



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

Writ Petition No. 5820 of 2022

Yashodabai Joshi Ladies Club, through it's Secretary, Amravati and anr. **..vs..** Smt. Prerana
Prakash Watane and anr.]

with

Writ Petition No. 8115 of 2023

[Lady Yashodabai Joshi Ladies Club, through it's Secretary, Amravati and anr. **..vs..** Smt. Prerana
Prakash Watane and anr.]

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

Court's or Judge's orders

Mr. A. J. Gilda, Advocate for the petitioners
Mrs. M. R. Kavimandan, AGP for respondent no. 2

CORAM : ANIL L. PANSARE J.

DATED : 28-02-2024

Though on caveat, none present for respondent
no. 1.

2. The petitioner – management of Lady Yashodabai Joshi Ladies Club is aggrieved by judgment and order dated 1-4-2022 passed by the Presiding Officer, School Tribunal, Amravati in Appeal No. 16/2020.

3. Respondent no. 1 – Smt. Prerana Prakash Watane is/was working with the school run by petitioner no. 1. She was served with notice of termination dated 16-4-2019. Notice was issued under Section 25A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The notice of termination came to be challenged under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 before the School Tribunal, Amravati. The School Tribunal has, by the impugned judgment, partly allowed the appeal in following terms.

- “(1) The appeal is partly allowed.
 (2) The notice of termination dated 16.04.2019 is hereby quashed and set aside.
 (3) The appellant be deemed to be continuous in service from 16.7.2019 for all service benefits excluding the benefit of earned leave.
 (4) The respondent No. 1 is directed to pay full back wages to the appellant from 16.07.2019 till today within three months.
 (5) The respondent No. 1 is directed to follow the procedure contemplated in Rule 27(d) and (e) along with Rule 25A within 30 days from the date of this order in respect of appellant.
 (6) The appellant is entitled to full salary from tomorrow i.e. from 02.04.2022 till compliance of clause (5) of this order.
 (7) The parties shall bear their own costs.
 (8) Copy of this order be sent to the respondent No. 3 for information.”*

4. As could be seen, petitioner no. 1 is directed to pay back wages. Petitioner no. 1 – management is also directed to pay full back wages to the respondent no. 1, Assistant Teacher from 16-7-2019 till the date of order within three months. The management, however, did not pay full back wages as directed. Therefore, the respondent no. 1 filed execution proceeding bearing Regular Darkhast No. 116/2022. The respondent no. 1 filed application for attachment of immovable property which is pending consideration before the executing court.

5. The petitioner management requested executing court to stay the proceedings in terms of law laid down

by this Court in the case of ***Shewalkar Developers Ltd., Nagpur Vs. Rupee Cooperative Bank Ltd. Pune [(2016)1 Mh. L.J. 382]***. The Division Bench of this Court has held that when the highest Court in the country is seized of matter, all the Courts subordinate thereto including High Courts, must wait till outcome of decision pending before the Apex Court.

6. This judgment has been relied upon by the management to contend that identical issue, in the sense the notice of termination having same date i.e. 16-4-2019 pertaining to another Assistant Teacher, who is similarly situated and who has also filed similar such execution proceeding, is pending consideration before the Hon'ble Supreme Court and the Court vide order dated 13-12-2023 has stayed the execution proceedings.

7. I have gone through the record and I am satisfied that the issue involved in the present petition is absolutely identical to the issue involved in the petition pending before the Hon'ble Supreme Court. The outcome of the petition before the Supreme Court will cover the issue involved in the present proceeding. In the circumstances, it will be appropriate to keep Writ Petition No. 5820/2022 in abeyance pending proceedings before the Supreme Court. Order accordingly.

8. The question, however, is whether the executing court has committed error by refusing to stay the execution proceedings. The answer would be in the negative. The petitioners had filed Writ Petition

No. 5820/2022 challenging the order passed by the School Tribunal. The petitioners did not circulate the petition for two years and press for stay to the order passed by the School Tribunal. In absence of stay, the approach of executing court cannot be faulted with. The petitioners ought to have approached this Court in Writ Petition No. 5820/2022 and pressed for stay on the ground as noted above. The petitioners instead approached the executing court seeking stay to the execution proceedings without seeking appropriate relief from this Court. Thus the challenge to the order dated 6-11-2023 passed by 11th Joint Civil Judge Senior Division, Amravati below Exhibit 17 in Regular Darkhast No. 116/2022 cannot be faulted with. Writ Petition No. 8115/2023 is accordingly dismissed.

9. Nonetheless, considering the facts noted in paragraph no. 7 above, since the Hon'ble Supreme Court has in identical matter granted stay to the order passed by the School Tribunal, it will be appropriate to stay the effect and operation of order dated 1-4-2022 passed by the School Tribunal, Amravati in Appeal No. 16/2020 until further orders. Order accordingly.

10. The petitioners, however, shall file undertaking stating therein that in the event of dismissal of SLP before the Hon'ble Supreme Court, the petitioner shall deposit back wages as ordered by this Court within a period of six weeks before the executing court.

11. Learned counsel for the petitioners submits that he will submit undertaking tomorrow. Statement is accepted.

12. List Writ Petition No. 5820/2022 once SLP (C) Diary No. 49233/2023 pending before the Hon'ble Supreme Court is decided.

(Anil L. Pansare, J.)

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