



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

WRIT PETITION NO.721 OF 2017

1. VSPM Academy of Higher Education
Regd. Office 5, YMCA Complex,
Sitabuldi, Maharajbag Road,
Nagpur-01
Through its President/Secretary.
2. The Head Master
Madhyamik Vidyalaya,
Chandnibardi, Tahsil Narkhed,
District Nagpur.

..... **PETITIONERS**

...V E R S U S...

1. Shri Deorao S/o Premaji Rathod
Aged about 50 years, Occu : Nil
R/o Plot No. 66, Shivshakti No.2,
Nagpur.
2. ~~Shri Sudhakar Narayan Pawar~~
~~Aged about Major, Occu : Service~~
~~Head Master, Vidya Niketan Titamba,~~
~~Tahsil Dharni, District Amravati.~~
3. The Education Officer,
(Secondary), Education Department,
Zilla Parishad, Nagpur.
4. The Presiding Officer
School Tribunal, Nagpur.

..... **RESPONDENTS**

Petition dismissed
against R-2 vide
Registrar's Ord. dt.
12.1.18.

Mr. V. P. Marpakwar, Advocate for Petitioners.
Mr. M. M. Sudame, Senior Advocate with Mr. I. A. Fidvi,
Advocate for Respondent No.1.
Mr. S. B. Bissa, AGP for Respondent Nos.3 and 4/State.

CORAM: **ANIL L. PANSARE, J.**
DATE: **11th MARCH, 2025.**

ORAL JUDGMENT:

1. Heard.

2. The petitioners have restricted challenge to the portion of the judgment granting back wages to the respondent no.1.

3. Having heard both the sides and having gone through the record, it transpired that respondent no.1 was working as Head Master with petitioner no.2 school run by petitioner no.1. The respondent no.1's services were terminated on 22.02.2013. The order of termination was challenged by the respondent no.1 before the School Tribunal, Nagpur in Appeal No.STN 13/2013. The School Tribunal vide impugned judgment and order set aside the order of termination and directed petitioners (original respondents) to reinstate the respondent no.1 (original complainant) along with back wages with continuity in service.

4. Learned counsel for petitioners has invited my attention to the findings given by the School Tribunal while awarding back wages. The School Tribunal was of the view that the burden to prove that respondent no.1 was not in gainful employment was upon the petitioners. Accordingly, the School

Tribunal noted that the petitioners had found short to demonstrate that at any point of time, after the impugned termination order the respondent no.1 was not out of gainful employment, and therefore, the respondent no.1 would be entitled for the relief of back wages also.

5. Learned counsel for petitioners has invited my attention to the judgment of Hon'ble Supreme Court in the case of ***Allahabad Bank and others v. Avtar Bhushan Bhartiya [(2022) 13 SCC 202]*** where on the point of gainful employment, the duty cast upon the employee is clarified in following terms:

36. The reliance placed upon the decision in Pawan Kumar Agarwala v. SBI may not also be of help to the employee. It is a case where this Court applied the propositions laid down in Deepali Gundu Surwase. This Court found that there was nothing to show that the employee was gainfully employed after the date of dismissal. It is needless to point out that in the first instance, there is an obligation on the part of the employee to plead that he is not gainfully employed. It is only then that the burden would shift upon the employer to make an assertion and establish the same.

As could be seen, the Hon'ble Supreme Court has held that at the first instance, there is an obligation on the part of the employee to plead that he is not gainfully employed and it is only then that the burden would shift upon the employer to make an

assertion and establish the same. In the present case, however, the School Tribunal has shifted burden directly upon the employer.

6. Learned counsel for respondent no.1 submits that the petitioners were absent before the School Tribunal and this point was not raised at all. He further submits that the respondent no.1 had after getting order of termination of services, approached the School Tribunal in the year 2013 itself, the School Tribunal was pleased to grant stay to the order of termination. He submits that the said order was carried before this Court in Writ Petition No.5486/2013 and on 19.10.2013 the order passed by the School Tribunal granting stay to the order of termination was stayed by this Court. Learned counsel then submits that the respondent no.1 thereafter pursued the remedy before the Tribunal and therefore, had no occasion to put-forth such pleading.

7. In addition, he has invited my attention to the judgment passed by the Hon'ble Supreme Court in the case of ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya [(2013) 10 SCC 324]*** wherein the proposition of law elucidated in the said case has been reproduced in paragraph no.38 of which paragraph no.38.5 is relied upon which reads as under:

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 victimising the employee or workman, then the concerned court or tribunal 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 always be kept 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 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.

8. Accordingly, it is argued that the writ Court should be slow in exercising extraordinary jurisdiction in the cases where School Tribunal has granted back wages.

9. To my mind, the submissions put-forth by the learned counsel for respondent no.1 are not acceptable inasmuch as the Hon'ble Supreme Court in *Allahabad Bank's* case has also considered the law laid down in *Deepali Surwase's* case. The question here is whether the School Tribunal could have shifted the burden on the employer. It is so because the School Tribunal's order granting stay to the order of termination was itself stayed by this Court on 19.10.2013 meaning thereby, the order of

termination of services continued pending appeal before School Tribunal. In such circumstances, the petitioners were duty bound to plead that respondent no.1 was not in gainful employment in the intervening period. This could be done by amending the petition or even by making statement before the School Tribunal. Having not done so, the School Tribunal could not have shifted burden on the employer, to prove otherwise. To that extent, the order passed by School Tribunal will not stand the scrutiny of law. The petitioners therefore, have made out a case to that extent. Hence, following order:

ORDER

Writ Petition is partly allowed. The judgment and order dated 01.09.2016 passed by the School Tribunal, Nagpur in Appeal No.STN 13/2013 is quashed and set aside to the extent it directs the petitioners to pay back wages to the respondent no.1. Rest of the order stands intact.

Writ petition is disposed of in above terms. No order as to costs.

(ANIL L. PANSARE, J.)