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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5195 OF 1999

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The Secretary, Shikshan Prasarak
Mandal & Anr.

... Petitioners

V/s.

Ashok Dattatraya Jadhav & Anr.

... Respondents

Mr. Manoj A. Patil with Ms. Kalyani Mangave and Mr.
Akash M. Murudkar for the petitioners.

Mr. Vipul K. Bodhare for respondent No.1.

Smt. Snehal S. Jadhav, AGP for respondent No.2-State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 7, 2025

P.C.:

1. The present writ petition, instituted under Articles 226 and 227 of the Constitution of India, assails the judgment and order dated 24th February 1999, rendered by the School Tribunal, Pune Region, Solapur in Appeal No. 53 of 1996. By the said order, the Tribunal allowed the appeal preferred by respondent No.1 against his termination from service and issued consequential directions for his reinstatement with full back-wages.

2. The facts giving rise to the controversy in the present case are not in serious dispute and may be succinctly stated thus: Respondent No.1 was appointed as an Assistant Teacher in the

petitioner-school on 15th June 2012 against a post reserved for a Scheduled Tribe candidate. Subsequent to his initial appointment, the petitioner-management issued an order dated 30th March 1994 appointing respondent No.1 on probation against a permanent post for a period of two years. However, it is the case of the petitioner-management that respondent No.1 remained absent from duty from 1st April 1994 to 14th July 1994 without any authorization. Furthermore, respondent No.1 remained absent from 1st November 1995, and ultimately, on 27th March 1996, he voluntarily tendered his resignation, which was submitted in person.

3. Being aggrieved by his termination, respondent No.1 preferred an appeal before the School Tribunal, Pune Division, Solapur, by way of Appeal No. 53 of 1996 on 11th April 1996. The petitioner-management contested the appeal by filing a detailed written statement. Pending adjudication, the petitioner-management reinstated respondent No.1 in service. Upon considering the pleadings and submissions advanced by both parties, the Presiding Officer of the Tribunal, by the impugned judgment and order dated 24th February 1999, allowed the appeal and directed the petitioner-management to reinstate respondent No.1 to his original post with continuity of service, coupled with the further direction to pay full back-wages from the date of his termination till the date of his reinstatement.

4. Pursuant to the Tribunal's order, the petitioner-management reinstated respondent No.1. However, the present writ petition has been preferred, limiting the challenge solely to the direction of the

Tribunal regarding the payment of full back-wages, which the petitioner-management contends to be erroneous and legally unsustainable.

5. Learned counsel appearing for the petitioner-management has confined his arguments to the aspect of back-wages, submitting that once the management has complied with the Tribunal's order and reinstated respondent No.1, the issue regarding the validity of termination does not survive for adjudication. However, it is contended that in the absence of any specific pleading or averment by respondent No.1 to the effect that he was not gainfully employed elsewhere during the interregnum period between his termination and reinstatement, the Tribunal could not have granted full back-wages as a matter of course. Learned counsel urged that the burden to establish unemployment during the relevant period squarely rested on respondent No.1, and in the absence of such proof, the Tribunal's direction warrants interference.

6. In support of his contention, learned counsel placed reliance upon an unreported judgment of this Court in *Koyana Shikshan Sanstha v. Vijayamala R. Burate* (Writ Petition No. 8326 of 2008, decided on 8th October 2024), wherein it was held that in the absence of a categorical plea of unemployment during the relevant period, an order directing full back-wages would be unsustainable. Further reliance has been placed upon the judgment of the Hon'ble Supreme Court in *Ramesh Chand v. Management of Delhi Transport Corporation* (2023 SCC OnLine SC 776), wherein similar principles have been reiterated.

7. Per contra, learned counsel appearing for respondent No.1 submitted that even in the absence of a specific averment regarding non-employment elsewhere, the claim for back-wages was an inherent component of the relief sought in the memorandum of appeal. He relied upon paragraph 38.3 of the judgment in *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) & Ors.* ((2013) 10 SCC 324), to contend that once termination is held to be illegal, the grant of back-wages should ordinarily follow. He further submitted that in the event this Court finds any procedural lapse in proving unemployment during the relevant period, the matter may be remanded to the Tribunal to afford respondent No.1 an opportunity to place on record necessary materials to substantiate his plea of unemployment from the date of termination till the date of reinstatement.

8. Having heard the learned counsel for the parties and perused the record, the matter now falls for adjudication on the limited question of whether the Tribunal was justified in granting full back-wages in the absence of a categorical averment and proof regarding unemployment.

9. This Court shall now proceed to examine the legal principles governing such reliefs and their application to the facts of the present case. It is imperative, at the outset, to delineate the precise issue that remains to be adjudicated in these proceedings.

10. In the present case, the legality or propriety of the alleged resignation tendered by the respondent No.1, or the validity of his

termination, need not be delved into, for two reasons—first, on account of the concession by the petitioner-management that the issue need not be adjudicated, and second, the reinstatement of the respondent No.1 has already been given effect to. Consequently, the primary focus must remain on the question of entitlement to back-wages, which is the sole grievance of the petitioner-management.

11. The petitioner's contention essentially rests on the absence of any express statement or pleading by the respondent No.1, in consonance with paragraph (38.3) of Deepali Gundu Surwase(Supra), wherein it has been mandated that an employee seeking back-wages shall plead or specifically aver that he or she was not gainfully employed during the period between termination and reinstatement. According to the petitioner, a mere prayer for back-wages does not satisfy the requirement of a clear and unambiguous assertion of unemployment, so as to shift the evidentiary burden to the management to prove that the employee was, in fact, gainfully employed. The limited question, therefore, is whether the prayer for back-wages in the respondent No.1's memorandum of appeal can, by itself, be construed as a sufficient compliance with paragraph (38.3) of Deepali Surwase (supra). It is well settled that an employer cannot ordinarily be saddled with the negative burden of proving that an employee was gainfully employed during the relevant period. Consequently, the law requires a positive assertion by the employee—preferably in the pleadings or by way of a statement on oath—setting forth the fact that he or she had not been employed after the date of

termination. Such an assertion enables the employer to lead rebuttal evidence, if any, to establish that the employee drew income or remuneration from another source, thus disqualifying the employee from a claim of full back-wages. A mere general prayer for relief cannot stand in the place of this specific pleading or statement.

12. On the question of remand, it is settled law that an order of remand ought not to be passed merely to enable a party to fill up lacunae in his or her case. In the instant factual matrix, the request to remit the matter to the School Tribunal solely for the purpose of allowing the respondent No.1 to introduce evidence regarding his alleged unemployment amounts to permitting such lacunae to be rectified after the case has already been adjudicated by the Tribunal. An order of remand may be justified if the Tribunal failed to adjudicate upon an existing material issue that could affect the outcome. However, where the essential pleading that enables such adjudication was never made, no remand can be granted as a matter of course. Such a direction would clearly contravene the settled principle that judicial decisions must be based on pleadings and evidence as they stood before the adjudicating authority, barring exceptional circumstances.

13. Turning to the impugned order, it transpires that while the School Tribunal framed Issue No.3 concerning the entitlement of the respondent No.1 to claim back-wages, it did not record any finding as to whether the respondent No.1 had fulfilled the legal requirement of pleading or deposing that he remained unemployed from the date of termination until the date of

reinstatement. In the absence of such a finding, the direction to grant full back-wages stands in direct conflict with paragraph 38.3 of Deepali Surwase (supra). It is thus evident that the Tribunal proceeded on the assumption that once the termination was set aside, full back-wages would naturally follow, overlooking the settled principle that back-wages do not flow automatically from an illegal termination.

14. In the circumstances, the impugned Judgment and Order dated 24th February 1999, rendered by the School Tribunal, Pune Division, Solapur, cannot be sustained to the extent it directs payment of full back-wages to the respondent No.1, owing to the respondent No.1's failure to comply with the procedural requirement of asserting and demonstrating non-employment. Resultantly, the portion of the impugned Judgment and Order dated 24th February 1999 granting full back-wages stands quashed and set aside.

15. In view of the above, the writ petition is disposed of in the aforesaid terms. The parties shall bear their own costs. No further order as to costs is warranted.

(AMIT BORKAR, J.)