

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

W.P.No. 1021 of 2014

Ku. Nutan d/o Sayajirao Jawade vs. State of Maharashtra and others

Notes, Office Memoranda of

Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's
Orders.

Shri S.P.Bhandarkar, Advocate for the
petitioner.

Shri D.P.Thakare, Additional Government
Pleader for R-1 to 3.

Shri H.A.Deshpande, Advocate for
respondent nos. 4 and 5.

Shri A.D.Mohagonkar, Adv. for respondent
no.6.

Smt. I.L.Bodade, Advocate and Shri
G.G.Mishra, Advocate for respondent no. 8.

**CORAM : SMT. VASANTI A. NAIK &
A.M.BADAR, JJ**

DATE : 20.4.2015

By this petition, the petitioner seeks a direction to the
respondent Zilla Parishad to grant an approval to the appointment
of the petitioner on the post of assistant teacher in Scheduled
Caste category in the grant-in-aid School run by the respondent
Sanstha.

According to the petitioner, the petitioner was appointed by the respondent Management to teach in the non-grant-in-aid section in the School run by the Management. The petitioner continued to work as an assistant teacher in the non-grant-in-aid classes. According to the petitioner, one post of assistant teacher in the grant-in-aid classes had fallen vacant and, therefore, the petitioner sought her absorption on the post of assistant teacher in the grant-in-aid classes. Since the vacancy in the grant-in-aid class was in respect of the Scheduled Caste candidate, according to the petitioner, the petitioner was eligible for the absorption in the said post. As the Education Officer declined to grant approval to the said absorption/appointment, the petitioner has filed the instant petition.

It is stated on behalf of the Zilla Parishad that the petitioner cannot be granted approval on the post of assistant teacher in the grant-in-aid classes. It is stated that several assistant teachers from the grant-in-aid schools are declared surplus and in view of the Government Resolution it is necessary to fill up the vacancies in grant-in-aid Schools by absorbing the said surplus assistant teachers in the said vacancies. It is stated that the Government is required to pay the salary to the surplus teachers though they are not working in any School. It is stated that in this background since the Government has heavily come down on the

Zilla Parishads against granting such approvals, the Zilla Parishad is not in a position to grant approval to the appointment of the petitioner in the grant-in-aid classes.

Shri Thakare, the Additional Government Pleader submitted that at one point of time, the Deputy Director of Education had observed that the absorption of the assistant teachers of the Zilla Parishad from the non-grant-in-aid classes to grant-in-aid classes was permissible. It is, however, stated on instructions that this observation was made on a mistaken notion and by wrongly placing reliance on the provisions of Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, though they do not apply to the assistant teachers of the Zilla Parishad.

Since the petitioner had also sought a direction against the respondent Management to pay the arrears of the salary to the petitioner from the year 2003 till date, Shri Deshpande, the learned counsel for the Management has submitted that salary is paid to the petitioner till November, 2009. It is stated that the petitioner can seek the salary only for a period of three years preceding the date of filing of the writ petition. It is stated that the petitioner has asked for the salary as per the recommendations of the 6th Pay Commission whereas the petitioner is entitled to salary, as

prescribed in the schedule annexed to the Act and The Rules.

On hearing the learned counsel for the parties, it appears that a direction cannot be issued to the Zilla Parishad (Primary) to grant approval to the absorption/appointment of the petitioner in the grant-in-aid classes run by the respondent Management. No right whatsoever has been pointed out on behalf of the petitioner to seek the absorption /appointment from non-grant-in-aid classes to the grant-in-aid classes. In fact, the petitioner has annexed various approval orders issued by the respondent Zilla Parishad which clearly show that it is the sole responsibility of the Management to pay the salary of the petitioner as the petitioner is appointed in non-grant-in-aid classes. In the absence of any right in the petitioner to seek the appointment/absorption from the non-grant-in-aid classes to the grant-in-aid classes, a direction cannot be issued to the Zilla Parishad to grant the approval. In the circumstances of the case, we find that the Zilla Parishad has rightly declined to grant approval to the absorption of the petitioner from non-grant-in-aid classes to grant-in-aid classes. Several assistant teachers are declared surplus in other grant-in-aid schools and since there are no vacancies in the existing grant-in-aid schools, they are being paid from the Government Exchequer though they are not working in any school. In this background, the Government has issued a Resolution, by which, the Zilla Parishads are directed

not to grant permission for fresh appointments unless the vacancies are filled in by the teachers who are declared surplus in other schools. The Zilla Parishad, therefore, has rightly directed the respondent Zilla Parishad to fill up the vacancies in the grant-in-aid classes by the teachers named in the order issued by the Zilla Parishad. It is stated that two teachers from other Schools are absorbed in the School run by the respondent Management in view of the directions of the Zilla Parishad. The petitioner would not be entitled to a direction to the Zilla Parishad to grant approval to the absorption of the petitioner in the grant-in-aid classes.

The petitioner would, however, be entitled to the arrears of salary as the petitioner has worked in the respondent School from the year 2003 till date. This is not the first petition filed by the petitioner with a prayer for a direction to the respondents to pay the salary to the petitioner. One such writ petition was filed by the petitioner in the year 2012 bearing Writ Petition No. 4088/2012. Even assuming that the petitioner would be entitled to the salary for a period of 3 years preceding the date of filing of the petition or making of the claim, since the petitioner had made a claim in the year 2012, the petitioner would be entitled to the arrears of the salary for the period from December, 2009 till date.

For the reasons aforesaid, we dispose of the writ

petition with a direction to the respondent Management to pay the arrears of salary to the petitioner, as admissible, within a period of three months. An amount of Rs. 1 lac is deposited by the Management in this Court. We permit the petitioner to withdraw the same. It is needless to mention that the said amount should be adjusted towards the amount payable to the petitioner towards the arrears of salary. Order accordingly. No costs.

JUDGE

JUDGE

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