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

CIVIL APPLICATION NO. 15664 OF 2015
IN RAST/31389/2015
IN WRIT PETITION NO.3451 OF 2013

VAISHALITAI DESHMUKH SHIKSHAN SANSTHA, DHANEGAON AND
ANOTHER
VERSUS
SYED SHAHIN SHARAFAT ALI(BORIKAR) AND ANOTHERS

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Advocate for Applicants : Shri S.S.Jadhavar a/w Agrawal Pavankumar S.

Advocate for None Applicant No.1 : Shri Syed Mansood Chand.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th December, 2015

Per Court:

(a) Civil Application No.15664/2015:-

1 The Review Petitioner/ Management prays for condonation of 18 days' delay in filing the Review Petition for reviewing the judgment dated 02.09.2015 passed by this Court in Writ Petition No.3451/2013.

2 I have heard Shri Jadhavar along with Shri Agrawal, learned Advocates for the Review Petitioner/ Management in support of this application.

3 Shri Syed, learned Advocate for the Non-Applicant/
Employee, appears suo motu on instructions from the Non Applicant and
opposes this application as well as the Review Petition.

4 Considering the fact that minor delay of 18 days has been
caused, the Civil Application is allowed and the delay is condoned.

(b) Review Petition (stamp) No.31389/2015:-

5 Shri Jadhavar submits that the issue involved is with regard
how can an unqualified teacher be reinstated in employment. The
contention is that the Non Applicant/ Employee was holding the
Secondary School Certificate (SSC) and the Teachers' Certificate of Higher
Course (TCH) when she was appointed as a Shikshan Sevak on
05.07.2003 as probationer for a period of three years. The Non Applicant/
Employee had worked till 20.09.2006 from 05.07.2003. The Management
had specifically denied terminating the services of the Employee and had
taken a stand that she had abandoned the employment.

6 Shri Syed, learned Advocate for the Non Applicant/
Employee, strenuously supports the judgment under review delivered by
this Court and prays for the dismissal of the review petition.

7 The issue before the School Tribunal was with regard to the oral termination of the Non Applicant/ Employee. The plea taken by the Management was with regard to abandonment of service. Along with the said ground, the stand of the Management was that because the Non Applicant/ Employee was not duly qualified to continue in employment, she herself has abandoned service.

8 This Court had considered the ratio laid down by the Apex Court in the matter of *Novartis India Limited vs. State of West Bengal and others*, **AIR 2008 SC (Supp) 836**, wherein the Apex Court had laid down the law that the claim of abandonment of service was a charge of unauthorized absenteeism and hence, the concerned Employee ought to be subjected to a proper domestic enquiry for proving the charges. Considering the ratio laid down by the Apex Court, this Court had granted reliefs which the Apex Court had granted in Novarties India Limited case (supra).

9 This Court had also placed reliance upon the judgment of the Full Bench of this Court in the matter of *Ram Avadh Mahel Pal vs. Shivdutta Educational Trust and others*, **2007(6) BCR 23**, wherein the Full Bench of this Court has concluded that the Shikshan Sevaks who had

completed three years in service, are deemed to be confirmed and are entitled to be absorbed as regular teachers.

10 The contention of the Review Petitioner/ Management is that the Non Applicant/ Employee was not qualified. This ground was not specifically taken by way of a written order of termination. By an oral stand of abandonment, the Management had infact charged the Employee with unauthorized absenteeism as a ground for removal from service. The Management was not precluded from following the due procedure of law in dealing with the Non Applicant/ Employee since any Employer can always take recourse to law in dealing with any issue with regard to any employee.

11 In the above backdrop, in my view, when the issue of abandonment of service was raised before the School Tribunal and before this Court, it was not within the domain of this Court to scrutinize whether, an employee was educationally qualified to be reinstated in service.

12 When the Non Applicant/ Employee was appointed on probation by the Review Petitioner/ Management, when she had completed her probation period of three years and there were no adverse

reports against her, this Court is not required to consider the contentions of the Management with regard to the educational qualification of the Employee. The Review Petitioner/ Management or for any reason any Employer cannot be precluded in following the due procedure of law in dealing with any Employee, if there are any legal issues.

13 In the light of the above, I do not find any merit in the Review Petition and the same is rejected.

(RAVINDRA V. GHUGE, J.)