

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 5776 OF 2017

SHRI SANT KAVI MAHIPATI MAHARAJ DEVSTHAN  
TRUST & ANR.

...PETITIONER(S)

VERSUS

MANISHA SAMBHAJI JADHAV & ANR.

...RESPONDENT(S)

WITH

SPECIAL LEAVE PETITION (CIVIL) NO. 5995/2017

SHRI SANT KAVI MAHIPATI MAHARAJ DEVSTHAN  
TRUST & ANR.

...PETITIONER(S)

VERSUS

ARCHANA BABAN JADHAV & ANR.

...RESPONDENT(S)

O R D E R

A.S. BOPANNA, J.

1. The petitioner-Trust is before this Court assailing the common order dated 22<sup>nd</sup> November, 2016 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No. 962 of 2015 and Writ Petition No. 1052 of 2015. By the said order, the High Court has reversed the order dated 01.10.2014 passed by the School Tribunal, Pune in Appeal Nos. 45/2014 and 46/2014.

2. The brief fact(s) leading to the present situation is

that the private respondents herein were appointed as Assistant Teachers in the School run by the Petitioner-Trust through letter dated 10.06.2009 w.e.f 15.06.2009. The services of the private respondents were discontinued at the first instance, due to which the respondents were before the School Tribunal in Appeal Nos. 63 and 64/2011. Through the order dated 03.08.2012, the termination was set aside and they were directed to be reinstated. Pursuant thereto, the reinstatement was done and the petitioner-trust has thereafter once again discontinued the services of the private respondents on 12.05.2014. It is in that circumstance the private respondents were again before the School Tribunal in Appeal Nos. 45 and 46 of 2014. As already indicated above, the Tribunal through its judgment dated 01.10.2014 has rejected the appeals. While doing so, the Tribunal had taken note that the contention put forth by the trust was that the post(s) in question was in fact reserved for ST and NT categories. In that circumstance it was contended that the Department was not in a position to appoint them to the posts as open category candidates and therefore the petitioner-trust is unable to continue them. The High Court while taking note of this aspect has taken into consideration the fact that though such contention was put forth there was no material available on record to indicate that any steps had been taken to advertise the said post(s) and appointment to be made. Therefore, in that circumstance, the High Court on adverting to all the aspects of the matter arrived at the conclusion that neither the said contention nor the contention put forth to

indicate that the appointment order had specified that the appointment was subject to approval of the Education Officer can be accepted. In such circumstance having set aside the order passed by the School Tribunal, the High Court has directed the appellant to reinstate the private respondents herein. To that extent having noticed the reasoning adopted by the High Court, we find no error so as to interfere with that aspect of the matter in the order impugned.

3. The only other aspects which arise for consideration herein is with regard to the backwages as has been ordered by the High Court and the future course to be adopted. Learned counsel appearing on behalf of the petitioner-Trust would submit that from classes V to VII no grant is received and therefore the private respondents teaching in the school for the said classes would not be admissible to grant unless the Government passes appropriate orders in this regard. Therefore, he contends that if the backwages as ordered by the High Court is sustained, the petitioner would be exposed to hardship.

4. Learned counsel appearing on behalf of the private respondents would submit that not only the backwages but the private respondents in fact have not been paid the salary for the period during which they had actually worked. According to the learned counsel, private respondents had actually worked between 15.06.2009 to 20.06.2011 and from 13.08.2012 to 31.05.2014. In that regard, learned counsel submits that at least the salary for that period is payable to the private respondents and the salary to that extent is quantified at

Rs.9,41,066/- in respect of each of the private respondents.

5. Having adverted to this aspect of the matter, we further take note, even in respect of the said period though it is contented that the private respondents have actually worked, there is no material to indicate the number of classes that were taken by them during the said period and period of holidays after the academic year and such other factual aspects. Further since those aspects would require factual determination it would not be appropriate for us to advert to determine the same in a proceeding of present nature. However, considering the fact that the private respondents had discharged their duties during the said period though be it intermittently, we find it appropriate to quantify the lump sum amount at Rs. 5,00,000/- (Rupees five lakhs) payable to each of the private respondents being the amount towards salary for the period they had actually worked. For the remaining period, we are of the view that the backwages would not be admissible since even on this aspect of the matter there is no definite material on record to indicate that the private respondents were gainfully engaged elsewhere or not during the said period which again would require factual determination and is not appropriate be done in these proceedings.

6. That apart while arriving such conclusion, keeping in view the long drawn litigation between the parties a quietus is to be given and, therefore an equitable order of the present nature in the interest of both the parties is made in the peculiar facts and circumstances of the instant case which shall

not be treated as a precedent for any other case. Further, keeping in view the fact that the private respondents had discharged their services for quite some time and presently the order passed by the High Court is being upheld by us which would result in reinstatement in respect of the vacancies in the School being run by the petitioner to which the private respondents were engaged, an appropriate recommendation shall be made by the petitioner to the respondent no. 2 who shall in turn forward it to Principal Secretary, School Education the proposal for regular appointment and admission to grant in respect of the posts in which private respondents are working. The Principal Secretary shall consider the same and take appropriate decision in respect of the vacancies existed in the School being run by the petitioner-trust which will be with prospective effect for the monetary benefits.

7. The special leave petitions are accordingly disposed of with the following directions:

(i) The petitioner-trust is directed to reinstate both the private respondents into service within a period of four weeks from the date of receipt of a copy of this order and continue to pay the current salary.

(ii) The petitioner shall pay the quantified amount of Rs. 5,00,000/- (Rupees five lakhs only) each towards the period for which the private respondents had actually worked, in installments, within the outer limit of six months from the date

of the receipt of the copy of this order. The Private Respondents shall not be entitled to any other amount as backwages.

(iii) The petitioner-trust is directed to send a proposal for the appointment of the private respondents with grant to the second respondent herein who shall place it before the Principal Secretary, School Education. Such proposal shall be sent immediately on reinstating the private respondents herein as directed above.

(iv) On receipt of such recommendations from the petitioner-trust, the respondent no. 2/Principal Secretary, School Education shall process the papers, appoint and admit the respondents for grant in open category. While doing so, respondent no. 2/Principal Secretary, School Education shall also indicate that if the said vacancies were still being treated as reserved for ST/NT, the said reserved vacancies be treated as backlog for the future and be presently treated as open category to accommodate the respondents. Such consideration shall be in the peculiar facts and circumstances of this case as an one time measure and shall not be treated as a precedent for any other case.

(v) In view of the above direction, on reinstatement being made, the criminal proceedings

which were initiated by the private respondents seeking for implementation of the order shall not survive for consideration any further and the same shall be treated as closed by the concerned Court.

..... J.  
[R. BANUMATHI]

..... J.  
[A.S. BOPANNA]

NEW DELHI  
20TH NOVEMBER, 2019

..... J.  
[HRISHIKESH ROY]

ITEM NO.7

COURT NO.5

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 5776/2017  
(Arising out of impugned final judgment and order dated 22-11-2016  
in WP No. 962/2015 passed by the High Court Of Judicature At Bombay  
At Aurangabad)

SHRI SANT KAVI MAHIPATI MAHARAJ DEVSTHAN TRUST & ANR.  
Petitioner(s)

VERSUS

MANISHA SAMBHAJI JADHAV & ANR. Respondent(s)  
(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT AND  
EXEMPTION FROM FILING O.T.AND PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS/ANNEXURES)

WITH

SPECIAL LEAVE PETITION (CIVIL) NO. 5995/2017

SHRI SANT KAVI MAHIPATI MAHARAJ DEVSTHAN TRUST & ANR.  
Petitioner(s)

VERSUS

ARCHANA BABAN JADHAV & ANR. Respondent(s)

(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA  
FOR EXEMPTION FROM FILING O.T AND FOR PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS/ANNEXURES ON IA

Date : 20-11-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI  
HON'BLE MR. JUSTICE A.S. BOPANNA  
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Mr. Sandeep S.Deshmukh,Adv.  
Mr. Vasim Siddiqui,Adv.  
Mr. Nar Hari Singh, AOR

For Respondent(s) Mr. K. Parameshwar,Adv.  
Mr. Kailas Bajirao Autade, AOR  
Mr. M.V. Mukunda,Adv.  
Ms. Sheetal Patil,Adv.

Ms. Deepa M. Kulkarni, Adv.  
Mr. Nishant Ramakantrao Katneshwarkar, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The special leave petitions are disposed of in terms of  
the signed order.

Pending application(s), if any, shall also stand disposed  
of.

(MADHU BALA)  
COURT MASTER (SH)  
(Signed order is placed on the file)

(BEENA JOLLY)  
BRANCH OFFICER