

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

WRIT PETITION NO. 2086/2014

(NUSRAT YASMEEN ASHFAQ AHMAD **VERSUS** STATE OF MAH. & OTHERS)

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

Court's or Judge's orders

Shri M.P. Lala, counsel for the petitioner.
 Shri N.R. Rode, A.G.P. for the R-1 & 4.
 Shri A.M. Quazi, counsel for the R-2.
 Shri D.C.R. Mishra, counsel for the R-5 to 8.

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

DATE : JUNE 23, 2015.

By this petition, the petitioner seeks a direction to the respondent no.2-Management to absorb the services of the petitioner in the aided part of the school on any post occupied by the respondent Nos.5 to 8 right from the initial date of the appointment of the petitioner with effect from 26.06.2009. The petitioner also claims the arrears of salary from 2009.

The first relief sought by the petitioner cannot be granted. No direction can be issued to the respondent no.2-Management to absorb the petitioner. No right whatsoever has been pointed out on behalf of the petitioner to seek the absorption/appointment from a non-grant-in-aid school to the grant-in-aid in a school. Reliance placed by the learned counsel for the petitioner on the provisions of Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 is ill-founded as the said provisions relate to the transfer of the employees. In the absence of any right in the petitioner to seek appointment/absorption in the grant-in-aid school from a non-grant-in-aid school, a direction cannot be issued.

As regards the prayer made by the petitioner for a direction to the respondent no.2-Management to pay the arrears of salary to the petitioner from 26.06.2009, it would be necessary to consider the case of the parties. The petitioner claims that the services of the petitioner were approved by the Education Officer from 26.06.2009. Since the respondent no.2-Management has failed to release her salary despite the representations made by the petitioner, the petitioner has sought a direction to the respondent no.2-management to pay the arrears of salary to the petitioner with effect from 26.06.2009.

It is submitted on behalf of the respondent no.2-Management that the petitioner cannot claim the arrears of salary from 26.06.2009. It is stated that the petitioner was illegally appointed by the headmistress without the concurrence of the respondent no.2-Management as the headmistress is the petitioner's mother. It is stated that the mother of the petitioner sent the proposal of the petitioner to the Education Authorities for grant of approval. It is stated that the correspondence made by the headmistress with the Education Authorities is illegal. It is also stated that the petitioner was not working as an Assistant Teacher in the school run by the respondent no.2-Management till 26.06.2014, when the respondent no.2-Management appointed the petitioner on the post of Assistant Teacher. It is stated that till that date, the petitioner was working only for sometime in the school so as to gain experience and not as a regular Assistant Teacher. It is stated that the petitioner would not be entitled to claim salary even after 26.06.2014 as she had agreed to give up her salary if the Education Authorities failed to grant approval to her appointment.

It appears on hearing the learned counsel for the parties that this Court would not be in a position to direct the respondent no.2-Management to pay the arrears of salary with effect from 26.06.2009. There is a serious dispute in regard to the appointment of the petitioner and the rendering of services by her as an Assistant Teacher. There is word against word and it would be necessary for the petitioner to seek the relief by filing appropriate proceedings before a civil Court, if advised. The petitioner would, however, be entitled to claim the arrears of salary with effect from 26.06.2014 as the respondent no.2-Management had admittedly appointed the petitioner on the said date. The respondent no.2-Management has availed the services of the petitioner since 26.06.2014 and though the appointment of the petitioner is not approved, the respondent no.2-Management would be liable to pay the arrears of salary to the petitioner with effect from 26.06.2014 till date. The Management cannot refuse to pay the salary of an employee after availing the services on the ground that the services of the employee are not approved by the Education Authorities. The submission made on behalf of the respondent no.2-Management that the petitioner had agreed to work without salary in case the approval was refused and, hence, the petitioner would not be entitled to the salary even after 26.06.2014 is ill-founded and is liable to be rejected. The action on the part of the respondent no.2-Management in securing such an undertaking from the petitioner is against public policy. It is well settled that the Management would be liable to pay the salary to the employee despite refusal of approval to the services by the Education Authorities if the Management has secured the services of the employee.

Hence, for the reasons aforesaid, the writ petition is partly allowed. Though the prayer of the petitioner for a direction to the Zilla Parishad and the respondent no.2-Management to absorb the services of the petitioner in a grant-in-aid school is rejected, the respondent no.2-Management is directed to pay the arrears of salary to the petitioner from 26.06.2014 till date within a period of four weeks.

Order accordingly. No costs.

JUDGE

JUDGE

APTE