

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3484 OF 2012

1. The Secretary,
Shri Gurudeo Shikshan Prasarak Mandal,
Osmanabad, at post Bori, Taluka and
District Latur.

2. The President,
Shri Gurudeo Shikshan Prasarak Mandal.
Osmanabad, at post Bori, Taluka and
District Latur.

3. The Head Master,
Smt. Satyabhama Shinde Vidyalaya,
Devlali, Tq. and Dist. Osmanabad.

..Petitioners

Versus

1. Smt. Dhas Seema Shivajirao,
Age 38 years, Occ. Nil,
R/o Shikshak Colony,
Osmanabad, Tq. and Dist.
Osmanabad.

2. The Education Officer (S),
Zilla Parishad, Osmanabad.

..Respondents

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Advocate for Petitioners : Shri Gunale V.D.
Advocate for Respondent 1 : Shri Shelke S.K. h/f Shri Shelke A.S.
AGP for Respondent 2 : Smt. Shelke S.D.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 24, 2015

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. After considering the submissions of the learned Advocates for the respective sides, there appears to be no controversy about the services of respondent No.1, who has been reinstated in 2012 and has also been granted permanent approval. Shri Mane, another teacher, who was reinstated by the School Tribunal for imparting education in Hindi subject has now been appointed as the Headmaster. Respondent No.1 has acquired the qualifications to teach Marathi subject in 2011 and in the light of a permanent vacant post, she has already been reinstated.

5. In the light of the above, the only issue that deserves determination is the order of the School Tribunal granting full backwages to the respondent No.1 from the date of her termination 16.11.2007. It is seen from paragraph No.11 of the impugned judgment that backwages have been granted by the School Tribunal firstly on the ground that the petitioner institution receives salary grants and secondly that the first respondent deserves backwages since she was not allowed to work.

6. Shri Gunale strenuously submits that the first respondent could not discharge her duties since she was qualified to teach Hindi and the reinstatement of Shri Mane, who was a teacher of Hindi subject, under Court orders, naturally led to his reinstatement to impart education in

Hindu subject. Respondent No.1, therefore, could not be paid salary as it would have amounted to two teachers being paid salary for teaching the same subject which is impermissible in law.

7. Shri Gunale, therefore, submits that as the respondent No.1 acquired qualifications to teach in Marathi subject in 2011, backwages, at the most, could be awarded after she acquired the said qualification as she would be the only teacher teaching Marathi subject.

8. Shri Shelke, learned Advocate has opposed the submissions of Shri Gunale and insisted that the backwages be paid as directed by the School Tribunal.

9. The learned AGP appearing on behalf of respondent No.2 has indicated from paragraph Nos.5 and 6 of the affidavit-in-reply that the post of a teacher teaching Marathi subject is available and there should be no difficulty in accommodating the first respondent on the said post. It is undisputed that ever since respondent No.1 acquired qualifications for teaching Marathi subject, there has been no other teacher for teaching the same subject in the said school.

10. In the light of the above, if the salary bills, by way of backwages from the date the first respondent qualified for teaching Marathi subject are forwarded by the petitioner to the education department, there would be no difficulty in granting the said salary bills as no other teacher has

earned his salary from the grants for the said period in the Marathi subject.

11. In the light of the above, the impugned judgment is partly modified only to the extent of granting backwages to the first respondent from the date of her qualifying to teach the Marathi subject and more so in the light of the stand of the petitioners that she was never terminated.

12. The petitioners shall, therefore, forward her salary bills, by way of backwages, from the date of her acquiring the qualification in Marathi subject and respondent No.2 shall deal with such proposals and sanction the same in accordance with law.

13. This petition is, therefore, partly allowed and Rule is made partly absolute in the aforesaid terms.

(RAVINDRA V. GHUGE, J.)

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