

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

WRIT PETITION NO. 3683 OF 2015

Smt.Shailaja Rajeshwar Nalgundwar

-vs-

The Deputy Director of Education, Nagpur Division, Nagpur and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.G.N.Khanzode, counsel for the petitioner.
Ms P D. Rane, AGP for the respondent Nos.1 and 2.
Mr. S. Raisuddin, counsel for the respondent Nos.3 and 4.

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

DATE : 01.12.2015.

By this petition, the petitioner challenges the order of the Education Officer (Secondary), dated 04/03/2015 refusing to absorb the petitioner in some other school as a surplus teacher under the provisions of Section 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

The petitioner was appointed as an assistant teacher in the respondent-School in the year 2000. The petitioner had worked in the school till 2012, when the strength of the students in the school dwindled and the strength of the assistant teachers was reduced to 2. It is the case of the petitioner that the petitioner was orally informed by the Management that the petitioner had become surplus. Since the petitioner was not declared surplus, by the Management, the petitioner filed Writ Petition No.6292 of 2013 seeking her absorption in some other school. A direction to the respondents to pay the salary till the de-recognition of the school on 16/01/2013 was also sought. The said writ petition was disposed of by an order dated 21/01/2015 and a direction was issued to the Education Officer to ascertain whether the petitioner was declared surplus in the school and was required to be absorbed in some other school. After hearing the petitioner, by the

impugned order, dated 04/03/2015, the Education Officer refused to absorb the petitioner in some other school.

On hearing the learned counsel for the parties and on a perusal of the impugned order, it appears that a direction cannot be issued to the Education Officer to absorb the petitioner in some other school. It appears that by an order, dated 16/01/2013 the school was de-recognized and the Management filed an appeal against the order of de-recognition. On 24/07/2014, the State Government stayed the order of de-recognition and permitted the respondent-Management to run and administer the school for the academic session 2014-2015. It appears that petitioner's services were terminated by the Management by an order, dated 20/07/2015 and the petitioner has challenged the said order before the School Tribunal in an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. It is also the case of the petitioner that though the petitioner desired to join the services in the year 2014, the petitioner was not permitted by the Management to join in the said academic year. It is the case of the petitioner that even after the impugned order was passed, the respondent-Management did not permit the petitioner to join the duties. It is thus clear that the petitioner was not permitted to join the duties in the year 2014-2015 and the services of the petitioner were "otherwise terminated" by the Management, though an order of termination was indeed issued on 20/07/2015. We do not wish to decide, in exercise of the writ jurisdiction as to whether the action on the part of the respondents in refusing to permit the petitioner to join in the school is bad-in-law or not, as the said issue would be decided in the appeal filed by the petitioner before the School Tribunal. The School Tribunal would also consider some of the other factual disputes that are involved in the writ petition. The respondent cannot be directed to absorb the petitioner as his services are terminated. The question in regard to the legality of termination and the entitlement of the petitioner for salary are not decided by us. These issues would fall for consideration in the appeal before the School Tribunal and the School Tribunal may record the findings on the said issues. Suffice it to state that a direction cannot be issued to the Education Officer in the circumstances of

the case, to absorb the petitioner in some other school, as the Management has not declared the petitioner as surplus and has terminated the services of the petitioner.

In the circumstances of the case, we dismiss the petition with no order as to costs. The question in regard to the payment of the salary to the petitioner for the period from August, 2012 till date is kept open. No costs.

JUDGE

JUDGE

KHUNTE