



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6255 OF 2016

Rameshwar Laxminarayan Laddha

....Petitioner

VERSUS

The State of Maharashtra & others

.....Respondents

Mr. A. R. Deokate, Advocate holding for Mr. S. P. Salgar, Advocate for the Petitioner.

Mr. K. N. Lokhande, AGP for the State.

Ms. J. R. Nawale, Advocate holding for Mr. V. D. Salunke, Advocate for Respondent Nos. 5 and 6.

CORAM : R. M. JOSHI, J.

DATE : 12th AUGUST, 2025.

PER COURT :

1. A limited issue involved in this Petition is as to whether the Petitioner is entitled for backwages.

2. Petitioner came to be terminated from service by order dated 06.08.2012 with effect from 10.09.2012. He preferred Appeal before the University and College Tribunal on 08.10.2012. The Tribunal passed the impugned order dated 18.03.2016 whereby notice of termination dated 06.08.2012 and consequential termination with effect from 10.09.2012 is set aside and Respondents were directed to reinstate the Petitioner in service with continuity of service but without backwages.

3. Though Respondents/management challenged the said order to the extent of re-instatement in Writ Petition No. 7038/2016, the said Petition is disposed of by order dated 28.08.2019.

4. Learned counsel for Petitioner submits that in view of the settled position of law by the judgment of the Supreme Court, in order to be entitled for backwages, the employee is required to make a statement before the Court at first instance about he being not gainfully employed and thereafter the onus shifts upon the employer to prove that the employee was gainfully employed during the relevant period. It is his submission by relying upon the communication addressed by the Petitioner to the Tribunal that he has given a declaration that he did not engage himself in any private employment, trade or business during the relevant period. It is the submission of learned counsel for the Petitioner, therefore, that the Tribunal has committed error in not granting backwages to the Petitioner. To support his submissions, he has placed reliance on following judgments :

- (i) Maharashtra State Road Transport Corporation
vs. Mahadeo Krishna Naik
(2025) 4 Supreme Court Cases 321.

- (ii) Deepali Gundu Surwase
vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & others
(2013) 10 Supreme Court Cases 324.
- (iii) Shobha Ram Raturi
vs. Haryana Vidyut Prasaran Nigam Limited & others
(2016) 16 Supreme Court Cases 663.
- (iv) Kiran Shankar Rawool & others
vs. Eastern International Hotel & another
(2019) 1 AIR Bom R 498

5. Learned counsel for Respondents supported the impugned order.

6. There cannot be any dispute made with regard to the preposition sought to be canvassed by learned counsel for the Petitioner that the employee is required to make a submission before the Tribunal at first instance that he is not gainfully employed and thereafter the onus shifts upon the employer to prove gainful employment of the employee. Here in this case, though a statement is made by the Petitioner before the Tribunal that he was not gainfully employed, there is a communication on record which indicates that immediately after termination of his service, he addressed communication to his earlier employer for re-joining of service. There is no dispute made by the Petitioner with regard to the said communication. Apart from this, it is admitted fact that the

Petitioner had tendered voluntary resignation on 09.08.2012. Though his voluntary retirement was not accepted by the Respondents/management, there is evidence to indicate that the Petitioner was interested in working somewhere else. In such circumstances, it was absolutely necessary for the Petitioner to make a positive statement before the Tribunal that in these circumstances too, inspite of communication to the earlier employer, he actually did not join the services. There is absolutely no evidence to that effect before the Tribunal nor any statement is made.

7. In the backdrop of the aforestated facts, the Tribunal has made following observations for denying backwages :-

“31. He cannot blow hot and blow cold at one and the same time on one hand he submitted application for voluntary retirement with the present Institution and on the other hand he has communicated to parent Institution of his rejoining his service. The appellant has not served with the respondents Institution from the date of his termination. So in this case the formula of no work no wages should be followed.”

8. Thus, the facts involved in the case are quite peculiar. There cannot be straight jacket formula applied in which circumstances the backwages can be granted or denied. As observed

above it was necessary for the Petitioner to make positive statement about he not actually joining the previous employer. This becomes more relevant with the voluntary retirement sought to be obtained by him. As against the statement of the employee there are circumstances indicating employment of Petitioner since there is no specific denial thereof. Moreover, this is not the case where Tribunal while denying backwages has not recorded any cogent reason. In the facts of the case said finding is probable one. Thus, it can be held that the Tribunal has rightly taken into consideration the contention of the Petitioner and in the facts of the case, more particularly, for want of any specific statement being made that he did not join the service of the earlier employer, the denial of backwages cannot be called as perverse in order to cause interference in the said order in exercise of writ jurisdiction.

9. Hence, Petition stands dismissed.

(R. M. JOSHI)
Judge

dyb