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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1393 OF 1994

Chairman,
Janata Shikshan Prasarak Mandal,
C/O Lalbhadur Shastri Vidyalaya, Bhokar,
Tq. & District Jalgaon.
@ R.N. Lathi Vidyalaya,
Tq. & District Jalgaon.

..PETITIONER

-VERSUS-

- 1 Smt.Sugandha Shankar Khairnar,
Age : 46 years, Occ : Household,
R/o Mamurabad, Tq. & Dist.Jalgaon.
- 2 Education Officer (Secondary),
Zilla Parishad, Jalgaon.
- 3 Pandit Jawaharlal Nehru Vidyalaya,
Mamurabad,
Tq. & Dist.Jalgaon.
Through it's Headmaster,
C/o Pandit Jawaharlal Nehru High School,
Mamurabad, Tq. & Dist.Jalgaon.

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Mr.S.V.Dixit h/f Mr.V.J.Dixit, Senior Advocate, for the Petitioner.
Mr.Deshmukh Ravindra M., Advocate for Respondent No.1.
Mr.D.R.Korde, AGP for Respondent No.2.

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**WITH
WRIT PETITION NO.2923 OF 1995**

Smt.Sugandha Shankarrao Khairnar,
Age : Major,
C/o Rupchand Sakharam Patil,

At & Post Mamurabad,
Tq. & Dist.Jalgaon.

..PETITIONER

-VERSUS-

- 1 Chairman,
Janata Shikshan Prasarak Mandal,
C/O Lalbahadur Shastri Vidyalaya, Bhokar,
Tq. & District Jalgaon.
@ R.N. Lathi Vidyalaya,
Tq. & District Jalgaon.
- 2 The State of Maharashtra.
Copy to be served on the
Government Pleader,
High Court of Judicature of Bombay,
Bench at Aurangabad.)

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Mr.Deshmukh Ravindra M., Advocate for the Petitioner.
Mr.S.V.Dixit h/f Mr.V.J.Dixit, Senior Advocate, for the Respondent No.1.
Mr.D.R.Korde, AGP for Respondent No.2.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 16th June, 2015

Oral Judgment:

1 The first petition filed by the Petitioner/ Management (herein after referred to as “the Management”) was admitted by this Court and interim relief was granted in terms of prayer clause (B) by order dated 16.06.1994 which reads as under:-

“When the matter was called for final hearing, the Counsel for Respondent expressed his inability to argue the matter as the record is not before the Court.

*Rule.
To be heard in regular course.
Interim relief in terms of prayer clause (B)."*

2 Prayer clause (B) set out in this petition reads as under:-

"(B) That pending the hearing and final disposal of the present writ petition, the implementation, execution and operation of the judgment and order dated 18.03.1994 passed by Member, School Tribunal, Nasik Region, Nasik in Jalgaon Appeal No.1/1989 be stayed."

3 The Respondent No.1 in the first petition is the employee who has preferred the second petition (herein after referred to as "the employee") praying for reliefs of full back-wages.

4 Both these petitions arise out of the impugned judgment and order dated 18.03.1994 delivered by the School Tribunal, Nasik Region, Nasik in Jalgaon Appeal No.1/1989.

5 The second petition filed by the employee was admitted by this Court by order dated 02.07.1996.

6 I have heard Mr.Dixit, learned Advocate for the Management, Mr.Deshmukh, learned Advocate for the employee and the learned AGP appearing for the Respondent No.2.

The relevant clauses of the appointment order read thus:-

2 *Your appointment is purely temporary for a period of 07th August *months/years from 1984 to 08th June 1985 in the vacancy. After expiry of the above period, your services shall stand terminated without any notice. (For Academic Year 1984-85).*

**Your appointment is on probation for a period of two years.*

6 If no reply accepting the appointment is received within the period mentioned in paragraph 5, the order shall be treated as cancelled.

13 Till that time you will have no right to demand any &
D.A. or any advance from J.S.P.Mandal or School
committee Bhokar.”

8 It is thus, apparent that the employee was appointed as an Assistant Teacher purely on temporary basis for the period 07.08.1984 till 08.06.1985. It was made clear to her that after the expiry of the said period, her services would stand terminated without notice. It was also made clear that she would have to formally accept the appointment order, failing which it would be presumed that she is not interested in accepting the same. Further, clause 12 of the appointment order clearly indicates that her services would be confirmed only after obtaining the approval from the Education Department (Secondary), Zilla Parishad.

9 By communication dated 16.01.1985, the Education Department intimated to the Management that the approval to the appointment of the employee cannot be accorded in the light of the Government Circular dated 11.05.1971. The Management was, accordingly, directed to dis-engage the employee.

10 Pursuant to the communication dated 16.01.1985, the employee was dis-engaged on 28.03.1985. She preferred Appeal No.1/1989 on 27.09.1989, which is practically after four years and six months of her dis-engagement. It is not in dispute that an application for condonation of delay was not preferred by her before the School Tribunal.

11 By the impugned judgment and order dated 18.03.1994, the School Tribunal condoned the delay and at the same time, allowed the Appeal by a common judgment, by which the Management was directed to reinstate the employee, pay her salary for the period of service rendered by her from 07.08.1984 till 28.03.1985 along with allowances. Her prayer for back-wages was turned down.

12 It is in this backdrop that the Management has filed the first petition challenging the impugned judgment and order. The employee has filed the second petition seeking full back-wages.

13 It is canvassed on behalf of the Management that the appointment order dated 06.08.1984 itself vests no right in the employee to seek reinstatement in service, much less continuity and continuance in employment. The terms and conditions of the appointment are explicitly set out in the appointment order and which are made known to the employee. It was also made known that she would remain in service for the duration set out in the appointment order only if the Education Department grants necessary approval.

14 It is, therefore, canvassed on behalf of the Management that neither on the strength of the appointment order can the employee claim

reinstatement and continuance in employment, nor could the employee seek any relief in the light of the fact that the approval required to be granted by the Education Department has been turned down.

15 The employee has contended that the circular dated 29.07.1971 gives the status of an Assistant Teacher to the employee since she has worked from 21.09.1970 till 01.06.1971 with another establishment, namely, Pandit Jawaharlal Nehru Vidyalaya. The concerned circular is tendered across the Bar which is issued in connection with the recognition of STC as a teaching qualification. By the said circular, the Government of Maharashtra has clarified for the guidance of all concerned that STC or its equivalent qualification should be considered as a training qualification in respect of those teachers who were in service as on 30.09.1970 and/or were reappointed in other schools after 01.10.1970, provided break in employment being condonable under the Rules and that they should be treated as trained matriculates or graduates as the case may be.

16 Upon going through the impugned judgment, it is evident that the circular dated 29.07.1971 relied upon by the employee, was never placed before the School Tribunal. It was mainly contended that because the employee worked with Pandit Jawaharlal Nehru Vidyalaya

and was terminated on 16.03.1971, would indicate that she was in employment prior to 01.10.1970. The Tribunal, therefore, held that she could take aid of the circular dated 11.05.1971 and seek status of a trained teacher.

17 Learned Advocates are unable to explain as to why the circular referred to in the impugned judgment is dated 11.05.1971, when the circular dated 29.07.1971 is placed before this Court for perusal.

18 Nevertheless, the issue of being treated on assumption as a trained teacher, is distinct and different from being appointed on a substantive post by following the due procedure of law. The employee cannot indicate, whether, the appointment order dated 06.08.1984 could mean an appointment after following the due procedure of law and being placed on probation for being considered for confirmation after the end of the probation period.

19 Notwithstanding the extensive submissions of both the sides, I am not convinced that the appointment order dated 06.08.1984 could be termed as being issued after following proper selection procedure and placing the employee on probation for a period of two years so as to enable the Management to consider her performance and consider her for

confirmation in employment. The appointment order is self explanatory as has been adverted to in the foregoing paragraphs.

20 The employee has relied upon Rule 1(iii) under Schedule B-II of the MEPS Rules along with Note-9 under Schedule-V in relation to condoning the break in employment. Considering the factum of her appointment, I do not find that reliance on the said Rule and the said Note could be said to be well placed. The said Rules are of no assistance to the employee.

21 Considering the above, I do not find it necessary to go into the aspect of condonation of delay of more than four years by the School Tribunal in the absence of an application seeking such condonation. Since I have considered both these petitions finally on their own merits and as I have come to a conclusion that no right vests in the employee to seek reinstatement and continuance in employment, I have refrained from going into the issue of condonation of delay.

22 Insofar as the issue of payment of salary of the employee for the period of service from 07.08.1984 till her dis-engagement dated 28.03.1985 is concerned, the refusal to grant approval by the Education Department, would not disentitle the employee from seeking her salary

from the Management for the period of service rendered.

23 In this context, Mr.Dixit has strenuously contended that clause 13 of the appointment order which precludes the employee from demanding Dearness Allowance (D.A.) or any advances from the Management or School Committee, would, therefore, disentitle her from seeking wages for the period she has worked.

24 Mr.Deshmukh confirms that the employee has not been paid her salary for the entire duration of work from 07.08.1984 till 28.03.1985. This statement of non payment of salary is not denied by the Management.

25 In this backdrop, the Management is directed to pay salary as stated in paragraph 1 of the appointment order dated 06.08.1984 to the employee for the period 07.08.1984 to 28.03.1985 with interest at the rate of 8% per annum from the date of termination till the actual payment to be made under the directions in this order. The Management is, therefore, directed to pay the said amount with interest to the employee within SIXTY DAYS from the passing of this order from their own funds.

26 In the light of the above, the first petition filed by the

Management is partly allowed. The impugned judgment and order delivered by the School Tribunal dated 18.03.1994 in Appeal No.1/1989 is quashed and set aside. Appeal No.1/1989, therefore, stands rejected. In the light of the directions to the Management to pay the unpaid salary with interest as recorded above, Rule is made partly absolute in the first petition.

27 The second petition claiming full back-wages is, therefore, dismissed. Rule is discharged in the second petition.

(RAVINDRA V. GHUGE, J.)