

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

WRIT PETITION NO.4104/2014

Tamendra s/o Shamlal Katre

...Versus...

Education Officer (Secondary), Zilla Parishad, Gondia and another

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

Court's or Judge's orders

Shri P.S. Tembhare, Advocate for petitioner
Mrs. K.S. Joshi, AGP for respondent no.1
Shri Rahul M. Wasnik, Advocate for respondent no.2

CORAM : SMT. VASANTI A. NAIK AND
A.M. BADAR, JJ.

DATE : 20.03.2015

By this petition, the petitioner impugns the order of the Education Officer, Zilla Parishad, Gondia dated 18.7.2014, cancelling the approval to the appointment of the petitioner as a Headmaster and directing that the Management would be solely responsible for paying the difference of salary to the petitioner.

Shri Madhukar Brahmanekar was working on the post of Headmaster in the School run by the respondent – Management. The services of Shri Madhukar were terminated after holding an enquiry. An appeal was preferred by Shri Madhukar and during the pendency of the appeal in the School Tribunal, the petitioner was appointed on the post of Headmaster on the condition that the appointment would be subject to the result in the appeal filed by Shri Madhukar. The

proposal of the petitioner was sent by the Management to the Education Officer for grant of approval. A conditional approval was granted by the Education Officer. It was stated in the order of approval that the approval would be subject to the result of the appeal filed by Shri Madhukar. The School Tribunal partly allowed the appeal filed by Shri Madhukar and was pleased to quash and set aside the order of termination after the appeal was partly allowed. The Education Officer cancelled the approval to the appointment of the petitioner as a Headmaster and directed the Management to pay the difference of salary to the petitioner for the period during which he was holding the post of Headmaster. The said order is challenged by the petitioner in the instant petition.

On hearing the learned counsel for the parties, it appears that the Education Officer was justified in cancelling the approval to the appointment of the petitioner as a Headmaster. The petitioner was not entitled to be regularly promoted as a Headmaster and was appointed on the post of Headmaster only because Madhukar Brahmanekar, who was working as a Headmaster in the School was terminated. The appointment of the petitioner as a Headmaster was subject to the result of the appeal. So also, the approval granted to the appointment of the petitioner as a Headmaster also mentioned that it was conditional and was subject to the result of the appeal filed by Shri Madhukar. Since the appeal filed by Shri Madhukar was partly allowed by the Tribunal, it cannot be said that the Education Officer was not justified in cancelling the approval to the appointment of the petitioner. The part of the order

cancelling the approval of the petitioner cannot be said to be bad in law. However, the Education Officer cannot recover the amount of difference of salary paid to the petitioner for having worked as a Headmaster during the pendency of the appeal filed by the petitioner. After the termination of Shri Madhukar was held to be bad by the Tribunal, the responsibility to pay the difference of salary to Shri Madhukar could be of the Management. We are not deciding the issue whether the Management would be liable to pay the salary of Shri Madhukar in this petition. The Education Officer cannot seek the recovery of the difference of salary paid to the petitioner. The petitioner would however not be entitled to other benefits flowing from the order of grant of approval as the approval stands rightly cancelled by the impugned order.

In view of the aforesaid, we dispose of the writ petition with no order as to costs.

JUDGE

JUDGE

Wadkar