



[THIS ORDER IS CORRECTED PURSUANT TO SPEAKING TO MINUTES ORDER DATED 12.09.2025]

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

950 WRIT PETITION NO. 8149 OF 2006

THE PRESIDENT, MAHATMA BASVESHWAR SHIKSHAN SANSTHA AND
ORS

VERSUS

SAYYAD NOORMIYA AAMIRSAHEB AND ORS

WITH

WRIT PETITION NO. 8148 OF 2006

THE PRESIDENT MAHATMA BASVESHWAR SHIKSHAN SANSTHA LATUR
AND ORS

VERSUS

SHIVRAJ VISHWANATHRAO KARADKHELE AND ORS

Mr. N.P. Patil, Advocate for the petitioner.

Mr. V.D. Gunale, Advocate for respondent No.1.

Mr. R.D. Borde h/f. Mr. U.S. Malte, Advocate for respondent No.3-
University (through VC).

CORAM : KISHORE C. SANT, J.

DATE : 09.09.2025

PC :-

01. Heard learned Advocates for the parties. Both the petitions arise out of judgment and order passed by the learned Member, College Tribunal dated 04.10.2006 in Appeal Nos. 5 and 6 of 2004. The respondents were working as Lecturer and Stenographer in the petitioner – management. From respondent No.4 onwards are formal respondents being members of the management trust. The contest is between the

petitioner and respondent No.1 in both the petitions.

02. Few facts giving rise to the petitions in short are that respondents were working in the College. They came to be terminated on the ground of absenteeism without permission. They approached the learned College Tribunal. The learned College Tribunal by way of the impugned judgment and order, allowed the appeals and directed reinstatement of the respondents with continuity of service and back wages.

03. The management has come to this Court by filing these two petitions. By the passage of time, now the respondents stood retired. The question is, thus, now only to the extent of back wages, as there was stay granted by this Court only to the extent of payment of back wages with condition to reinstate the respondents.

04. Learned Advocate Mr. N.P. Patil – Jamalpurkar for the petitioner submits that before the learned College Tribunal, there is no document or affidavit filed showing that the respondents were not gainfully employed from the date of termination till allowing the appeals. He submits that now it is settled position that, unless there is record and

unless it is shown by the employee that he was not gainfully employed, the employee shall not be entitled to get back wages. He thus submits that the petitions now deserve to be partly allowed to the extent of back wages.

05. As against this, learned Advocate Mr. Gunale vehemently submits that when the appeals were filed, there was no judgment of the Hon'ble Supreme Court in the case of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Vidyalay (2014) SCC (LS) 184** and thus there was no question of proving this fact before the learned College Tribunal. He thus submits that as on today, there is no material on record either to show that they were gainfully employed by the management. There was no such ground taken when the appeals were pending. It is for the first time, said ground is being raised and this Court need not consider the same. He thus prays that the petitions be dismissed.

06. Learned AGP also supports the impugned order. He submits that unless there is material on record or an affidavit of the employee showing that he was not gainfully employed, no back wages can be granted.

07. It is fact on record that no any affidavit was filed by the respondents stating that they were not gainfully employed. When the employee asserts that he was not gainfully employed, it is for such person to prove that he was not gainfully employed. It is only after such employee makes assertion that he was not gainfully employed, it is for the management to prove otherwise. When no such affidavit is filed, there is no question of management proving fact of such employment.

08. Be that as it may, this Court finds that in the present case only question is of back wages. Therefore, following order is passed :-

- i) These Writ Petitions are partly allowed to the extent of back wages. However, the management is free to send proposal to the Joint Director, Higher Education, Nanded Region, Nanded. The authority shall decide the said proposal on the basis of record available. In-case, the Joint Director, Higher Education, Nanded Region, Nanded comes to a conclusion that the employees are entitled to back wages, it is for the Government to pay the same.
- ii) These Writ Petitions are accordingly partly allowed and are disposed off.

[KISHORE C. SANT, J.]