



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.6512 OF 2023

Dyansanwardhan Mandal, Wadhona, Trust, through its President, Chandrapur and
another .Vs. Shri Raju S/o Harihar Barde and others

WITH

WRIT PETITION NO.3981 OF 2022

Shri Raju S/o Harihar Barde .Vs. Headmaster, Samaj Seva Vidyalaya, Wadhona and
others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

In Writ Petition No.6512/2023.

Mr. P.N. Shende, Advocate for petitioner.

Mrs. S.P. Giratkar, Advocate for respondent No.1.

Mrs. H.S. Dhande, A.G.P. for respondent/State.

In Writ Petition No.3981/2022.

Mrs. S.P. Giratkar, Advocate for petitioner.

Mr. P.N. Shende, Advocate for respondent No.4.

Mrs. H.S. Dhande, A.G.P. for respondent/State.

CORAM : ROHIT W. JOSHI, J.

DATE : 06/10/2025

1. Both the petitions arise out of judgment and order dated 20.03.2020, passed by the Presiding Officer, School Tribunal, Chandrapur in STC Appeal No.01.2019. The petitioner in Writ Petition No.6512 of 2023 will hereinafter referred to as 'Management' and the petitioner in Writ Petition No.3981 of 2022 will be referred as 'Teacher'. The services of the teacher were terminated by the Management by order dated 14.09.2017 after conducting inquiry. The teacher filed the aforesaid appeal challenging the said order of termination. The learned Tribunal has allowed the appeal holding that the inquiry

was not conducted in accordance with Rule 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The learned Tribunal has accordingly, set aside the order of termination. However, while the appeal was pending, the teacher attained the age of superannuation on 31.12.2019. In both petitions, the challenge is restricted to the award of backwages. The teacher claims entitlement to 100% backwages, whereas the case of the Management is that the learned Tribunal has erred in awarding backwages. It is pertinent to mention that the learned Tribunal directed the Management to pay 30% of the backwages for the period from the date of termination, i.e., 14.09.2017, till the date of superannuation, i.e. 31.12.2019.

2. Mr. Prashant Shende, learned Advocate for the Management has placed reliance on judgments of the Hon'ble Supreme Court in the matter of *Deepali Gundu Surwase ..vs.. Kranti Junior Adhyapak Mahavidyalaya and ors* (Civil Appeal No.6767 of 2013, arising out of SLP (C) No.6778 of 2012) and in the matter of *Allahabad Bank and others ..vs.. Avta Bhushan Bhartiya*, reported in (2022) 13 SCC 202 and also an unreported judgment dated 11.03.2025 delivered at Nagpur Bench of this Court in Writ Petition No.721 of 2017 (*VSPM Academy Higher Education, Nagpur and another ..vs.. Shri Deorao S/o Premaji Rathod*). The judgments have laid down that, in the

event an order of termination is found to be bad in law, the employee is normally entitled to reinstatement along with backwages. However, it is held that, in order to be entitled to backwages, the employee must initially demonstrate that he was not gainfully employed elsewhere during the relevant period. The burden on the employee in this regard is very light, and a statement to that effect in the pleadings or an affidavit is sufficient to discharge this burden. Once such a statement is made, the burden shifts on the employer to demonstrate that the employee was, in fact, gainfully employed elsewhere. Failing this, the employer cannot avoid the liability for payment of backwages.

3. Mrs. Giratkar, learned Advocate for the teacher has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *Bhuvnesh Kumar Dwivedi ..vs.. Hindalco Industries Limited*, reported in (2014) 11 SCC 85, to contend that the Tribunal has erred in awarding only 30% backwages. She contends that in the facts of the case, 100% backwages ought to have been granted.

4. Perusal of the memorandum of appeal and record, will demonstrate that there is no pleading or separate affidavit by the teacher stating that he was not gainfully employed elsewhere from the date of termination of his services till the date of reinstatement. However, a

statement is made stating that he was suffering from heart ailment. Likewise, there is no evidence on the side of the Management to positively demonstrate that the teacher was working elsewhere during the relevant period. In the considered opinion of this Court, the learned Tribunal has exercised discretion in order to balance the equities. The discretion exercised by the learned School Tribunal cannot be interfered with or substituted with the discretion of this Court. It will be pertinent to state that in the matter of *Allahabad Bank* (Supra), also despite that there was no pleading by the employee about not being gainfully employed, 50% backwages were awarded by the High Court and the order was upheld by the Hon'ble Supreme Court.

5. It must also be stated that the judgment by the learned Tribunal dated 20.03.2020 and the petitions by the teacher on the Management are filed on 04.07.2022 and 03.07.2023, respectively. The Delay is also a reason for not entertaining the petitions.

6. In the considered opinion of this Court, a reasonable view of the matter is taken by the learned School Tribunal. Both petitions are **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)