

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3215/2014

(RADHA NANDKISHOR TUPKAR (MAIDEN NAME RADHA BABURAO PANDIT) **VERSUS** THE
 STATE OF MAHARASHTRA & OTHERS)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri R.D. Bhuibhar, counsel for the petitioner.
 Shri N.R. Patil, A.G.P. for the R-1 to 4.

CORAM : SMT. VASANTI A. NAIK AND
PRASANNA B. VARALE, JJ.

DATE : JULY 15, 2015.

By this petition, the petitioner impugns the order of the Education Officer dated 18.04.2013 cancelling the approval to the appointment of the petitioner as also the order of the Director of Education, Pune upholding the order of the Education Officer.

The petitioner was appointed as an Assistant Teacher in a school run by the respondent no.5-Society on 26.06.2009 in pursuance of her application dated 02.05.2009. The Education Officer granted approval to the appointment of the petitioner by an order dated 26.08.2009. One Harishchandra Chavan, whose son was also working as a teacher in the same school, made a complaint to the Deputy director of Education that the petitioner and some other Assistant Teachers had secured the appointment by producing fake certificates. It appears that the Deputy director of Education heard the Headmistress of the school and the Education Officer and asked the Education Officer to cancel the approval of the petitioner after hearing her. Criminal proceedings were also directed to be initiated against the petitioner and some other employees for producing fake and

fabricated documents for securing employment. According to the petitioner, the criminal proceedings have been quashed in terms of an order passed by this Court in Criminal Application No.315 of 2014. The Education Officer heard the petitioner and by an order dated 18.04.2013 cancelled the approval order dated 26.08.2009. The petitioner filed an appeal before the Director of Education but, the same was dismissed.

Shri Bhuibhar, the learned counsel for the petitioner, submitted that the order of the Education Officer is liable to be set aside as the said order is passed on the dictates of the superior authority, i.e. the Deputy Director of Education. It is stated that the Education Officer was unduly influenced by the directions of the Deputy Director of Education and, hence, there was no application of mind by the Education Officer while cancelling the order of approval. It is submitted that the Director of Education has mechanically upheld the order of the Education Officer.

Shri Patil, the learned Assistant Government Pleader appearing on behalf of the respondent nos.1 to 4, supported the order of the Education Officer and the Director of Education. It is submitted that the approval to the petitioner's appointment was rightly cancelled as admittedly, the due procedure that was required to be followed before making the appointments was not followed by the management before appointing the petitioner. It is submitted that no advertisement was issued by the management in the year 2009 before the petitioner was appointed. It is submitted that the petitioner was appointed on the basis of an application made by her on 02.05.2009 sans advertisement. It is stated that even if we ignore the aspect of the Education Officer being unduly influenced by the directions of the Deputy Director of Education, still the petitioner would not be entitled to approval as her appointment is made without following the due procedure prescribed by law.

On hearing the learned counsel for the parties and on a perusal of the impugned orders, it appears that there is no scope for interference with the impugned orders, in exercise of the writ jurisdiction. We would have normally allowed the petition on the ground that the Education Officer was influenced by the directions issued by the Deputy Director of Education had the appointment of the petitioner been made in accordance with law. Admittedly, in this case, no advertisement was issued before the petitioner was appointed on the post of Assistant Teacher. An advertisement was not issued by the management and on a simple application made by the petitioner on 02.05.2009, the petitioner was appointed on 26.06.2009. It is well settled that a person would not be entitled to claim his retention or regularization in service if the appointment of the said person is made without following the due procedure prescribed by law. In this case, there was no competition whatsoever as no advertisement was issued before appointing the petitioner on the post of Assistant Teacher. It would be worthwhile to refer to the judgment reported in **2007(6) Mh.L.J. 667** (*Priyadarshini Education Trust & Others Versus Ratis (Rafia) Bano d/o Abdul Rashid & Others*), in this regard. In the circumstances of the case, when the appointment of the petitioner was admittedly not made by following the due procedure prescribed by law, the order of cancellation of approval cannot be faulted with.

In the result, the writ petition fails and is dismissed with no order as to costs.

JUDGE

JUDGE