

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 4188 OF 2009

Pradeep s/o. Basaji Gaikwad and anr. **...Petitioners.**

Versus

Maroti s/o. Gangadhar Sakhre & anr. **...Respondents.**

Shri. P.R. Katneshwarkar, Advocate for petitioners.

Shri. A.V. Patil h/f. Shri. V.D. Gunale, Advocate for the respondent No. 1.

CORAM : R.K. DESHPANDE, J.

DATE : 15th June 2010.

PER COURT :

1. This writ petition challenges the judgment and order passed by the Presiding Officer, School Tribunal, Latur Region, Latur on 29.1.2009 allowing the appeal No. 24/2007 filed by the respondent No. 1/employee, challenging his dismissal from service after holding departmental inquiry.

2. The Tribunal has held that the inquiry was held without following the procedure prescribed under the rules and the Management has

failed to prove that the respondent/employee was found to be guilty of misconduct and negligent in his duties and therefore, the order of reinstatement with backwages has been passed.

3. The respondent employee was dismissed from service on 12.3.2007. The Tribunal has decided the matter on 29.1.2009. The present petition is filed in March 2009 and there is an interim order passed in terms of prayer clause "B", staying the effect of impugned judgment and order on 7th July 2009.

4. Shri. Katneshwarkar, the learned counsel for the petitioner/Management has urged that the findings recorded by the Tribunal are contrary to the facts available on record, the same are, therefore, perverse. As against this, Shri. Patil, the learned counsel appearing for the respondent/employee, after inviting my attention to paragraph No. 19 of the judgment, delivered by the Tribunal, has urged that it has been found by the Tribunal that as a matter of fact, the dismissal was *malafide* as the employee was also not paid the subsistence allowance. According to him, non payment of subsistence allowance by itself is enough to initiate the inquiry.

5. After hearing both the learned counsel for the parties at length, the question whether the findings recorded by the Tribunal are perverse and contrary to the evidence available on record and the findings

recorded by the inquiry committee, is required to be gone into. No doubt, the findings on facts are recorded and the jurisdiction under Article 226 and 227 of the Constitution cannot be exercised to set aside the same merely because another view is possible. However, the perversity in recording the findings can be gone into. In view of this, **Rule**, returnable early.

6. The petitioner has made out *prima facie* case and the matter is, therefore, required to be looked into to find out the evidence available on record and the findings recorded by the Tribunal. So far as the order of backwages is concerned, it cannot be now disputed that the burden to plead and prove the backwages, is upon the employee. There is no discussion in the judgment and order passed by the Tribunal in respect of grant of backwages. However, on merits the findings on facts are recorded and the order of reinstatement and backwages has been passed. In view of this, the stay to the order of reinstatement shall be conditional, subject to the petitioner depositing the amount of backwages plus arrears of salary up to the date of passing of an interim order dated 7th of July 2009. Hence, the following order is passed.

ORDER

There shall be an interim relief in terms of prayer clause "B" of the petition, subject to the condition that the petitioner shall deposit entire amount of backwages from the date of dismissal of the employee from service on 12.3.2007, till the date of the order of the Tribunal i.e.

29.1.2009. Similarly, the petitioner shall also deposit the arrears of salary of the respondent/employee for the period from 30.1.2009 till 7th of July 2009. This will be done by the petitioner within the period of six weeks from today. If such an order is not complied with within the stipulated period, the interim order shall stand automatically vacated without back reference to the Court. The parties are at liberty to move the matter for urgent hearing. Similarly, the respondent employee is at liberty to file an application for withdrawal of amount, if so deposited.

[R.K. DESHPANDE, J.]

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