



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

**WRIT PETITION NO. 6754 OF 2024
WITH WRIT PETITION NO. 2507 OF 2023**

Chandrakant Bhimashankar Bavage
VERSUS
The Education Officer Primary And Others

Mr. G. L. Awale, Advocate for Petitioner
Mr. D. B. Bhange, AGP for Respondents/State
Mr. V. C. Patil h/f Mr. U. B. Bondar, Advocate for Respondent No. 1
Mr. B. R. Kedar, Advocate for Respondent No. 2
Mr. V. D. Gunale, Advocate for Respondent No. 3

CORAM : R. M. JOSHI, J.

DATE : 30th April, 2025

PER COURT :-

1. By consent of both sides heard finally at the stage of admission.
2. These petitions takes exceptions to the orders dated 07.02.2024 and 14.12.2022 passed by the School Tribunal, Latur in Appeal No. 22/2022 below Exhibit 25 and Appeal No. 23/2016 below Exhibit 41 directing reinstatement of the Respondent No. 3 with full backwages and continuity of service.
3. The facts as they appear from record indicates case of Respondent No. 3 i.e., Management is terminated orally. For filing of the Appeal No.

22/2022 cause of action arose on 04.07.2022. The management appeared before the School Tribunal and resisted the contention of Respondent No. 3. It is specifically made clear that Respondent No. 3 has not been terminated and that he is remaining absent. Tribunal considering material evidence placed before it recorded finding that there is otherwise termination and directed reinstatement of service of Respondent No. 3 with full backwages and continuity.

4. It is thereafter Respondent No. 3 alleged that he was again terminated orally and he filed one more Appeal No.23/2016 below Exhibit 41 on the basis of cause of action arose on 17.10.2016. At this stage also, management resisted the appeal by claiming that there is no termination effected to the service of Respondent No. 3. The School Tribunal held that it is an oral termination and directed reinstatement with full backwages.

5. Learned counsel for Respondent No. 3 at the outset raised objection to the filing of the petition by Head Master of the School on the ground that he has no Authority to prefer petition and more particularly management has no any reply against the impugned orders. Learned counsel for petitioner resisted the said contention by pointing out the appeal memo and order passed by School Tribunal which show that the petitioner is party

respondent. Thus, it is his contention that once the petitioner is party respondent to the said proceeding, he has legal right to prefer present petition.

6. This is not the case wherein the person who is no party to the original proceeding seeks to challenge the order passed by School Tribunal by filing petition. Once it is admitted that petitioner was Respondent No. 3 in the said proceeding, it cannot be said that this respondent has no right to prefer any petition against the order impugned. Hence, there is no substance in the objection raised by learned counsel for Respondent No. 3 with regard to the maintainability of the petition.

7. On merit, learned counsel for petitioner has sought to take exception to the impugned orders by contending that Tribunal has failed to take into consideration the correspondence exchanged between the parties which indicates that number of Show Cause Notices were issued to Respondent No. 3 which was not replied by him. It is his submission that these facts clearly indicate that this is not the case of oral termination but it is of absentism on the part of Respondent No. 3. The challenge is raised on the ground that there is no statement made before the Court at first instance about Respondent No. 3 on being not gainfully employed. According to him in absence of such statement, in view of settled position of law, School Tribunal committed error in granting

backwages.

8. Learned counsel for Respondent No. 3 vehemently opposed the petition. It is his submission that the School Tribunal has rightly taken into consideration the attending circumstances and material on record to hold that this is a case of otherwise termination. In so far as the order of grant of backwages is concerned, it is his submission that School Tribunal in Appeal No. 23/2016 has recorded finding in Paragraph No. 11 about the appellant not gainfully employed elsewhere. It is his submission that once the termination of Respondent No. 3 is held to be illegal, the order of backwages must follow.

9. As far as the issue of reinstatement is concerned, it is word against word by the employee and the management. Employee claims that service terminated orally whereas Management has alleged absentism against him. There is no dispute about the fact that the Management has not initiated/conducted any inquiry against Respondent No. 3 for his alleged absentism. This fact indicates that there is substance in the contention of Respondent No. 3 that he has been terminated otherwise facts as they appear from record that there are disputes with regard to Respondent No. 3 taking up class of std 5th to 7th . This dispute could lead to prevent him from joining the duty. In this regard, School Tribunal has rightly taken into consideration the

material placed before it in order to record finding that this is the case of otherwise termination. Having regard to the facts of the case and more particularly material on record, the said findings rendered by the School Tribunal are not perverse. It is not open for this Court to substantiate the view of Tribunal only for reason that other view is possible, in exercise of writ jurisdiction. Hence, the said order deserves no interference.

10. Coming to the issue of order of payment of backwages, the law on the point of payment of backwages is settled by the Supreme Court to say that an employee in order to seek relief of backwages is required to make statement before Court of first instance. Once such statement is made, the onus shifts upon the Employer/Management to prove otherwise. In this regard, reference can be made to the Judgment of Hon'ble Supreme Court in case of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and another, (2013) 10 SCC 324** has called out propositions with regard to payment of back wages. It would be useful to make reference of the same which reads as under :-

“38.1 In cases of wrongful termination of service, reinstatement with continuity of service and backwages is the normal rule.

38.2 The aforesaid rule is subject to the rider that while deciding the issue of backwages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3 Ordinarily, an employee or workman whose services are terminated and who is desirous of getting backwages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full backwages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.”

Here, in this case, there is nothing on record to indicate any such statement being made before the School Tribunal. The finding recorded by the Tribunal in Appeal No. 23/2016 about there being no evidence of appellant therein being gainfully employed is perverse as the same is contrary to the law settled by the Supreme Court. Unless employer makes statement about having

not gainfully employed, the onus would not shift upon employer to prove gainful employment of the employee. Thus the order of grant of backwages is not in consonance with position of law and hence cannot sustain.

11. In view of the above, both petitions deserve to be allowed partly. Hence, impugned orders are upheld to the extent of direction to the management for reinstatement of service of Respondent No. 2. The order of grant of backwages however stands set aside.

12. Both petitions stand disposed of in above terms.

(R. M. JOSHI, J.)

bsj