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

WRIT PETITION NO. 9554 OF 2012

AUDUMBAR SHIVAJI DHAGE,
Age : 29 years, Occ : Service,
R/o Paranda, Tq.Paranda,
District Osmanabad.

...PETITIONER

-VERSUS-

1 PRESIDENT/SECRETARY,
 SHRI SHIVSHAKTI BAHUDDHESIYA
 GRAMVIKAS MANDAL, INGODA,
 Tq.Paranda, District Osmanabad.

2 Headmaster,
 Navin Madhyamik Vidyalaya,
 Rohtak, Tq.Paranda,
 District Osmanabad.

3 Education Officer (Secondary),
 Zilla Parishad, Osmanabad.

...RESPONDENTS.

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Shri V.D.Salunke, Advocate for the Petitioner.

Shri K.J.Ghute Patil h/f Shri M.P.Tripathi, Advocate for Respondent Nos.1
and 2.

Shri U.H.Bhogle, AGP, for Respondent No.3.

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**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 07th September, 2015**

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner is aggrieved by the judgment and order dated 29.08.2012 delivered by the School Tribunal in Appeal No.121/2011 by which the Appeal preferred by the Petitioner challenging his oral termination dated 17.10.2011, has been dismissed on the ground that the Petitioner was never appointed by the Respondent Nos.1 and 2/ Management.

3 I have heard Shri Salunke, learned Advocate for the Petitioner, Shri Ghute Patil, learned Advocate for Respondent Nos.1 and 2/ Management and the learned AGP on behalf of Respondent No.3.

4 Considering the order that I intend to pass, I need not advert to all the contentions of the learned Advocates for the respective sides, which have been canvassed in extenso.

5 Suffice it to say that the grievance of the Petitioner is that the documents placed on record before the School Tribunal have not been considered while delivering the impugned judgment. The Petitioner indicates from the documents from page Nos.14 to 25 below Annexure B of this petition, that it is the Inspection Report (Padtalani Vishayak Mahiti) dated 21.08.2007.

6 Shri Salunke submits that the documents from page Nos.15 to 25 have been a part of the said inspection report which has been signed by the Headmaster and the Education Extension Officer. He further submits that since the Education Extension Officer was conducting the inspection, the signature of the Education Officer is missing. All these documents were not considered by the School Tribunal.

7 He then draws my attention to the documents from page 26 onwards to contend that they are quarterly reports, seniority list and the letters dated 04.03.2009 and 02.03.2010 which indicate that the Petitioner was posted on duty for the 10th standard examination as a Supervisor. One letter indicates that post completion of the said duty, he was relieved from the said task.

8 Shri Salunke further points out from the documents at page Nos.37 and 38 that the Petitioner was a valid voter in the elections held for the Teachers' Constituency. He, therefore, submits that this is an evidence of the fact that the Petitioner was appointed as a teacher. His grievance is that none of these documents have been considered by the School Tribunal while delivering the impugned judgment.

9 Shri Ghute Patil submits that the resolution dated 01.06.2007

is totally false and is manufactured by the Petitioner. One of the signatory is the Headmaster Shri Kolte, who, in collusion with the Petitioner had prepared the said document. The other signatory is an 80 years old person, who does not share cordial relations with his son, who is managing the Respondent/ Management.

10 Shri Ghute Patil further points out from the petition memo that the Petitioner claims to have been appointed as an Assistant Teacher by the order dated 05.06.2007 when he was not B.Ed. qualified. He then points out from the memo of the appeal filed before the School Tribunal that the Petitioner had averred that he had been appointed as an Assistant Teacher on 20.06.2006 after having acquired the qualification of B.A., B.Ed..

11 He points out that the Petitioner passed the B.Ed. examination on 07.06.2007 which is after his alleged appointment. The discrepancy between the contention in the appeal that he was appointed on 20.06.2006 and the contention in the memo of the petition that he was appointed on 05.06.2007, indicates that the Petitioner had indulged in forgery by manufacturing the documents with the aid of Shri Kolte, who was the Headmaster at the relevant time.

12 Shri Ghute Patil further submits that after Shri Kolte left, Mrs.Madhuri Patil became the Headmistress. Since then, the name of the Petitioner neither appears on the attendance register nor on any record of the Management to suggest that he was in employment. He further submits that the Petitioner never worked, was never appointed and was never paid his monthly salary as he was never appointed. His proposal was not sent to the Education Officer for approval for the same reasons.

13 I do not wish to consider the disputed and contentious issues raised by the respective sides in the light of the fact that these documents were never considered by the School Tribunal. Though the School Tribunal has taken efforts to draw a conclusion that the Petitioner was never appointed by the Respondent/ Management, it would have been worth the exercise if the Tribunal could have considered the documents in the light of the contentions of the Petitioner that these documents are maintained by the statutory authorities like the Education Officer and they would throw sufficient light on the facts keeping in view that there are two factions in the Management and both these factions took opposite stands.

14 Considering the above, I am inclined to set aside the impugned judgment only for the reason that the School Tribunal has

ignored/ overlooked the documents which were placed on record by the Petitioner. It was expected that the School Tribunal should consider all these documents and go into the controversy about the factum of appointment of the Petitioner after analyzing the statutory records produced before it.

15 Though the Respondent/ Management contends that the said record is false and bogus, it would be in the interest of justice that the School Tribunal considers all those documents and contentions of the litigating sides. The Education Officer, who is Respondent No.3 in the Appeal before the School Tribunal, also needs to be directed to file a specific affidavit to indicate whether, the documents from page Nos.14 to 25 of the petition paper book was indeed the Inspection Report of the Education Department.

16 As such, this Writ Petition is partly allowed. The impugned judgment and order dated 29.08.2012 is quashed and set aside for the reasons stated herein above. Appeal No.121/2011 is remitted back to the School Tribunal for enabling the litigating sides to place further documents on record and for Respondent No.3 to file it's affidavit/ written statement so as to confront the documents placed before this Court as well as before the School Tribunal, as noted above.

17 Since the litigating sides request for a particular date of appearance before the School Tribunal, it is hereby directed that the litigating sides shall appear on 28.09.2015 before the School Tribunal at Solapur. Formal notices need not be issued.

18 The learned AGP shall communicate this order to Respondent No.3/Education Officer. It is further directed that Respondent No.3/ Education Officer shall file a specific affidavit/ written statement before the School Tribunal to indicate whether the inspection report dated 21.08.2007 placed before this Court was an Inspection Report at the behest of the Education Department.

19 The School Tribunal shall consider the documents on record and shall decide Appeal No.121/2011 on it's own merits without being influenced by it's observations set out in the impugned judgment, which has been set aside today.

20 Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)