was this position pleaded at any point of time subsequent thereto. It is also contended that since there was no pleading in that regard, there was no question of any contravention of the non existent pleadings at the hands of the petitioners. By relying upon **Vidarbha Youth Welfare Society vrs State of Mah and ors, 2022 (4) Mh.L.J 69**, it is submitted that the respondent no.1 is not entitled to any backwages at all.

5] Mr. Wankhede, learned counsel for the respondent no.1 does not dispute that the memo of appeal under Section 9 of the MEPS Act before the learned School Tribunal did not contain any averment regarding the respondent no.1 not being

gainfully employed. He further admits that during the pendency of the entire proceedings before the learned School Tribunal, this position was not brought on record by the respondent no.1.

6] In such circumstances, the award of 75% backwages to the respondent No.1 by the learned School Tribunal is clearly not justified. The entire discussion in the impugned judgment is in para 20 (pg.126) in which the Tribunal itself has held that it would not be proper for the respondent No.1 to allow him to collect full backwages of his remuneration during the period when he was out of work. The Tribunal, however, does not give any reason whatsoever for awarding 75% backwages.

7] It is a settled position of law, that for granting a relief there has to be sufficient pleadings and material placed on record by the person claiming the relief. In the instant matter, admittedly there is absolutely nothing, not even a

pleading by the respondent no.1 in his appeal under Section 9 of the MEPS Act, nor thereafter of his not being in gainful employment. In **Vidarbha Youth Welfare Society** (supra), I had the occasion to consider the position, in which noticing both **Deepali Gundu Surwase** and the subsequent judgments of the Hon'ble Apex Court in **Phool Chand, 2018 (18) SCC 299** and **Allahabad Bank vrs Krishan Pal Singh, 2021 Mh.L.J Online (S.C.) 43**, it has been held that full backwages cannot be granted merely for the sake of asking. In **Phool Chand** (supra) after considering **Deepali Gundu Sarwase**, the Hon'ble Apex Court has held as under :

*“11. In our considered opinion, the courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.*

*12. It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.*

*13. In some cases, the Court may decline to award the backwages in its entirety whereas in some cases, it may award partial, depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages are required to be decided, what are the factors to be taken into consideration awarding back wages, on whom the initial burden lies, etc. were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer res integra. These cases are, M.P. SEB v. Jarina Bee [M.P. SEB v. Jarina Bee, (2003) 6 SCC 141 : 2003 SCC (L&S) 833], Haryana Roadways v. Rudhan Singh [Haryana Roadways v. Rudhan Singh, (2005) 5 SCC 591 : 2005 SCC (L&S) 716], U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey [U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, (2006) 1 SCC 479 : 2006 SCC (L&S) 250], J.K. Synthetics Ltd. v. K.P. Agrawal [J.K. Synthetics Ltd. v. K.P. Agrawal, (2007) 2 SCC 433 : (2007) 371 SCC (L&S) 651], Metropolitan Transport Corpn. v. V. Venkatesan [Metropolitan Transport Corpn. v. V. Venkatesan, (2009) 9 SCC 601 : (2009) 2 SCC (L&S) 719], Jagbir Singh v. Haryana State Agriculture Mktg. Board [Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] and Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya [Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324 : (2014) 2 SCC (L&S) 184].*

*14. The Court is, therefore, required to keep in consideration several factors, which are set out in the aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages and, if so, to what extent.”*

8] It would therefore be apparent that there being an absolute dearth of pleadings and material in the present matter, the direction of the learned School Tribunal to award 75% backwages to the respondent no.1 cannot be sustained. It has also come on record, that consequent to the termination of the respondent no.1, the petitioners had granted employment

to the respondent no.2 in place of the respondent no.1 and therefore, wages have also been paid to the respondent no.2 for the duration which he has worked with the petitioners. This is also a factor which needs to be taken into consideration while awarding backwages.

9] Though **Abdul Shakil Shakil Ahamad vrs Husanmiya Education Society, 2023(2) Mh.L.J.301** has been relied upon by Mr. Wankhede, learned counsel for respondent no.1, it does not notice **Phool Chand and Allahabad Bank** (supra). That apart, it does not also lay down a proposition that backwages should be granted, merely for the sake of asking.

10] This Court by the order dated 8.11.2019, has issued a direction directing the petitioners to deposit 25% of the backwages in this Court, which has been so deposited in this Court, as is recorded in the noting in the farad sheet dated 15.11.2021.

11] In my considered opinion, considering the above factual position and the fact that the respondent no.1 has not rendered any services to the petitioners for the duration of his termination, 25% backwages would be more than enough.

12] The impugned judgment of the learned School Tribunal in so far as it directs payment of 75% backwages for the duration as stated therein is hereby quashed and set aside and modified by holding that the respondent no.1 is entitled to 25% of the backwages, which is the amount of Rs.4,82,129/- as deposited in this Court.

13] The petition is accordingly partly allowed in above terms. No costs.

**JUDGE**

Digitally sign by RAJESH  
VASANTRAO JALIT  
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Signing Date: 20.03.2023 19:56