IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4754 OF 2009

Shri. Patil Samgonda Namgonda

….Petitioner

Vs.

1. The State of Maharashtra

2. Education Officer (Secondary)

3. The Special District Social Welfare Officer,

4. Kolhapur Zilla Vimukta Jati Bhatake

….Respondents

Mr. Kuldeep Nikam a/w Ms. Prerana K. Nikam and Mr. Om N. Latpate for the petitioner
Mr. Nilesh Desai for respondent no. 4
Smt. M. S. Bane AGP for the State

CORAM : GAURI GODSE, J.

RESERVED ON: 14th MARCH 2024

PRONOUNCED ON: 12th JUNE 2024

JUDGMENT:

1. This petition challenges the dismissal of the petitioner's appeal filed under section 9 of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ('MEPS Act') before the School Tribunal. The petitioner preferred the appeal challenging the order of termination dated 6th October 2001 passed by respondent no. 4 (management) and for issuing directions to reinstate the petitioner as headmaster with full back wages and continuity of service w.e.f. 6th October 2001.

Petitioner's Case:

2. The petitioner was appointed headmaster by the management on 19th June 1991. In the year 2001, the order dated 6th October 2001 intimated him that he had been removed from the post of headmaster w.e.f. 6th October 2001. Hence, the petitioner filed Appeal No. 99 of 2001 with a prayer to declare the order dated 6th October 2001 amounting to reduction in rank to be illegal. The petitioner thus prayed for reinstatement as headmaster.

3. It is the petitioner's case that after he was reduced in rank w.e.f. 6th October 2001, the petitioner attended the school on 9th October 2001. It is his case that after he was reduced in rank, the immediate next date, i.e. 7th October 2001, was a Sunday and on 8th October 2001, the petitioner was on casual leave. Hence, on the immediate next day, i.e. 9th October 2001, he attended the school. The petitioner was allowed to work in the school; however, the muster was not made available for his signature. Hence, according to the petitioner, he had filed an application with the in-charge headmaster, requesting him to be allowed to sign the muster. The petitioner had submitted various representations requesting to allow him to sign the muster as an assistant teacher; however, the in-charge headmaster did not allow the petitioner to sign the muster. Hence, on 21st January 2002, the petitioner filed another appeal bearing Appeal No. 10 of 2002 before the School Tribunal challenging the otherwise termination dated 9th October 2001.

4. In the Appeal No. 10 of 2002, management filed reply to the interim application and to the appeal on 20th March 2003. Management

contended that the petitioner was directly appointed as headmaster and was not promoted to the post. Hence, management's contention was that the petitioner was not reduced in rank, but his services were terminated by the order dated 6th October 2001.

5. In view of the stand taken by the management in Appeal No. 10 of 2002, the petitioner filed an application on 6th January 2004 in the earlier Appeal No. 99 of 2001 for permission to carry out an amendment to correct the order dated 6th October 2001 as the order of termination instead of a reduction in rank. The said application was rejected.

6. In such circumstances, the petitioner withdrew both the aforesaid appeals and filed a third appeal on 22nd June 2004 for challenging the order of termination dated 6th October 2001. Since there was a delay in filing the said appeal, the petitioner filed Miscellaneous Application No. 9 of 2004 for condoning the delay of about 9 days in filing the appeal. The petitioner contended in the said application for condonation of delay that due to certain lacunas, he withdrew the earlier appeals on 16th June 2004 and took immediate steps to file a fresh appeal.

Application for condonation of delay was allowed on 6th February 2006, and the appeal was numbered as Appeal No. 4 of 2006. The said Appeal No. 4 of 2006 was heard on merits, and by Judgment and Order dated 29th November 2008, the School Tribunal allowed the appeal declaring the order of termination dated 6th October 2001 as illegal, improper and bad in law and thus, quashed and set aside the termination order. The School Tribunal directed the management to reinstate the petitioner in service as headmaster with full back wages and continuity in service w.e.f. 6th October 2001. The management was also directed to pay a cost of ₹5000/- to the petitioner. Being aggrieved by the said decision, the management filed Writ Petition No. 1318 of 2009 in this Court. The said petition was partly allowed on 9th February 2009, and the matter was remanded back to the School Tribunal for a fresh decision.

7. After the order of remand, the Appeal No. 4 of 2006 was heard afresh, and by Judgment and Order dated 24th March 2009, the appeal was dismissed. Hence, the present writ petition.

Submissions on behalf of Petitioner:

8. Learned counsel for the petitioner submitted that before the order of remand, the School Tribunal framed points for determination on merits and held that the petitioner was a permanent employee of respondent no. 4-institution and the management had illegally terminated his services w.e.f. 6th October 2001. Hence, by the said order, the petitioner was held entitled to reinstatement in service as headmaster with full back wages and continuity in service w.e.f. 6th October 2001. The School Tribunal considered the objections raised by the management that the third appeal was barred in view of Order XXIII Rule 1 of Code of Civil Procedure, 1908 ('CPC'). The School Tribunal held that though the petitioner had filed two earlier appeals, only because he had withdrawn the same, it cannot be said that the third appeal against the order of termination dated 6th October 2001 was on the same cause of action. The School Tribunal thus held that a third appeal was filed on an altogether different cause of action as specifically stated in the appeal. Hence, the appeal was not barred under Order XXIII Rule 1 of CPC. The School Tribunal thus held that the petitioner, being a permanent employee of respondent no. 4

institution, his services could not have been terminated without following the due procedure under the MEPS Act and the rules framed thereunder.

9. This court, by order dated 9th February 2009, set aside the said order by holding that there was no clarity as to whether the petitioner was working as an assistant teacher on 9th October 2001 when he was allegedly orally removed w.e.f. 6th October 2001. This court held that there was no appointment order appointing the petitioner as assistant teacher, nor was there any order promoting the petitioner to the post of headmaster from the post of assistant teacher. Hence, with these observations, this court held that it was necessary for the Tribunal to closely examine the facts regarding appointment orders and termination for the purpose of determining the cause of action of the earlier two appeals and whether there was a different cause of action for filing a third appeal. Hence, for the purpose of determining the cause of action of the third appeal with reference to the cause of action of the earlier two appeals, the matter was remanded to the Tribunal.

10. Learned counsel for the petitioner referred to the points for

determination framed by the Tribunal after remand. The points for determination framed after remand are as under;

"Points	Findings
1. Whether the appeal is barred under order 23 Rule 1 of the Code of Civil Procedure?	Yes
2. Does the appellant prove that he was a permanent employee of the respondent no. 1?	Yes
3. Does the appellant prove that the respondent No. 1 management has illegally terminated his services w.e.f. 6.10.2001?	Yes
4. Is the appellant entitled for his reinstatement In the service as Head Master with full backwages And continuity in service w.e.f. 6.10.2001?	No.
5. What order?	As per final order"

11. Learned counsel for the petitioner by referring to the points for determination submitted that the first point as to whether the appeal was barred under Order XXIII Rule 1 of CPC was answered in the

affirmative. However, the issue as to whether the petitioner was illegally terminated was answered in the affirmative by holding that the petitioner was a permanent employee of respondent no. 4 institution and thus, his services were terminated without following the due process of law. Hence, the termination was held to be illegal. However, in view of the affirmative answer on the point of appeal being barred under Order XXIII Rule 1 of CPC, the petitioner was held not entitled to reinstatement in services as headmaster.

12. Learned counsel for the petitioner submitted that the subject matters in the earlier two appeals were different; hence, though the cause of action was the same, the subject matter of the third appeal being different, bar under Order XXIII Rule 1 of CPC, was not applicable. He thus submitted that since the subject matter of the third appeal was different, unconditional withdrawal of the earlier two appeals would not be a bar for filing the third appeal by applying the provision of Order XXIII Rule 1 of CPC. Learned counsel for the petitioner submitted that the Tribunal held the appeal to be barred under Order XXIII Rule 1 of CPC only on the ground that, at the time of

withdrawing the earlier two appeals, no liberty was prayed by the petitioner for filing a fresh appeal. He submitted that the Tribunal failed to take into consideration that the subject matter of the earlier two appeals was different than the third appeal.

13. To support his contentions, learned counsel for the petitioner relied upon the order of termination dated 6th October 2001. He submitted that the said order intimated the petitioner that he was removed from the post of headmaster w.e.f. 6th October 2001. The said order did not terminate the petitioner's services. Admittedly, the petitioner was a permanent employee of respondent no. 4 institution who was appointed after following the due procedure laid down under the MEPS Act and the Rules framed thereunder. Hence, without following any due procedure, the management was not entitled to terminate the services of the petitioner. Thus, the wording of the order dated 6th October 2001 clearly indicated that the petitioner was reduced in rank from the post of headmaster. Hence, considering the wording of the order dated 6th October 2001, the petitioner had filed Appeal No. 99 of 2001 ("first appeal") for declaring that the order of

reduction in rank dated 6th October 2001 was illegal. As specifically pleaded by the petitioner in Appeal No. 10 of 2002 (“second appeal”), the petitioner was permitted to work as an assistant teacher; however, he was not allowed to sign the muster. Hence, the petitioner filed the second appeal for challenging the action of the management of otherwise termination dated 9th October 2001, as he was not permitted to sign the muster as an assistant teacher. Learned counsel for the petitioner submitted that in the said second appeal, the management contended that the order dated 6th October 2001 was not an order of reduction in rank, but it was an order of termination of services of the petitioner. Hence, in view of the contention of the management that the order dated 6th October 2001 was an order of termination, the petitioner withdrew the earlier two appeals and filed a fresh third appeal for challenging the order dated 6th October 2001 as an order of termination. Learned counsel, therefore, submitted that the subject matter of the first appeal was an order dated 6th October 2001 as a reduction in rank, the subject matter of the second appeal was otherwise termination of the petitioner on 9th October 2001, and the

subject matter of the third appeal was the termination order dated 6th October 2001 in view of the stand taken by the management in the second appeal.

14. Learned counsel for the petitioner, thus, by referring to the prayers and pleadings in the earlier two appeals, contended that the subject matter of the third appeal was different than the subject matter of the earlier two appeals. Hence, even if the cause of action of the three appeals is accepted as the same, the subject matter of the third appeal was different. Hence, there was no bar under Order XXIII Rule 1 of CPC. In support of his submissions, learned counsel for the petitioner relied upon the decision of this court in the cases of *Harishchandra Vithoba Narawade vs. Smt. Vatsalabai w/o Narayan Shinde*[1], *Vallabh Das vs. Dr. Madan Lal and Others*[2], *Kusum Ingots & Alloys Ltd vs. Union of India and Another*[3] and *State of Goa vs. Summit Online Trade Solutions Private Limited and Others*[4].

15. Learned counsel for the petitioner relied upon the aforesaid

1 2004(4) Mh.L.J. 897
2 1970(1) Supreme Court Cases 761
3 (2004) 6 Supreme Court Cases 254
4 (2023) 7 Supreme Court Cases 791

decisions to support his submissions that the expression 'subject matter', 'cause of action' and the relief claimed were different with reference to the Order XXIII Rule 1 of CPC. Learned counsel for the petitioner thus submitted that once the appeal is held to be not barred by Order XXIII Rule 1 of CPC, the petitioner is entitled to be reinstated as headmaster. In view of the findings recorded by the Tribunal that the petitioner was permanent employee of respondent no. 4 and the findings recorded that the management had illegally terminated the petitioner's services w.e.f. 6th October 2001. He thus submitted that the petitioner is entitled to reinstatement as headmaster with full back wages and continuity of service w.e.f. 6th October 2001.

Submissions on behalf of Respondent No. 4:

16. Learned counsel for respondent no. 4 management submitted that the petitioner had filed an application for amendment in the first appeal to change the prayers of reduction in rank as the prayer for challenging the order of termination. The said application for carrying out amendment in the first appeal, i.e. Appeal No. 99 of 2001, was rejected. However, the petitioner failed to challenge the said rejection.

By keeping the said appeal pending, the petitioner filed another appeal contending that there was otherwise termination of services on 9th October 2001. The petitioner unconditionally withdrew both the said appeals. Hence, it amounts to an abandonment of the earlier two prayers, i.e. challenge to the order dated 6th October 2001, considering it as the order of reduction in rank and the order of otherwise termination on 9th October 2001. Learned counsel for the management thus submitted that once there is an abandonment of the relief claimed in the two appeals, the petitioner was debarred from claiming similar relief by filing a fresh appeal.

17. In the third appeal, the petitioner prayed for challenging the order dated 6th October 2001, which was already challenged by him in the first appeal i.e. Appeal No. 99 of 2001. Thus, once the said challenge was abandoned by the petitioner by withdrawing the appeal, the third appeal filed by the petitioner was barred, in view of Order XXIII Rule 1 of CPC. Learned counsel for the management submitted that, admittedly, the earlier two appeals were unconditionally withdrawn by the petitioner. Hence, it amounts to abandonment of the claim. The

petitioner claims to challenge the action of management of removal of the petitioner from services. He submitted that in view of clause(b) of sub-rule (4) of Rule 1 of Order XXIII of CPC, once the petitioner withdrew his claim without permission as referred to in sub-rule (3), the petitioner is precluded from instituting any fresh claim in respect of the same subject matter.

18. Learned counsel for the management thus submitted that the Tribunal has rightly held that the third appeal filed by the petitioners is barred under Order XXIII Rule 1 of CPC. To support his contention on the applicability of Order XXIII Rule 1 of CPC, learned counsel for the management has relied upon the decision of this court in the case of ***Rajaram s/o Jairam Raut vs. Baliram s/o Laxman Raut***[5]. Learned counsel, by relying upon the principles laid down in the said decision, submitted that on the ground of the defects in the first two appeals, the petitioner was not entitled to withdraw the earlier two appeals unconditionally and claim that the third appeal contained different subject matter. Hence, the bar under Order XXIII Rule 1 of CPC was applicable. Learned counsel for the management submitted that in the

[5] **2006 (2) Mh.L.J. 693**

said case ***Rajaram s/o Jairam Raut***, in spite of permitting the plaintiff to amend the plaint to cure the defects, the Trial Court had permitted the withdrawal of the suit with permission to file a fresh suit. However, the Supreme Court held that the order granting permission for withdrawal of the suit with permission to file a fresh suit could not have been passed to cure the defects and remedy the earlier relief. Learned counsel for the management has thus submitted that the legal principle laid down in the said decision by relying upon the decision of the Hon'ble Supreme Court, in the case of ***K. S. Bhoopthy and Ors vs. Kokila and Ors***[6], it is clear that the subject matter and the cause of action of the third appeal of the petitioner was the same. Thus, in view of the withdrawal of earlier appeals, the bar under Order XXIII Rule 1 of CPC was applicable to the third appeal. Hence, the Tribunal rightly dismissed the appeal of the petitioner by holding that the same was barred by Order XXIII Rule 1 of CPC.

Analysis:

19. I have considered the submissions made by both the parties. A

[6] AIR 2000 Supreme Court 2132

perusal of the order dated 6th October 2001 indicates that the petitioner was intimated that w.e.f. 6th October 2001, the petitioner was removed from the post of headmaster. The said order dated 6th October 2001 does not terminate the services of the petitioner. Admittedly, the petitioner was directly appointed to the post of headmaster. It is not in dispute that the petitioner was a permanent employee of respondent no. 4 institution. The Tribunal, in the impugned Judgment, has recorded a finding that the petitioner was a permanent employee of respondent no. 4 institution, and his services could not have been terminated without following the due procedure laid down in the MEPS Act read with Rules framed thereunder for terminating the services of a permanent employee. Only in view of the wording of the order dated 6th October 2001, the petitioner filed the first appeal to challenge the petitioner's reduction in rank from the post of headmaster.

20. It is the petitioner's case that he was permitted to work as an assistant teacher after the order of 6th October 2001. Thus, the petitioner filed the second appeal for challenging the otherwise termination dated 9th October 2001. Thus, the first appeal was filed by

the petitioner by treating the order dated 6th October 2001 as the order of reduction in rank. The second appeal was filed by the petitioner on the ground that there was otherwise termination of his services on 9th October 2001. Admittedly, in the second appeal, the management contended by way of filing a reply to the interim application and the appeal that the order dated 6th October 2001 was not an order of reduction in rank, but the said order was a termination letter. Thus, in view of the stand taken by the management, the petitioner withdrew both the appeals. There is no dispute that both appeals were withdrawn without seeking any permission and/or any liberty for filing a fresh appeal.

21. The third appeal was filed by the petitioner by contending that since the petitioner was served with an order dated 6th October 2001, he had filed the appeal within time, however, due to certain technical lacunas, he withdrew the appeal on 16th June 2004 and thereafter filed a fresh appeal i.e. third appeal for challenging the termination order dated 6th October 2001. For the first time in the third appeal, the petitioner contended that the order dated 6th October 2001 was an

order of termination. The said contention was raised based on the stand of the management in the second appeal that the order dated 6th October 2001 was an order of termination of service. Thus, the subject matter of the third appeal was an order dated 6th October 2001 as the order of termination of services. However, the subject matter of the first appeal was the order dated 6th October 2001 to be an order of reduction in rank. The subject matter of the second appeal was otherwise termination dated 9th October 2001. Thus, the order dated 6th October 2001 was never challenged by the petitioner as an order of termination of services. Admittedly, the management contended in the second appeal that the order dated 6th October 2001 was an order of termination of services. Thus, the cause of action for filing the third appeal was the contention raised by the respondent management that the order dated 6th October 2001 was an order of termination of services. Thus, the bundle of facts pleaded in the third appeal is with reference to the action of the management and the pleadings in the earlier two appeals. It appears that only in view of the management's contention that the order dated 6th October 2001 was not an order of

reduction in rank but the same was an order of termination, the petitioner withdrew two appeals. So far as the second appeal is concerned, the subject matter of the said appeal is obviously different as the challenge was to otherwise termination dated 9th October 2001.

22. Hence, considering the rival submissions made by the parties, the controversy to be decided in the present petition is whether the subject matter and the cause of action in the first appeal and the cause of action and subject matter in the third appeal are the same and whether in view of the withdrawal of the first two appeals without seeking any permission to raise a fresh claim the third appeal was barred in view Order XXIII Rule 1 of CPC. It is, thus, necessary to examine whether withdrawal of the first and second appeals without seeking any liberty would mean an abandonment of the petitioner's claim.

23. The Tribunal had framed a point for consideration as to whether the appeal was barred under Order XXIII Rule 1 of CPC. Thus, it is necessary to first examine the aspect of the applicability of the provision of Order XXIII of CPCP to the appeal filed before the School

Tribunal under Section 9 of the MEPS Act. Section 9 of the MEPS Act says notwithstanding anything contained in any law or contract for the time being in force, any employee of a private school who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank by the order passed by the management and who is aggrieved shall have a right to appeal before the Tribunal. Section 10 of the MEPS Act says that for the purpose of admission, hearing and disposal of the appeal, the Tribunal shall have the same powers as are vested in an Appellate Court under CPC. Order XXIII of CPC is applicable to withdrawl and adjustment of suits as is clear from the title of the said provision. The provision of Order XXIII of CPC is not per se applicable to appeals. A right to file a suit is distinct from a right to file an appeal under section 9 of the MEPS Act. The right to file an appeal under Section 9 of the MEPS Act is a statutory right of appeal in the manner as provided under the MEPS Act and thus is distinct from filing a suit. Thus, even if the principles analogous to Order XXIII of CPC are applied, withdrawal of an appeal under Section 9 of the MEPS Act will not amount to an abandonment of a claim in every case. Thus, the

School Tribunal, while hearing an appeal under Section 9 of the MEPS Act, can deal with the aspect of whether withdrawal of an appeal would amount to abandonment.

24. Abandonment is a principle of equity. Every right, including the right to prefer an appeal, can be abandoned. But whether there is an abandonment would depend on the facts of each case. Abandonment can be either express or implied. The Hon'ble Supreme Court, in the case of ***Dani Wooltex Corporation and others Vs Shell Properties Pvt. Ltd. And Another***[7] while dealing with an issue about the legality and validity of the order of termination of the arbitral proceedings under clause (c) of sub-section (2) of Section 32 of the Arbitration and Conciliation Act, 1996, held in paragraph 16 as under:

> "*Therefore, if the party fails to appear for a hearing after filing a claim, the learned Arbitrator cannot say that continuing the arbitral proceedings has become unnecessary. Abandonment by the claimant of his claim may be grounds for saying that the arbitral proceedings have become unnecessary.* ***However, the abandonment must be established. Abandonment can be***

[7] 2024 SCC Online SC 970

either express or implied. Abandonment cannot be readily inferred. One can say that there is an implied abandonment when admitted or proved facts are so clinching and convincing that the only inference which can be drawn is of the abandonment. *Mere absence in proceedings or failure to participate does not, per se, amount to abandonment.* ***Only if the established conduct of a claimant is such that it leads only to one conclusion that the claimant has given up, his/her claim can an inference of abandonment be drawn.*** *Merely because a claimant, after filing his statement of claim, does not move the Arbitral Tribunal to fix a date for the hearing, it cannot be said that the claimant has abandoned his claim. The reason is that the Arbitral Tribunal has a duty to fix a date for a hearing. If the parties remain absent, the Arbitral Tribunal can take recourse to Section 25."*

emphasis applied

25. In the present case, the conduct of the petitioner shows that he never intended to abandon his claim. He took immediate steps at every stage to save his job. The letter/order dated 6th October 2001

issued by the management says that the petitioner is removed from the post of headmaster. It does not say that the petitioner's service is terminated. Thus, considering the wording of the said letter/order, the petitioner immediately filed an appeal challenging the same with a prayer to declare the order amounting to a reduction in rank to be illegal. The pleadings of the petitioner show that thereafter, he attended the school on 9th October 2001, and he was allowed to work in the school; however, he was not permitted to sign the muster. Hence, according to the petitioner, he made various representations requesting to allow him to sign the muster as an assistant teacher. Since he was not permitted to sign the muster as an assistant teacher, he filed another appeal challenging the otherwise termination dated 9th October 2001. After that, in view of the stand taken by the management in the said appeal against otherwise termination, stating that the order dated 6th October 2001 was not a reduction in rank but it was a termination letter, the petitioner attempted to amend his first appeal, but his amendment application was rejected. Thus, the petitioner withdrew both the aforesaid appeals and filed a third appeal

to challenge the order of termination. Thus, the conduct of the petitioner nowhere even remotely indicates that he anytime wanted to abandon his claim. The persistent steps taken by the petitioner show that he made every attempt to save his job. Thus, in my view, it cannot be said that the petitioner abandoned his claim. Hence, the dismissal of the petitioner's appeal on the ground that it was barred under Order XXIII Rule 1 of CPC is an error in law.

26. Thus, it is not necessary to elaborate on the aspect of different causes of action or different subject matter with reference to Order XXIII of CPC. Hence, I do not find it necessary to refer to the decisions on the withdrawal of the suit and applicability of Order XXIII of CPC, relied upon by the respective counsels on behalf of both parties. The legal principles settled in those decisions are not directly applicable to the facts of the present case involving the issue of withdrawal of an appeal and filing a fresh appeal under Section 9 of the MEPS Act.

27. In the present case, the Tribunal answered in the affirmative that the petitioner was illegally terminated by holding that the petitioner was a permanent employee of respondent no. 4 institution, and thus, his

services were terminated without following due process of law. Hence, the termination is held to be illegal. However, only in view of the affirmative answer on the point of appeal being barred under Order XXIII Rule 1 of CPC, the petitioner is not granted relief of reinstatement in services as headmaster, with continuity of service and full backwages. Thus, though the findings are recorded in favour of the petitioner on merits, his prayer for reinstatement with continuity in service with full backwages is not granted. The management has not challenged the affirmative findings on merits in favour of the petitioner. Thus, once the finding on the appeal's maintainability is held to be illegal and not sustainable for the reasons recorded by above, the petitioner’s appeal deserves to be allowed.

28. The question of whether an employee can be held entitled to full back wages needs to be decided by examining the facts and circumstances of the case. In the present case, the petitioner worked as headmaster for more than ten years, and abruptly, he was removed from his service. Thus, without even getting a fair opportunity of being represented the petitioner was removed from service. Thus, the action

of the management is unjustified. The Tribunal has recorded that the termination of the petitioner is illegal. The said findings on merits are unchallenged.

29. In the case of ***Deepali Gundu Surwase Vs Kranti Junior Adhyapak Mahavidyalaya***[8]**,** the Hon'ble Supreme Court, in paragraph 21 has defined the word "reinstatement" as follows:

> **"21.** *The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol. 2, 3rd Edn., the word "reinstate" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edn., the word "reinstate" means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word "reinstatement" means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam-Webster Dictionary, the word "reinstate" means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black's Law Dictionary, 6th Edn., "reinstatement" means:*

[8] (2013) 10 SCC 324

"To reinstall, to re-establish, to place again in a former state, condition, or office; to restore to a state or position from which the object or person had been removed.""

Emphasis Added

30. The Hon'ble Supreme Court, in the case of ***Deepali Gundu Surwase***, has held that ordinarily, an employee whose service is terminated and who is desirous of getting back wages is required to either plead or at least make a statement that he/she was not gainfully employed or was employed on lesser wages. It is also held that in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule subject to a rider that while deciding the issue of back wages, the court may take into consideration the length of service of the employee, the nature of the misconduct, if any, found proved against the employee and similar other factors. In the present case, there is nothing on record regarding the gainful employment of the petitioner. However, considering the peculiar facts of the case, including the length of service of the petitioner, the manner in which the petitioner was removed from service abruptly without any opportunity of any representation and the

unchallenged findings in favour of the petitioner on merits by the Tribunal on the illegal termination of the service, I do not see any reason to refuse the prayers made by the petitioner in his appeal. The conduct of the management is in breach of principles of natural justice. Hence, in my view the petitioner is entitled to full backwages with continuity of service and all consequential benefits.

31. Hence, the petition is allowed by passing the following order;

(i) The judgment and order dated 24th March 2009 passed by the School Tribunal in Appeal No. 4 of 2006 is quashed and set aside.

(ii) Appeal No. 4 of 2006 is allowed. The order dated 6th October 2001 passed by the management is quashed and set aside, and the petitioner is held entitled to reinstatement in service to his original post of headmaster with effect from 6th October 2001 with full back wages and continuity in service. The petitioner will be entitled to all consequential benefits.

(iii) The management is directed to give effect to the

order of reinstatement as directed above within two months from today.

32. Writ Petition is allowed in the aforesaid terms.

[GAURI GODSE, J.]

IRESH MASHAL

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