

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

WRIT PETITION NO. 4672 OF 2014

(Ramesh Jaganrao Gadre Vs. The Education Officer (Primary), Z.P., Nagpur & others)

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

Court's or Judge's orders

Shri P. N. Shende, Advocate for the petitioner.
Smt. I. L. Bodade with Shri G. G. Mishra, Advocates for respondent
No.1.
Shri Zia Qazi, Advocate for respondent Nos. 2 & 3.

**CORAM : B. P. DHARMADHIKARI AND
P. N. DESHMUKH, JJ.**

DATED : 09 OCTOBER, 2015

Heard.

2. The petitioner, who approached this Court in Writ Petition No. 4339 of 2013 disposed of on 21/01/2014, has approached again in the present writ petition assailing the subsequent order dated 25/3/2014 passed by Education Officer. The Education Officer has observed that the petitioner has not been recruited properly inasmuch as when only three posts were available on 01/7/2006, total five appointments were made. Thus, three senior teachers were given approval.

3. Learned Counsel appearing for the petitioner made attempt to demonstrate that petitioner cannot be held liable for this state-of-affairs and has drawn our

attention to order dated 21/01/2014 disposing of earlier writ petition and also to the judgment dated 04/3/2015 in Writ Petition No.4627 of 2014. He further states that this Court has directed the Management to pay salary of the petitioner for the period during which he has worked.

4. Advocate Shri Qazi for respondent Nos. 2 and 3 as also Advocate Shri Mishra appearing for respondent No.1 point out that this Court in its earlier order dated 21/01/2014 found that petitioner could not show any advertisement in response to which he entered the service.

5. This Court also noted the fact that the School started receiving grants from the Session 2011-12. The contention of the petitioner is that he was in service in that year and continued even on the date on which Writ Petition No.4339 of 2013 was decided. Thereafter, this Court permitted him to recover arrears of salary till grant of approval by the Education Officer from the Management and asked him to make representation to the Education Officer. Thus, the fact that petitioner did not produce advertisement on record of Writ Petition No.4339 of 2013 was ignored. The petitioner then approached Education Officer and in the impugned order

dated 25/3/2014, Education Officer has found that when three posts of teachers were sanctioned, five persons were recruited against it. Thus, the recruitment of petitioner is found to be in excess.

6. The question is, whether petitioner can be blamed for this. The respondents have pointed out that petitioner is presently not in service. Petitioner has not challenged the order of Education Officer before the School Tribunal. The questions, whether recruitment of petitioner is in accordance with law or was in violation of law and whether petitioner can be blamed for violation, can be looked into by the School Tribunal in pending appeal.

7. Insofar as Writ Petition No.4627 of 2014 decided on 04/3/2015 is concerned, the respondents have pointed out that this writ petition was earlier disposed of on 11/12/2014. Then this Court found that the order of Education Officer declining grant of approval to the appointment of petitioner Ku. Neeta Shahu therein was in accordance with law as there was no proper recruitment. Said petition was, therefore, dismissed on 11/12/2014. It is not in dispute that thereafter a review was filed and that Writ Petition No. 4627 of 2014 was

restored. After restoration, this Court has, in peculiar facts and circumstances, proceeded to issue a direction asking respondent-Management to provide work to petitioner Ku. Neeta Shahu after a vacancy gets created on 31/5/2016 on account of retirement of Smt. Vasanti Sippi.

8. It is apparent that the later judgment in Writ Petition No. 4627 of 2014 dated 04/3/2015, therefore, takes a particular view in peculiar facts and circumstances of the case and does not lay down any law for general application.

9. We, therefore, with liberty to the petitioner to raise necessary challenges before the School Tribunal as mentioned supra, dispose of this writ petition. No costs. Needless to mention that since the salary has not been paid to the petitioner for the work done, he is at liberty to execute the earlier orders in his favour, in accordance with law. Writ petition disposed of with no order as to costs.

JUDGE

JUDGE