

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

WRIT PETITION NO.10763 OF 2014

Ashokkumar s/o. Rangnath Tikhe,
Age 39 Years, Occu: Service
R/o. At Post Thergaon, Taluka
Karjat, District Ahmednagar

PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai – 32.
- 2] The Education Officer [Secondary],
Zilla Parishad, Ahmednagar
- 3] The President / Secretary,
Manav Vikas @ Savardhan Seva
Mandal, Thergaon Taluka
Karjat, District Ahmednagar
- 4] The Head Master
Shri Nageshwar Vidyalaya,
Thergaon Taluka Karjat,
District Ahmednagar

RESPONDENTS

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Mr. Amol N. Kakade, Advocate for the Petitioner
Mr. G.R.Ingole, AGP for the Respondent -State

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**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

**Reserved on : 06.04.2015
Pronounced on: 10.04.2015**

JUDGMENT: [Per S.S.Shinde, J.]:

- 1] Heard.

2] Rule. Rule made returnable forthwith heard with the consent of the parties.

Brief facts for proper adjudication of the Writ Petition, disclosed in the Memo of the Petition are as under:

3] It is the case of the petitioner that, petitioner possesses the qualification of B.A., B.Ed. and he came to be appointed as Assistant Teacher, by following due procedure of law, in the respondent No.4 School on permanent vacant post in the Year 1999. In the Year 2001, the management terminated the services of the petitioner illegally, and therefore, he filed Appeal No.137/2001 before the Presiding Officer, School Tribunal, Pune Region, Solapur. It is the further case of the petitioner that, on 24.11.2015, the appeal filed by the petitioner came to be allowed and he was granted reinstatement with 50% back wages from the date of termination till the date of reinstatement. It was further directed that, petitioner shall complete D.Ed. course within period of 5 Years.

4] Being aggrieved by the said order, the Director of Maharashtra State Council for Educational Research and

Training, Pune filed Writ Petition No. 4009 of 2007 before the High Court of Bombay, Bench at Aurangabad. The High Court allowed the said Writ Petition and set aside the clause No. IV and V of the order of the School Tribunal as the petitioner in the said Writ Petition was not party to the proceeding and directions were issued beyond the scope of Section 9 of the MEPS Act. The petitioner also filed Writ Petition No.5635/2007, challenging the part of the said order, whereby the petitioner was directed to complete D.Ed. course.

5] It is the further case of the petitioner that, on 22.01.2007, the Education Officer granted approval to the services of the petitioner as an Assistant Teacher, and it was further directed that, the petitioner should complete D.Ed. course within five years from the academic Year 2006-2007. In view of the fact that, directions issued by the Tribunal were set aside by the High Court in Writ Petition No.4009 of 2007, and therefore, there was no clear picture in regard to completion of the D.Ed. course by the present petitioner. It is the further case of the petitioner that, on 14.06.2011, the respondent management terminated the services of the petitioner on 14.06.2011, on

the ground that, he has not completed D.Ed. course within five years, and therefore, approval to his services is automatically rejected.

6] Being aggrieved by the said termination order, petitioner filed Appeal No.53/2012 before the Presiding Officer, School Tribunal, Solapur on various legal grounds. After hearing both the parties, the School Tribunal by its order dated 04.02.2013, dismissed the appeal filed by the present petitioner. Thereafter, being aggrieved by the said order, the petitioner filed Writ Petition No. 2516 of 2013 before this High Court. After hearing all the parties, on 06.03.2014, the Hon'ble Single Judge partly allowed appeal filed by the petitioner, and quashed and set aside impugned termination order and order of learned Tribunal in Appeal No.53/2012.

7] It is the further case of the petitioner that, as per the order passed by the Hon'ble Single Judge on 06.03.2014 in Writ Petition No. 2516 of 2013, the petitioner came to be reinstated in service on 21.04.2014. After reinstating the petitioner, the respondent No.2 Education Officer has granted approval to the services of the

petitioner as an Assistant Teacher from 14.06.2011 without considering his earlier services from 02.08.1999. Hence this Writ Petition.

8] The learned counsel appearing on behalf of the petitioner invited our attention to the impugned order at Exhibit-E Page 68 of the compilation of the Writ Petition and submits that, the Education Officer [Secondary], Zilla Parishad, Ahmednagar has granted approval to the services of the petitioner with effect from 14th June, 2011, ignoring that, while allowing Writ Petition filed by the petitioner, the High Court by its order dated 6th March, 2014 in Writ Petition No.2516 of 2013 held that, the petitioner shall be reinstated by the respondent / Management with effect from 14.06.2011 with continuity and full back wages.

9] Though the respondents are served, no reply is filed. The learned AGP, relying on the contents of the impugned communication, submits that, the Education Officer has rightly granted approval to the appointment of the petitioner from 14th June, 2011, therefore, the Petition may be dismissed.

10] We have heard the learned counsel appearing for the petitioner, learned AGP for the respondent – State, with their able assistance, perused the pleadings, grounds taken in the Petition and annexure thereof and in particular the Judgment and Order passed by this High Court in Writ Petition No.2516/2013, decided on 6th March, 2014. It appears that, the petitioner was appointed as an Assistant Teacher in the Year 1999. Initially, the management terminated the services of the petitioner. The petitioner preferred an Appeal before the Presiding Officer, School Tribunal, Pune Region, Solapur, and the said Appeal came to be allowed on 24.11.2005 and 50% back wages were ordered from the date of termination till the date of reinstatement. It was further directed that, the petitioner to complete D.Ed. course within period of 5 Years. It further appears that, the Director of Maharashtra State Council for Educational Research and Training, Pune, preferred Writ Petition No.4009/2007, challenging the order passed by the School Tribunal. It further appears that, on 22.01.2007, the Education Officer granted approval to the services of the petitioner as an Assistant Teacher, subject to acquiring D.Ed. qualification within 5 years from the academic year 2006-07. On 14th June, 2011, again the management

terminated the services of the petitioner on the ground that, he has not completed D.Ed. course. The said order was assailed by the petitioner before the School Tribunal, Solapur, by filing Appeal and the same was dismissed. Being aggrieved by the said order, Writ Petition No. 2516/2013 was filed before the High Court of Bombay, Bench at Aurangabad.

11] For the purpose of deciding the present Petition, para No.19 of the Judgment and Order dated 6th March, 2014 passed in Writ Petition No.2516 of 2013 is relevant, which reads thus:

"19. I, therefore, deem it fit and proper to quash and set aside the impugned termination dated 14-06-2011 and the impugned judgment of the School Tribunal dated 04-02-2013 in Appeal No.53/2012. The petitioner shall therefore be reinstated by the respondent/Management with effect from 14-06-2011 with continuity and full back wages."

12] Upon careful perusal of the para 19, it is abundantly clear that, the respondent / management was directed to reinstate the petitioner with effect from 14th

June, 2011 with continuity and full back wages. Therefore, the word '*continuity*' would relate back to the date of appointment. Therefore, in our opinion, the Education Officer ought to have granted approval to the appointment of the petitioner from the date of appointment and not from 14th June, 2011.

13] In that view of the matter, the impugned communication / order dated 19.09.2014 is set aside. The Education Officer is directed to pass afresh order in the light of the observations made in this Judgment in respect of granting of approval to the services of the petitioner as expeditiously as possible, however, within four weeks from today.

14] Rule made absolute in above terms. Petition stands disposed of accordingly.

Sd/-

[P.R.BORA]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE

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DDC