



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

WRIT PETITION NO.11342 of 2025

Nagaon Education Society,
Through its Secretary
Taluka and District Dhule

.. PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through Principal Secretary,
School Education Department,
Mantralay Mumbai-32
- 2] The Education Officer Secondary,
Jilha Parishad Dhule,
Division Dhule, District Dhule.
- 3] S D Bhandane Secondary and Higher Secondary
School, through its secretary
Nimdale, Taluka and District Dhule.
- 4] Bharatkumar s/o. Murlidhar Patil,
Age: 58 years, Occu. : Retired,
R/o. At Post Nagaon,
Taluka and District Dhule.

.. RESPONDENTS

...
Mr.D.S.Bagul, Advocate holding for Mr.D.R.Bagul, Advocate
for the petitioner.

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 10.10.2025

ORDER :

1] By the present Writ Petition, the petitioner challenges the judgment and order dated 06.03.2025 passed by the Presiding Officer, School Tribunal, Nashik in Appeal No.34/2021. The School Tribunal has directed the respondent management to pay full back wages to the respondent no. 4 – Bharatkumar Murlidhar Patil along with all other consequential benefits attached to his post from the date of his termination i.e. from 04.10.2021 till the date of his reinstatement in service on 29.10.2022 and the petitioner challenges the order of the School Tribunal limited to this extent only.

Brief facts leading to filing the present writ petition are as under :

2] The respondent no.4 – Bharatkumar Muridhar Patil was appointed as an Assistant Teacher on permanent vacant post on 01.09.1994. Subsequently, the respondent no.4 was re-appointed on 17.07.1995 and thereafter the services of the respondent no.4 came to be confirmed. The

respondent no.4 was appointed on permanent vacant post on 01.09.1994 and thereafter approval to his appointment was granted by the concerned Education Officer by order dated 29.10.1997. The respondent no.4 has rendered 27 years of continuous service and thereafter he was terminated by order dated 04.10.2021. The said termination order was challenged before the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools [Conditions of service] Regulation Act, 1977 [hereinafter referred as 'MEPS Act'] and Rules made thereunder. The respondent no.4 was reinstated in service on 29.10.2022 during the pendency of appeal. On considering the matter on merits, the Tribunal held that the impugned order dated 04.10.2021 is illegal and quashed and set aside the termination by order dated 06.03.2025. It is further directed by the Tribunal to the Management to pay full backwages to the respondent no.4 along with all other consequential benefits attached to his post from the date of his termination i.e. on 04.10.2021 till the date of his reinstatement in service i.e. 29.10.2022 i.e. for the period of

near about one year.

3] The learned counsel for the petitioner has challenged clause no.3 of the impugned order dated 06.03.2025 and submits that in order to grant back wages it is necessary for employee to plead that he was not gainfully employed from date of termination. He further submits that in the instant case, there was no affidavit by the concerned employee that he was not employed during termination period and as such back wages ought not to have been granted in favour of the respondent no.4. In this regard, the learned counsel for the petitioner relies upon the judgment in the case **J.K.Synthetics Ltd. Vs. K.P.Agrawal and another** reported in **[2007] 2 SCC 433** and in the said judgment, at para nos. 17 and 18, the Hon'ble Supreme Court has held as under :

17. There is also a misconception that whenever reinstatement is directed, 'continuity of service' and 'consequential benefits' should follow, as a matter of course. The disastrous effect of granting several promotions as a 'consequential benefit' to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the

higher duties and functions of promotional posts, is seldom visualized while granting consequential benefits automatically. Whenever courts or Tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether 'continuity of service' and/or 'consequential benefits' should also be directed. We may in this behalf refer to the decisions of this Court in A.P. SRTC v. S.Narasagoud, A.P.SRTC v. Abdul Kareem and Rajasthan SRTC v. Shyam Bihari Lal Gupta.

18. Coming back to back-wages, even if the court finds it necessary to award back-wages, the question will be whether back-wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back-wages, in addition to the several factors mentioned in Rudhan Singh and Uday Narain Pandey. Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is, however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may.

4] He also relies upon the judgment in the case of **Rajasthan State Road Transport Corporation, Jaipur Vs. Phool Chand (Dead) Through Legal Representatives** reported in [2018] 18 SCC 299 more particularly at para no.12 and submits that it is necessary for the workman in

such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.

5] Having considered the submissions of the petitioner, it is necessary to note the judgment of Supreme Court in the case of *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya* reported in [2013] 10 SCC 324 at para no.38 has observed that in the case of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. The proposition of law is quoted in para no.38 in the case of **Deepali Gundu Surwase** [supra] is noted below :

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

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

38.2. *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.*

38.3. *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.*

38.4. *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.*

38.5. *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 court or Tribunal concerned 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 keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a 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.

38.6. 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 (P) Ltd. V. Employees.

38.7. The observation made in J.K. Synthetics Ltd. v. K.P.Agrawal 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.

the Supreme Court has observed that the observation made in *J.K. Synthetics Ltd. v. K.P.Agrawal* 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 and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman. In the case of **K.S.Ravindran Vs. Branch Manager, New India Assurance Company Limited** reported in [2015] 7 SCC 222, the Hon'ble Supreme Court has referred the judgment in the case of **Mohan Lal Vs. Bharat Electronics Ltd.** reported in [1981] 3 SCC 225 has held at para no.17 as under :

17. But there is a catena of decisions which rule that where the termination is illegal, especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the courts in the field of social justice and we do not propose to depart in the case."

7] Coming to the facts of the present case, the Tribunal has held that the respondent no.4 is illegally terminated from service after rendering 27 years of service on permanent post and the services of the respondent no.4

were terminated without conducting an enquiry. It is further observation by the Tribunal that the management by passing resolution dated 29.10.2022 has reinstated the respondent no.4 in service from 29.10.2022. As such, the only issue that remain before the Tribunal that the salary from 04.10.2021 to 29.10.2022.

8] The termination of the respondent no.4 was illegal. In the case of **Deepali Gundu Surwase** [supra], so also, in the case of **Mohan Lal Vs. Bharat Electronics Ltd.** [supra] the Supreme Court has observed that the observation made in *J.K. Synthetics Ltd. v. K.P.Agrawal* is not good law. Thus, although there was no affidavit by the employee/respondent no.4 that he was not employed for the period he was out of service i.e. near about one year, no efforts were made by the management to demonstrate that the employee was in service. The employee is reinstated by the management within one year and employee was on permanent employment at the petitioner-Institute which is receiving grant in aid. After rendering 27

years of service, it cannot be held that the respondent no. 4 was gainful employed during interregnum period of one year when he was illegally terminated so as to deny him the benefits of back wages. Considering the same, no interference is called in the impugned order, as such, the Writ Petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE

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