

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 17443 OF 2024

Vaibhav Vilas Patil Aged-47 years,
Occupation – Service R/o- Kapuskhed,
Tal – Walwa Dist-Sangli.

... Petitioner

Versus

1. The State of Maharashtra through
the Secretary School Education
& Sports Department Mantralaya,
Mumbai-400032.
 2. The Commissioner of Education
School Education Department,
Maharashtra State, Pune.
 3. The Director of Education,
(Secondary and High Secondary)
Maharashtra State, Pune-1.
 4. The Deputy Director of Education,
Kolhapur Region, Kolhapur.
 5. The Education Officer (Secondary),
Zilla Parishad, Sangli Having Office
at Zilla Parishad Building, Sangli
 6. Maratha Shikshan Sanstha,
Urun-Islampur Tal – Walwa,
Dist-Sangli Through its President/Secretary.
 7. Janta Vidyalaya, Urun-Islampur.
Tal- Walwa, Dist-Sangli Through
its Head Master
- ...Respondents

Mr. Umesh H. Pawar for the Petitioner.

Mr. S. D. Chipade, AGP for the State/Respondent Nos. 1 to 5.

**CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.**

RESERVED ON : 5th DECEMBER, 2024

PRONOUNCED ON : 17th DECEMBER, 2024

ORAL ORDER (PER ASHWIN D. BHOBE, J) :

1. Petitioner by the present petition, assails the order dated 13.03.2024 passed by the Respondent No.4 rejecting the proposal dated 19.03.2020 for back wages and salary arrears of the Petitioner for the period 01.01.2015 to 28.02.2020 (“impugned order”).

2. The background facts as would be relevant for the present petition can be summarized as under:

A) On 15.05.2000, Petitioner was appointed as a Peon by the Respondent No.6 in its Secondary School i.e. Respondent No.7. The Respondent No.6 terminated the services of the Petitioner w.e.f. 01.12.2014. Petitioner challenged the said termination before the School Tribunal, Kolhapur in Appeal No.112 of 2014. The School Tribunal, Kolhapur dismissed the Appeal No.112 of 2014, vide order dated 17.11.2015. Petitioner approached this Court

against the dismissal of Appeal No.112 of 2014, by filling Writ Petition No.7296 of 2016. The said petition was contested by the parties arrayed in the Writ Petition No.7296 of 2016.

B) The disputes involved in the writ petition were amicably settled by the Petitioner herein and the Respondent Nos. 1, 2, and 3 in the said Writ Petition / Respondent Nos. 6 and 7 herein, by filing consent terms. The Civil Writ Petition No.7296 of 2016 was disposed off by this Court vide order dated 28.02.2020 on the basis of consent terms filed by the Petitioner and Respondent Nos. 6 and 7 herein.

C) Upon the filing of the consent terms the Petitioner was reinstated on the post of peon in the Respondent Nos.7 School w.e.f. 29.02.2020.

D) Respondent No.7 by proposal dated 19.03.2020 submitted the salary bills of the Petitioner , to the Respondent No.5.

E) The Respondent No. 5, vide his letter dated 29.05.2020, by referring to the order dated 28.02.2020 passed in Civil Writ Petition No.7296 of 2016, notified the Respondent No.7 that the Petitioner would be entitled to the monthly salary w.e.f. 29.02.2020.

F) The Respondent No.7 thereafter submitted proposal for claiming back wages of Petitioner for the period 01.01.2015 to 28.02.2020 to the Superintendent of Salary and Pension Department (Secondary), Zilla Parishad Sangli. The Superintendent of Salary and Pension Department (Secondary), Zilla Parishad Sangli, vide letter dated 18.12.2023 forwarded the proposal as submitted by the Respondent No.7, to the Respondent No.4.

G) The Respondent No.4, vide the impugned order dated 13.03.2024 has rejected the said proposal submitted by the Respondent No. 7. The Respondent No.4 has declined to entertain the said proposal in view of the consent terms filed in Writ Petition No.7296 of 2016.

H) The Petitioner is before this Court questioning the impugned order on the grounds as raised in paragraph No.15 (A-H) of the memo of petition.

3. Before dealing with the contentions of the Petitioner it would be relevant to refer to the consent terms dated 28.02.2020 filed in Civil Writ Petition No.7296 of 2016.

“ CONSENT TERMS

The Petitioner and Respondents No.1 to 3 have amicably settled all their disputes on consent terms as stated hereunder. Both the parties agree that separate reasons need not be recorded for passing following order. Hence by consent of the parties, the following Order has been passed.

1. *That after taking a humanitarian and sympathetic view and further considering the service of the Petitioner, the Termination Order dated 1st December, 2014 [Exhibit-B, Page No. 28 of Writ Petition] issued by the Respondents No.1 and 2 to the Petitioner is hereby withdrawn/ recalled / canceled. The Petitioner is accordingly reinstated with continuity of service as well as all consequential benefits like annual increments etc. from the date of initial appointment but without backwages / salary from the Respondents No.1 to 2 from the date of termination till the date of reinstatement. The Petitioner shall resume his duties w.e.f. 29.02.2020 and Respondent Nos. 1 and 2 shall allow Petitioner to join the Petitioner on his post of Peon in Respondent No. 3-School. In view of the above, it is agreed between the parties that the Impugned Judgment and Order dated 17.11.2015 passed by the Learned Presiding Officer, School Tribunal, Kolhapur in Appeal No. 112 of 2014 is hereby quashed and set aside.*

2. *The Respondents No.1 to 2 undertake that by way of resolution dated 13.07.2019 passed in Governing Council meeting conducted on 13.07.2019, the Management unanimously decided to enter into consent terms in present Writ Petition and authority to endorse signatures on consent terms is given to Shri. Anirudha Tukaram Patil on behalf of Respondent No.1, Shri. Sambhaji Jagannath Salunkhe on behalf of Respondent No.2. Hereto annexed and marked as Annexure-1 is the copy resolution dated 13.07.2019 passed in Governing Council meeting.*

3. *The Respondent No. 1 and 2 agree that after the Petitioner was terminated from service, the said post was kept vacant and the Management did not make appointment of any other candidate on the said vacant post and did not claim and receive salary grant for the said post from the Government. As of today also the said post is vacant and hence no other Peon in the school would be affected due to reinstatement of Petitioner.*

4. *In view of the above, the Respondents No.1 to 3 shall prepare proposal for continuation of individual Approval of Petitioner as Peon (which was granted by Respondent No. 4- Education Officer vide order dated 4.09.2000) and submit the said proposal to Respondent No. 4 within 15 days from the date of Petitioner resuming the duties.*

5. *The Petitioner shall not claim any of backwages, difference of Salary from date of termination till the date of resuming duties, from the Respondents No.1 to 2.*

6. *After receiving continuation to earlier individual approval to the appointment of Petitioner as Peon, the Respondent No. 1 to 3 submit bills of monthly salary to Respondent No. 4 from date of reinstatement i.e. 29.02.2020 and Respondent No. 4 shall grant the said monthly salary bills and release the salary payable to the Petitioner.*

7. *The Petitioner & Respondents No.1 to 2 agree that all allegations made by the Petitioner and Respondent No. 1 to 2 against each other stand withdrawn and both parties agree that all such allegations including any Complaints / Proceeding / Representation made to any other Authority / Forum shall be withdrawn by concerned party.*

8. *Present Writ Petition is disposed of by consent of both parties in the aforesaid terms. No order as to costs.*

Place: Mumbai

Dated : 28.02.2020”

4. The said consent terms dated 28.02.2020 are signed by the Petitioner and the Management i.e. Respondent Nos. 6 and 7 herein. Pertinently, the State authorities who were arrayed as Respondent Nos. 4 and 5 in Civil Writ Petition No.7296 of 2016, were neither signatories to the said consent terms dated 28.02.2020 nor do the consent terms which

are at Exh. G. page Nos. 77 to 84, cast any obligation or financial burden on the said State authorities. Consent terms dated 28.02.2020 were taken on record, accepted by this Court and the Civil Writ petition No. 7296 of 2016 was disposed off on the basis of the above referred consent terms dated 28.02.2020.

5. The question that falls for consideration is whether the Petitioner on the face of the order dated 28.02.2020 passed by this Court in Civil Writ Petition No. 7296 of 2016, can maintain a claim for back wages/salary for the period 01.01.2015 to 28.02.2020? Consequently, whether the impugned order dated 13.03.2024 passed by the Respondent No.4 rejecting the proposal about back wages, salary arrears of the Petitioner for the period 01.01.2015 to 28.02.2020, warrants interference?

6. The records of the present case bear out that the services of the Petitioner were terminated by the Respondent Nos. 6 vide termination order dated 01.12.2014. Petitioner unsuccessfully challenged his termination before the School Tribunal Kolhapur in Appeal No.112 of 2014. The matter was carried in Civil Writ Petition No.7296 of 2016 before this Court. Petitioner and the Respondent Nos. 6 and 7 amicably resolved the subject matter of Civil Writ Petition No.7296 of 2016, as a

consequence of which the Petitioner was reinstated in service w.e.f. 29.02.2020. Arrangement/agreement between the Petitioner and the Respondent No.6 and 7 as reflected in the consent terms dated 28.02.2020 indicate that the Petitioner had agreed to be reinstated in service without back wages/salary for the period 01.01.2015 to 28.02.2020, from the date of his termination till the date of reinstatement. Statement in that context is recorded in clause 1 as well as in clause 5 of the consent terms dated 28.02.2020. Reinstatement of the Petitioner was with continuity of service as well as consequential benefits, but without backwages / salaries.

7. We have perused the memo of petition. It is not the case of the Petitioner that the said consent terms and/or the agreement as disclosed in the consent terms was either by coercion, force or by pressure from any person. No allegations of fraud. Similarly, there is no challenge to the consent terms dated 28.02.2020. On the contrary the Petitioner as well as the Respondent Nos. 6 & 7 have acted on the basis of the consent terms, which is evident from the fact that the Petitioner is reinstated to the post of peon. In such circumstances, the only conclusion which can be drawn from the said fact is that the consent terms were agreed and signed by the Petitioner with open eyes.

8. Petitioner can be the sole beneficiary of the proposal submitted by the Respondent No. 7. Apparently, the Petitioner has persuaded the Respondent No.7 to submit a proposal claiming the back wages /salary arrears during the period of his termination between 01.01.2015 to 28.02.2020 and / or the claim as made is at the instance of the Petitioner. Petitioner has now approached this Court against the rejection of the said claim. Petitioner has sought for the following substantial reliefs:

“B) By suitable writ, order or direction, this Hon’ble Court be pleased to quash and set aside the impugned order dated 13.3.2024 passed by the Respondent No.4 the Ld. Dy. Director of Education, Kolhapur thereby rejecting the proposal about back wages, salary arrears of the Petitioner during the period of illegal termination i.e. 1.1.2015 to 28.2.2020.

C) By suitable writ, order or direction, this Hon’ble Court be pleased to direct the Respondent Nos. 4 & 5 to pay the back wages, salary arrears of the Petitioner from the period of illegal termination i.e. 1.1.2015 to 28.2.2020.”

9. After considering the petition and the documents filled along with the petition, we find that the petition lacks merit. The conduct and approach of the Petitioner borders on abuse of the process of law for the following reasons:

A) The concept of “consent terms/settlement agreement” in

legal proceedings can be derived from the provisions of Order XXIII Rule 3 of the Code of Civil Procedure 1908. Filing of consent terms and getting a disposal in terms of the consent terms is a mechanism provided for resolution of dispute. In such proceedings, legal disputes are settled by a written agreement signed by the parties consenting thereto. Proceedings disposed on the basis of consent terms, create an estoppel between parties through a judicially enforced agreement. Records of this case indicate that the Civil Writ Petition No.7296 of 2016 was disposed off on the basis of the consent terms filed by the consenting parties thereto viz. the Petitioner herein and the Respondent Nos. 6 and 7 herein. The consent terms dated 28.02.2020 were accepted by this Court and the proceedings in Writ Petition No.7296 of 2016 were disposed off on the basis of the agreement / arrangement recorded in the said consent terms. Petitioner is thus estopped from contending anything to the contrary. This observation is in the context of the specific, unequivocal and unambiguous agreement as recorded in the consent terms dated 28.02.2020, by which the Petitioner has given up the claim / right to the backwages/salary from the date of his termination till the date of reinstatement i.e. 01.01.2015 to

28.02.2020. Statements to that effect are found in clause Nos. 1 and 5 of the consent terms dated 28.02.2020.

B) Petitioner having derived benefit of the consent terms dated 28.02.2020 filed in Civil Writ Petition No.7296 of 2016 cannot be permitted to approbate and reprobate. Principle of approbate and reprobate is based on the maxim “*allegans contraria non est audiendus*” which means that when one utters statements contradictory to one another the same shall not be heard. The reinstatement of the Petitioner was on a condition that he would not claim backwages/salary arrears. Petitioner has not questioned or challenged either the consent terms dated 28.02.2020 or any of the clause/s of the consent terms. On the contrary, the Petitioner has acted upon and taken advantage of the agreement as reflected in the consent terms dated 28.02.2020. Needless to mention the Petitioner and the Respondent Nos. 6 and 7 herein who are parties to the Civil Writ Petition No.7296 of 2016 persuaded this Court to dispose off the subject matter of the said petition on the basis of the consent terms.

C) Though, the Respondent authorities were parties to the Writ Petition No.7296 of 2016, however, the said authorities are

neither signatories to the said consent terms dated 28.02.2020 nor do the consent terms impose any financial obligation on the Respondent authorities. Thus, there is no occasion for either the Respondent Nos. 6 and 7 or the Petitioner to now make a demand for the backwages /salary arrears, as sought to be attempted by the proposal dated 19.03.2020. Consent terms dated 28.02.2020 neither reserves the right of the Petitioner / Respondent Nos. 6 & 7 to claim the back wages / salary from the Respondent authorities nor does the order dated 28.02.2020 of this Court grant liberty in that context. As such the contention of the Petitioner and / or the premise on which the petition is filed, that though the Petitioner had given up his claim of back wages / arrears of salary the same was restricted qua the Respondent Nos. 6 and 7 and the said claim was maintainable against the Respondent authorities, is devoid of substance, liable to be rejected and is hereby rejected.

D) Upon the passing of the order dated 28.02.2020 in Writ Petition No.7296 of 2016, the rights/claims of the Petitioner in the context of the termination of the Petitioner's service and the reinstatement, got crystallized. The agreement as recorded in the consent terms dated 28.02.2020 was found to be lawful and the consent terms were accepted by this Court. The Petitioner cannot

be permitted to re agitate the said issue. Petitioner cannot be permitted to travel beyond the consent terms dated 28.02.2020.

E) The demand/claim made by the Respondent No.7 in the proposal dated 19.03.2020 is illegal. The Respondent No.7 was not entitled to make such a claim for the same reason, as that of the Petitioner.

10. For the reasons recorded herein above and on the face of the order dated 28.02.2020 passed by this Court in Writ Petition No.7296 of 2016, we hold that the Petitioner is not entitled to claim the backwages/salary arrears for the period 01.01.2015 to 28.02.2020.

11. The Respondent No.4 has rightly rejected the proposal submitted by the Respondent Nos.7 for backwages and salary arrears for the period 01.01.2015 to 28.02.2020. The impugned order requires no interference.

12. Petition is without merit, **as such dismissed**. There shall be no costs.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)