

Bombay High Court Vijay Pundlik Jarhad vs A. J. Sonone, Education Officer
... on 5 September, 2017 Bench: S.C. Gupte 1 wp6430.16

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

(1) WRIT PETITION NO.6430/2016

1. Lok Shikshan Sanstha, through its Secretary, Kingaon-Raja, Tq. Sindhkhed-Raja, Distt. Buldhana.
2. The Head-Master, Jeevan Vikas Vidyalaya, Dusarbid, Tq. Sindhkhed-Raja, Distt. Buldhana. ..Petitioners.
..Vs..
3. Nitin Gopalrao Rathod, aged about 35 Yrs., Occu. Nil, R/o Dusarbid, Tq. Sindhkhed-Raja, Distt. Buldhana.
4. The Deputy Director of Education, Amravati Division, Amravati.
5. Education Officer (Sec.), Zilla Parisahd Buldhana, Distt. Buldhana.
6. Balwant V. Gujar, Ex-President, Lok Shikshan Sanstha, Kingaon-Raja, R/o C/o Suryakant Nimbalkar, At Post Kingaon Raja, Tq. Sindhkhed-Raja, Distt. Buldhana. ..Respondents.

(2) AND WRIT PETITION NO.6330/2016

7. Lok Shikshan Sanstha, through its Secretary, Kingaon-Raja, Tq. Sindhkhed-Raja, Distt. Buldhana.
8. The Head-Master, Jeevan Vikas Vidyalaya, Dusarbid, Tq. Sindhkhed-Raja, Distt. Buldhana. ..Petitioners.

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..Vs..

9. Gajanan Vikramrao Kale, aged about 35 Yrs., Occu. Nil, R/o Dusarbid, Tq. Sindhkhed-Raja, Distt. Buldhana.
10. The Deputy Director of Education, Amravati Division, Amravati.
11. Education Officer (Sec.), Zilla Parisahd Buldhana, Distt. Buldhana.
12. Balwant V. Gujar, Ex-President, Lok Shikshan Sanstha, Kingaon-Raja, R/o C/o Suryakant Nimbalkar, At Post Kingaon Raja, Tq. Sindhkhed-Raja, Distt. Buldhana. ..Respondents.

(3) AND WRIT PETITION NO.6431/2016

13. Lok Shikshan Sanstha, through its President, Kingaon-Raja, Tq. Sindhkhed-Raja, Distt. Buldhana.
14. The Head-Master, Yashwant Madhyamik Vidyalaya, Digras Bk., Tq. Deulgaon-Raja, Distt. Buldhana. ..Petitioners.
..Vs..
15. Sunil Devrao Dhanve, aged about 32 Yrs., Occu. Nil, R/o At Post-Harsi, Tq. Pusad, Distt. Yavatmal.
16. Education Officer (Sec.), Zilla Parisahd Buldhana, Distt. Buldhana. ..Respondents.

(4) AND WRIT PETITION NO.6998/2016

17. Lok Shikshan Sanstha,

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through its Secretary, Kingaon-Raja, Tq. Sindhkhed-Raja, Distt. Buldhana.

18. The Head-Master, Sahkar Maharishi Sw. Bhaskarraoji Shingne Madhyamik Vidyalaya, Changeval, Tq. Sindhkhed-Raja, Distt. Buldhana. ..Petitioners.
..Vs..
19. Vijay Kundlikrao Jarhad, aged about 28 Yrs., Occu. Nil, R/o Dusarbid, Tq. Sindhkhed-Raja, Distt. Buldhana.
20. The Deputy Director of Education, Amravati Division, Amravati.
21. Education Officer (Sec.), Zilla Parisahd Buldhana, Distt. Buldhana.
22. Balwant V. Gujar, Ex-President, Lok Shikshan Sanstha, Kingaon-Raja, R/o C/o Suryakant Nimbalkar, At Post Kingaon Raja, Tq. Sindhkhed-Raja, Distt. Buldhana. ..Respondents.

(5) AND WRIT PETITION NO.6999/2016

23. Lok Shikshan Sanstha, through its Secretary, Kingaon-Raja, Tq. Sindhkhed-Raja, Distt. Buldhana.

24. The Head-Master, Nutan Madhyamik Vidyalaya, Kingaon-Raja, Tq. Sindhkhed-Raja, Distt. Buldhana. ..Petitioners.

..Vs..

25. Pallavi Tulshiram Ramteke, aged about 37 Yrs., Occu. Nil, R/o Kingaon-Raja, Tq. Sindhkhed-Raja, Distt. Buldhana.

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26. The Deputy Director of Education, Amravati Division, Amravati.

27. Education Officer (Sec.), Zilla Parishad Buldhana, Distt. Buldhana.

28. Balwant V. Gujar, Ex-President, Lok Shikshan Sanstha, Kingaon-Raja, R/o C/o Suryakant Nimbalkar, At Post Kingaon Raja, Tq. Sindhkhed-Raja, Distt. Buldhana. ..Respondents.

(6) AND CONTEMPT PETITION NO.76/2016

Sau. Pallavi Tulshiram Ramteke, aged about adult, R/o Dusarbid, Tq. Sindhkhed Raja, Distt. Buldhana. ..Petitioner.

..Vs..

1. A.J. Sonone, Education Officer (Secondary), Zilla Parishad Buldhana, Distt. Buldhana.

2. S.B. Kulkarni, Deputy Director of Education, Amravati Division, Amravati.

3. Ganesh Janraoraje Jadhav, Secretary, Lok Shikshan Sanstha, At Post - Kingaon Raja, Tq. Sindhkhed Raja, Distt. Buldhana.

4. Balwant Vinayak Gujar, President, Lok Shikshan Sanstha, R/o C/o Suryakant Nimbalkar, At Post - Kingaon Raja, Tq. Sindhkhed Raja, Distt. Buldhana. ..Respondents.

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(7) AND CONTEMPT PETITION NO.77/2016

Nitin Gopalrao Rathod, aged about adult, R/o Dusarbid, Tq. Sindhkhed Raja, Distt. Buldhana. ..Petitioner.

..Vs..

1. A.J. Sonone, Education Officer (Secondary), Zilla Parishad Buldhana, Distt. Buldhana.
2. S.B. Kulkarni, Deputy Director of Education, Amravati Division, Amravati.
3. Ganesh Janraoraje Jadhav, Secretary, Lok Shikshan Sanstha, At Post - Kingaon Raja, Tq. Sindhkhed Raja, Distt. Buldhana.
4. Balwant Vinayak Gujar, President, Lok Shikshan Sanstha, R/o C/o Suryakant Nimbalkar, At Post - Kingaon Raja, Tq. Sindhkhed Raja, Distt. Buldhana. ..Respondents.

(8) AND CONTEMPT PETITION NO.78/2016

Gajanan Vikramrao Kale, aged about adult, R/o Dusarbid, Tq. Sindhkhed Raja, Distt. Buldhana. ..Petitioner.

..Vs..

1. A.J. Sonone, Education Officer (Secondary), Zilla Parishad Buldhana, Distt. Buldhana.
2. S.B. Kulkarni, Deputy Director of Education,

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Amravati Division, Amravati.

3. Ganesh Janraoraje Jadhav, Secretary, Lok Shikshan Sanstha, At Post - Kingaon Raja, Tq. Sindhkhed Raja, Distt. Buldhana.
4. Balwant Vinayak Gujar, President, Lok Shikshan Sanstha, R/o C/o Suryakant Nimbalkar, At Post - Kingaon Raja, Tq. Sindhkhed Raja, Distt. Buldhana. ..Respondents.

(9) AND CONTEMPT PETITION NO.79/2016

Vijay Kundlik Jarhad, aged about adult, R/o Dusarbid, Tq. Sindhkhed Raja, Distt. Buldhana. ..Petitioner.

..Vs..

1. A.J. Sonone, Education Officer (Secondary), Zilla Parishad Buldhana, Distt. Buldhana.
2. S.B. Kulkarni, Deputy Director of Education, Amravati Division, Amravati.
3. Ganesh Janraoraje Jadhav, Secretary, Lok Shikshan Sanstha, At Post - Kingaon Raja, Tq. Sindhkhed Raja, Distt. Buldhana.
4. Balwant Vinayak Gujar, President, Lok Shikshan Sanstha, R/o C/o Suryakant Nimbalkar, At Post - Kingaon Raja, Tq. Sindhkhed Raja, Distt. Buldhana. ..Respondents.

(10) AND CONTEMPT PETITION NO.118/2016

Sunil S/o Devrao Dhanve,

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aged about 29 Yrs., Occu. Nil, R/o At Post Harshi, Tahsil Pusad, Distt. Yavatmal. ..Petitioner.

..Vs..

1. Mukundrao S/o Appasaheb Deshmukh,
aged about 56 Yrs., Occu. President
of Lok Shikshan Sanstha, Kingaon Raja,
Tah. Sindhkhed Raja, Distt. Buldhana.
2. Ganeshrao S/o Vitthalrao Bhange,
aged about 45 Yrs., Occu. Service as
Head Master, Yashwant Madhyamik
Vidyalaya, At Post Digras Bk.,
Tah. Deulgaon Raja, Distt. Buldhana.
3. Ashok G. Sonavane,
Education Officer (Secondary),
Zilla Parishad Buldhana,
Distt. Buldhana.

Shri P.S. Patil, Advocate for the petitioners.
Shri S.M. Vaishnav, Advocate for respondent No.1.
Shri A.R. Chutke, A.G.P. for respondent Nos.2 and 3.

Shri Tejas Kene, Adv. h/f Shri S.S. Shingane, Adv. for respondent No.4.

Shri P.S. Patil, Advocate for the petitioners.

Shri B.R. Gawali, Advocate for respondent No.1.

Shri A.R. Chutke, A.G.P. for respondent No.2.

Shri S.M. Vaishnav, Advocate for the petitioner.

Shri A.R. Chutke, A.G.P. for respondent Nos.1 and 2.

Shri P.S. Patil, Advocate for respondent No.3.

Shri Sheikh Sohabuddin, Adv. h/f Shri Anjan De, Adv. for respondent No.4.

Shri V.B. Gawali, Advocate for the petitioner.

Shri P.S. Patil, Advocate for respondent Nos.1 and 2.

Shri A.R. Chutke, A.G.P. for respondent No.3.

CORAM : S.C. GUPTE, J.

DATE : 5.9.2017.

ORAL JUDGMENT

Heard the learned counsel for the parties.

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2. Rule. Taken up for hearing forthwith by consent.
3. The contempt petitions herein allege breach of, or disobedience to, the orders of the School Tribunal passed on appeals filed by the contempt petitioners herein. By the appellate orders, the School Tribunal set aside the termination orders passed by the respondent - contemnor and ordered their reinstatement with back wages and with directions to forward fresh proposals for approval of the education department to the appointments of the contempt petitioners as Assistant Teachers. Whereas in pursuance of the orders of the School Tribunal, the petitioners were reinstated, back wages were not paid to them. Such non-payment of back wages, according to the petitioners, amounts to breach of the orders of the School Tribunal. On the other hand, it is the case of the respondent - contemnor that in pursuance of the orders of the School Tribunal, the petitioners were reinstated and fresh proposals for approval of their appointments were forwarded by

it to the Education Officer. These proposals were subsequently rejected by the Education Officer by a communication dated 23rd February, 2016 on the ground that no posts were available for being filled in. In these peculiar facts and circumstances, the respondent - contemnor has filed five separate writ petitions challenging the orders of back wages issued by the School Tribunal.

4. The short facts of the cases may now be noted. (The contem

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petitioners are hereinafter referred to as 'teachers', whilst the respondent - contemnor is referred to as 'Management'. Sometime around November, 2012, an application was made by the Management for permission to fill in five vacant posts of 'Shikshan Sevak' (which was the earlier nomenclature for Assistant Teacher). By its communication dated 7th December, 2012, the Education Officer (Secondary), Zilla Parishad, Buldhana permitted the Management to fill up all five vacant posts so as to complete the backlog of backward classes. The posts were to be filled in from Scheduled Caste (1 number), Scheduled Tribe (1 number) and V.J.N.T. (3 numbers) candidates. Accordingly, on 28th December, 2012, after following due procedure, including publication of an advertisement and interviews of candidates, five appointments were made in the posts of Shikshan Sevak, which included the five petitioners ('Teachers') before this Court. By a communication dated 1 st July, 2013, the Education Officer cancelled the earlier permission issued on 7 th December, 2012, purportedly on the ground of the G.R. of 6 th May, 2013 under which vacant posts in aided educational institutes were allowed to be filled in only after specific permission of the Government. (The G.R. of 6 th May, 2013 merely contains a modification to the original G.R. of 2nd May, 2012 by which a directive was issued to aided institutes not to appoint any new teacher till all surplus teachers were absorbed.) In pursuance of this communication of the Education Officer, the Management terminated the teachers on 27 th November, 2013. The termination orders were, as noted above, challenged before the 10 wp6430.16 School Tribunal in appeals. By its orders dated 19th March, 2015, the School Tribunal allowed the appeals and set aside the orders of termination. (In so far as Writ Petition No.6431/2016 is concerned, the order was passed on 5 th August, 2015.) The School Tribunal directed the Management to reinstate the teachers and pay their back wages from 28th November, 2013 till the date of reinstatement. The Management was also directed to forward fresh proposals to the Education Officer for approval of the teachers after their reinstatement. The School Tribunal, in particular, observed in its orders that the education department did not stick to their original stand and kept continuously changing it so far as the appointments of these teachers are concerned and that, in

the premises, the termination orders purportedly issued on the basis of the stand adopted by the education department were not justified. This order was not challenged either by the Management or by the respondent - State. On 29 th April, 2015, the Management reinstated the teachers and thereafter forwarded fresh proposals to the Education Officer for approval of the teachers. (The date of reinstatement of the teacher in Writ Petition No.6431/2016 was 1 st October, 2015.) By a communication dated 23rd February, 2016, the Education Officer rejected the proposals for approval purportedly on the ground that the requisite posts were not available and could not be filled in. The Education Officer held that there were 36 posts in the school, all of which had already been filled in. (It appears that in the interregnum, i.e. between the termination of the teachers on 27th November, 2013 and disposal of their appeals by the School 11 wp6430.16 Tribunal on 19th March, 2015, five posts in the institute had been filled in from out of surplus teachers in the schools run by the Management.) By their order dated 29th March, 2016, the Management informed the teachers that in view of the rejection order passed by the Education Officer, the Management was not responsible for either the services of the teachers or wages payable to them. It is this order, which has given rise to the present contempt petitions, and as noted above, it is these peculiar facts and circumstances, which have led to the Management filing the present writ petitions.

5. Going by the above narration, it is apparent that these teachers, with no fault of theirs, have been denied reinstatement as well as back wages despite having orders of the School Tribunal in their favour, which orders were neither challenged by the Management nor by the State so far (i.e. till the filing of the present writ petitions by the Management). The Management itself, though, does not seem to have acted unauthorisedly in the matter, since at all stages it really followed and acted on the orders of the Education Officer. The stand of the Education Officer that in pursuance of the G.R. of 2 nd May, 2012, which anyway predates permission granted to the Management on 7 th December, 2012 for filling up the vacant posts in its institute, the posts could not have been filled in, also appears to be in order. The difficulty really arises due to the initial permission granted by the Education Officer on 7 th December, 2012 for filling up the posts, in the first place. If it was the case of the 12 wp6430.16 education department that under the G.R. of 2nd May, 2012 no vacant post in the school could be filled in till the backlog of surplus teachers was cleared, it ought not to have issued the permission. After it issued the permission, the Management followed the appropriate procedure such as issuance of a public advertisement, calling for applications from prospective candidates and taking their interviews and after following this procedure, duly appointed these teachers. The teachers, in turn, have duly worked with the institute and rendered their services. In these circumstances, if anyone is responsible for the teachers rendering their services with effect from the

date of their appointment and for payment of back wages for services rendered by them, it is the education department and no one else. This Court is not concerned in the present matters with the non-continuation of the services of the teachers after 29th March, 2016. That is a subject matter of a separate challenge instituted by two of these five teachers in separate petitions, which are pending before a Division Bench of this Court. This Court is concerned with the order of payment of back wages to these teachers.

6. The Supreme Court, in the case of Educational Society, Tumsar and Ors. V/s. State of Maharashtra & Ors. reported in 2016 (2) ALL MR 947 (S.C.), after considering the relevant provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 in the context of payment of back wages, has held that as per normal principle, whenever a 13 wp6430.16 terminated employee of an aided school challenges the termination and the termination is held to be illegal by a competent judicial forum / Court and an order is passed for payment of back wages, it is the Government, who is supposed to bear the burden. Such back wages are really in the nature of salary in the intervening period or compensation in lieu thereof which has to be paid to the employee, who would have anyway earned the same had he remained in service. There is no reason why this normal principle ought not to apply in the facts of the present case.
7. It is pertinent to note that in the present case not only was the Management allowed to fill in the posts of teachers and the teachers were allowed to render their services directly as a result of the orders passed by the Education Officer, but even the orders of reinstatement and back wages passed by the School Tribunal were not challenged by the education department. If it was their case either that the initial appointments themselves were not legal or that the School Tribunal was not right in ordering reinstatement and back wages, it was for them to have carried the matters further. They obviously failed to do so and stood by. It is not permissible, in these facts, to now allow them to shirk their responsibility of payment of salary to these unfortunate teachers. If the respondent - Education Officer is of the view that the appointments of the contempt petitioners and the subsequent liability to pay their salary, are the result of an incorrect order passed in the first place by the 14 wp6430.16 particular Education Officer, who gave permission on 7th December, 2012 to fill in the posts, respondent - Education Officer will be at liberty to adopt such steps against the concerned officer as may be permissible in law.
8. Learned A.G.P. for the State submits that though the posts were originally filled in after the permission was obtained from the Education Officer, the appointments were not subsequently approved by the education department. That is neither here nor there. Non-approval of the appointments

was based on nothing but the subsequent cancellation of the initial permission granted by the Education Officer.

9. In the premises, the contempt petitions as well as the writ petitions are disposed of in terms of the followed order:
 - (a) The respondent - Education Officer shall pay back wages as well as arrears of salary of the contempt petitioners up to 29th March, 2016 within a period of 8 weeks from today.
 - (b) If back wages and arrears of salary ordered above are not paid by the respondent - Education Officer within the period provided above, unpaid dues shall carry interest at the rate of 9% per annum.
 - (c) Non-payment by the respondent - Management of back wages in accordance with the order passed by this Court on 21st October, 2016 is excused and shall not be treated as breach of or disobedience to the orders of 15 wp6430.16 the School Tribunal dated 19th March, 2015.
 - (d) All writ petitions and contempt petitions are disposed of.
 - (e) **No order as to costs.**

Tambaskar.