

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14935 OF 2025**

Vidya Vinay Sabha & Anr. ..Petitioners

Versus

Bhushan Prabhakar Shirude & Anr. ...Respondents

Mr. Vishal Kanade, Ms. Tanaya Patankar, a/w Ms.
Khooshnum Daviervalva, Mr. Yazdi Jijina & Ms. Farzeen
Harver i/b Mulla & Mulla and Craigie Blunt & Caroe, for
the Petitioners.

Mr. Sugandh Deshmukh a/w Mr. Aniket Kanawade, Irvin
D'souza, Vaibhav Thorave, for Respondent No. 1.

Mr. P. V. Nelson Rajan, AGP for the Respondent-State.

CORAM: N. J. JAMADAR, J.

DATE : 01st DECEMBER 2025

P.C.:

1. Heard Mr. Vishal Kanade, the learned Counsel for the petitioner and Mr. Sugandh Deshmukh, the learned Counsel for the Respondent No. 1.

2. This petition assails the legality, propriety and correctness of a judgment and order dated 07th August, 2025 passed by the learned Presiding Officer, School Tribunal, Pune whereby the order of termination dated 24th May, 2019 passed by the Petitioner No. 1 thereby terminating the Respondent No. 1's

services was declared illegal and void and, thus, quashed and set aside, and the Petitioner Nos. 1 & 2 were directed to reinstate the Respondent No. 1 in service with full back wages from the date of termination till date of reinstatement in service.

3. Mr. Kanade, the learned Counsel for the petitioner, made an endeavor to urge that, the petitioner had executed an indemnity and thereby acknowledged that, his appointment was on temporary basis. The learned Presiding Officer did not properly appreciate the material on record and returned an incorrect finding that the petitioner was appointed on a vacant and permanent post.

4. I find it difficult to accede to the submission of Mr. Kanade. The appointment letter dated 28th July, 2014 is clear and unambiguous. It records that, the petitioner was appointed for a term of three years as a 'Shikshan Sevak'. It nowhere indicates that, the petitioner was appointed on a temporary basis. On the contrary, it reveals the petitioner was selected after following a regular recruitment process against clear vacancy.

5. A communication dated 28th July, 2014 addressed by the General Secretary of the Petitioner No. 1 (Exh. F to the petition) makes the aforesaid position abundantly clear. The learned

Presiding Officer, School Tribunal was, thus, justified in declaring that, the termination of the services of petitioner was wholly illegal.

6. As regards back wages, Mr. Kanade would urge that the grant of full back wages cannot be an automatic consequence of reinstatement. In contrast, Mr. Deshmukh would urge that, in view of the patent illegal order of termination and the Respondent having been not gainfully employed, post termination, grant of full back wages cannot be called in question. Mr. Deshmukh placed reliance on the judgments of the Supreme Court in the cases of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors¹**. And **Maharashtra State Road Transport Corporation Vs. Mahadeo Krishna Naik²** .

7. In the case of **Mahadeo Naik (supra)**, the Supreme Court after referring to the decision in the case of **Deepali Gundu Surwase (supra)**, enunciated that, “*after the employee pleads his non-employment and if the employer asserts that the employee was gainfully employed between the dates of termination and proposed reinstatement, the onus of proof would shift to the employer to prove such assertion having regard to the cardinal*

1 (2013) 10 SCC 324

2 Civil Appeal No. 13834/2024 dt. 14th February, 2025.

principle that 'he who asserts must prove'. Law, though, seems to be well settled that if the employer by reason of its illegal act deprives any of its employees from discharging his work and the termination is ultimately held to be bad in law, such employee has a legitimate and valid claim to be restored with all that he would have received but for being illegally kept away from work. This is based on the principle that although the employee was willing to perform work, it was the employer who did not accept work from him and, therefore, if the employer's action is held to be illegal and bad, such employer cannot escape from suffering the consequences. However, it is elementary but requires to be restated that while grant of full back wages is the normal rule, an exceptional case with sufficient proof has to be set up by the employer to escape the burden of bearing back wages."

8. In the case at hand, the learned Presiding Officer has in terms recorded that, the employer has failed to demonstrate that, after termination the Respondent No. 1 is not gainfully employed and was earning his livelihood. What was contended before the Presiding Officer was that, the father of the respondent No. 1 was running a flour mill and, therefore, back wages cannot be granted.

9. The learned Presiding Officer repelled the aforesaid submission, and rightly so. The termination of the Respondent No. 1 was patently illegal. The Respondent No. 1 was unjustifiably deprived of the work and the resultant wages. Therefore, no fault can be found with the order granting full back wages.

10. The petition thus stands dismissed.

[N. J. JAMADAR, J.]