



drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.554 OF 2020

Manisha Pandurang Adsul
Age - 39 years, Occ - Nil
R/o Bhalawani, Taluka - Parner
District - Ahmednagar

PETITIONER

VERSUS

1. The President / Secretary
Adarsha Shikshan Va Samajik Sanstha
Hivare Korda, Taluka - Parner
District - Ahmednagar
2. The Headmaster
Late Shri Trimbakrao Korade High School
Hivare Korda, Taluka - Parner
District - Ahmednagar
3. The Education Officer (Secondary)
Zilla Parishad, Ahmednagar

RESPONDENTS

.....
Mr. Santosh S. Jadhavar, Advocate for the Petitioner
Mrs. A. S. Mantri, AGP for Respondent - State
Mr. S. S. Wagh h/f Mr. S. T. Shelke, Advocate for Respondents
No.1 and 2

.....

[CORAM : MANJUSHA DESHPANDE, J.]

DATE : 23rd JANUARY, 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned Advocates for the parties.
2. The Petitioner, who was working as Assistant Teacher in

Respondent No.2 School, has challenged order dated 24th January, 2019 passed by Presiding Officer, School Tribunal, Solapur in Appeal No. 48 of 2015, whereby order dated 5th January, 2014 passed by Respondent – Management, terminating services of the Petitioner with effect from 24th December, 2013 is declared as illegal and is quashed and set aside by granting the relief of reinstatement with continuity in service. However the claim of the Petitioner for back wages has been denied. The Petitioner is aggrieved by clause 4 of the operative order passed by the School Tribunal, whereby she is denied the back wages.

3. According to the learned Advocate for the Petitioner, the Petitioner was selected and appointed as Assistant Teacher on 11th June, 2005, on a clear vacancy available in Respondent No.2 School, by following due selection process. After her appointment, the Petitioner continued in service till 24th December, 2013. Her services came to be terminated by the Respondent – Management on 24th December, 2013. Therefore, being aggrieved by the termination of her services, the Petitioner approached the School Tribunal, Solapur by filing Appeal No. 48 of 2015, under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

4. Upon issuance of notice, Respondents No.1 and 2 caused

their appearance and filed their written statement. It was the stand of the Respondent - Management that the Petitioner never attended the School and habitually remained absent without permission. She was regularly paid her salary. According to the Management, the Petitioner has resigned from her post on 24th December, 2013 and her resignation was accepted by the Management and accordingly she was relieved from duty by order dated 5th January, 2014. The stand of the Management, in short, was that the services of the Petitioner were not terminated, but she has voluntarily resigned from the service.

5. After considering the rival pleadings and submissions, the School Tribunal partly allowed the Appeal filed by the Petitioner, vide its judgment and order dated 24th January, 2019. While allowing the Appeal, the School Tribunal has held that the action of the Respondents - Management, in terminating services of the Petitioner is illegal and is liable to be set aside. Accordingly, the order of termination of services of the Petitioner, dated 5th January, 2014, has been set aside by the School Tribunal and further directions were given to reinstate the Petitioner in service within one month. Even continuity in service was also granted to the Petitioner. However, while passing the order on the issue of back wages, the School Tribunal has observed that since the Petitioner has not worked during that period, therefore, she is not

entitled for back wages. It is against these observations, the present Petition has been filed by the Petitioner, contending that when the order of termination of services of the Petitioner is quashed and set aside, by declaring the termination to be illegal, the necessary corollary which follows is grant of back wages.

6. Mr. Jadhavar, learned Advocate for the Petitioner submits that since the substantive challenge before the School Tribunal was to the Termination order, there is no question of working of the concerned employee during that period and the employee can rejoin services only after the termination is set aside and reinstatement is granted. In such case, back wages cannot be denied to the employee, on the ground that the employee has not worked during that period. It is contended by the learned Advocate for the Petitioner that the Petitioner has rendered more than 8 years' service in Respondent No.2 School and her services were illegally terminated in highly arbitrary manner. The action of termination was tried to be justified under the garb of voluntary resignation by the Petitioner. In such cases, where the Management deprives an employee from joining duty, the employee cannot be denied back wages, on the ground that the employee has not discharged duty.

7. In support of his submissions, learned Advocate for the

Petitioner places reliance on the reported judgment of the Supreme Court in the case of **“Deepali Gundu Surwase V/s Kranti Juniot Adhyapak Mahavidyalaya (D. Ed) and Others: 2023 AIR SCW 5330**. Learned Advocate for the Petitioner has placed reliance on paragraph No. 33 of the said judgment. Paragraph No. 33 is reproduced herein below, which reads thus -

“33. The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, 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.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages 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 back wages, 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 averments 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.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and

sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”

Management submits that though there is an order passed by the School Tribunal, directing the Management to reinstate the Petitioner, however, the Petitioner has not turned up to join the duty. He also points out from the reply affidavit that in fact the Petitioner has also filed Writ Petition No. 10182 of 2021 seeking a relief in terms of prayer clause "B", reading thus-

"By issuing a writ of mandamus or any other appropriate writ, order or direction, the respondent no. 5 & 6 may kindly be directed to pay unpaid salary of the petitioner from 11.06.2005 till December 2019 as per the pay scale to the post of Assist. Teacher"

9. In the said Writ Petition, the Petitioner has prayed for direction to the Management to pay unpaid salary from 11th June, 2005 till December, 2019. Therefore, according to learned Advocate for Respondents - Management, in view of the relief claimed by the petitioner in Writ Petition No. 10182 of 2021, the present Writ Petition is not tenable. The School Tribunal has not committed any error in denying back wages to the Petitioner, since she has not worked during that period and, therefore, applying the principle of 'no work no pay', she is not entitled for the back wages.

10. When learned Advocate for the Petitioner was called upon to respond the submission regarding filing of other Writ Petition by the Petitioner, learned Advocate for the Petitioner submits that the Petitioner has filed that Writ Petition claiming arrears of

her salary and though some of the period for which back wages are claimed in the present Writ Petition overlap with the period which is mentioned in prayer clause "B" of Writ Petition no. 10182 of 2021, however, he undertakes to seek amendment in the said writ petition in order to modify and exclude the period for which back wages are claimed by the Petitioner in the present Writ Petition.

11. After hearing the learned Advocates for the parties and perusing the impugned order passed by the School Tribunal, the observations of the School Tribunal which are in favour of the Petitioner indicate that the Petitioner has been victimized by the Management. Her signatures were forcefully obtained in order to demonstrate that in fact services of the Petitioner are not terminated but she has voluntarily tendered her resignation. The School Tribunal has observed that order dated 5th January, 2014 has been created by the Management only to terminate services of the Petitioner. Application submitted by the Petitioner to the Education Officer goes to show that her signature was forcefully obtained on blank paper and the same is misused. Hence, considering the observations, which are made against the conduct of the Management, which have resulted into deprivation of the Petitioner from discharging her duty, the observations of the School Tribunal for denying back wages to

the Petitioner, become unsustainable. More so, in the background of the grounds culled out by the Supreme Court in the judgment cited supra, case of the Petitioner would be squarely covered by clause (v) of the propositions which have been culled out in the said judgment. Hence, in view of the above mentioned facts and circumstances, in my opinion order passed by the School Tribunal to the extent of denial of back wages to the Petitioner, requires to be quashed and Respondents No.1 and 2 are required to be directed to pay back wages to the Petitioner.

12. In the result, the Writ Petition is allowed. Respondents No.1 and 2 are directed to pay back wages to the Petitioner from the date of termination of her service i.e. from 5th January, 2014 till the order passed by the School Tribunal i.e. 24th January, 2019, within a period of four months from today. As per the undertaking given by learned Advocate for the Petitioner, the Petitioner shall carry out amendment in Writ Petition No. 10182 of 2021 and modify the prayer clause deleting the overlapping period. Rule is made absolute in above terms.

[MANJUSHA DESHPANDE]
JUDGE