

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 4760 OF 2000**

Smt. Sushama d/o Prabhakar Joshi  
(Sau. Sushama w/o Anant Kulkarni)  
Age: 33 years, Occu.: Nil,  
r/o Sharadnagar, Latur.

..PETITIONER

**VERSUS**

1. The President/Secretary,  
Bhartiya Shikshan Prasarak Mandal,  
Ambejogai, Dist. Beed.  
Through its Branch at Latur,  
c/o Keshavraaj Vidyalaya, Latur.

2. The Head Master,  
Shri. Keshavraaj Vidyalaya, Latur,  
Tq. & Dist. Latur.

3. The Education Officer (Secondary)  
Zilla Parishad, Latur,  
Tq. & Dist. Latur.

..RESPONDENTS

....

Mr. V.D. Gunale, Advocate for petitioner.  
Mr. V.V. Bhavthankar, Advocate for Respondent No.1.  
Respondent No.2 served.  
Mr. D.R. Korde, AGP for Respondent No.3.  
Respondent No.4 deleted.

....

**CORAM : RAVINDRA V. GHUGE, J.  
DATED : 11<sup>th</sup> MARCH, 2016**

**ORAL JUDGMENT :**

1. This petition was admitted by this Court on 19.01.2001 and did not grant any interim relief to the petitioner.

2. The petitioner is aggrieved by the judgment delivered by the School Tribunal, Aurangabad dated 09.12.1999 by which her Appeal No. 126/1995 has been dismissed.

3. Mr. Gunale, learned Counsel appearing on behalf of the petitioner-employee has strenuously submitted as under:-

(a) The petitioner has acquired the qualification of M.A., B.Ed. in English.

(b) She belongs to the open category.

(c) By an order of appointment dated 17.06.1993, she was appointed on 24.06.1993.

(d) Though her appointment was shown to be for a temporary period of an academic year, she was appointed against a permanent vacant post.

(e) By an order dated 31.03.1994, the petitioner was informed that her service has come to an end. However, she was

given the liberty to apply for continuation.

(f) By order dated 13.06.1994, she was again continued for the academic year 1994-95 and was granted continuity.

(g) By letter dated 03.04.1995, she was informed that her services have come to an end upon conclusion of the academic year 1994-95. However she was given the liberty to apply for the next academic year.

(h) By order dated 16.05.1995, she was informed that her service has come to an end after the conclusion of the academic year 1994-95 and since she was appointed against the ST category, she may apply for the said post as and when the management publishes an advertisement.

(i) The petitioner was continued in employment till 16.06.1993 and was orally terminated on 17.06.1993.

(j) She preferred Appeal No. 126/1995 before the School Tribunal, Aurangabad.

(k) The respondent-management filed a written statement stating that the Education Officer declined to grant approval to the appointment of the petitioner since there was a backlog with regard

to the ST category and hence the petitioner could not be continued for the academic year 1995-96.

(l) Section 4(6) of the M.E.P.S. Act, 1979 has not been complied with by the management while effecting the oral termination of the petitioner.

(m) Rules 9(8) and 9(9) of the 1981 Rules have not been complied with, with regard to the manner of filling in the posts reserved for the categories and therefore the petitioner deserves to be continued in service.

(n) The petitioner has worked for two academic years and therefore she is deemed to have become permanent.

(o) He relies upon the judgment of the learned Division Bench of this Court in the matter of *Lalitha Thutpi Vs. C.B. Karkhanis, Presiding Officer, School Tribunal Bombay and Others, 1998(1) Mah.L.R. 235* to support the contention of the petitioner that after completion of two years, she should be continued in employment and there can not be an oral termination in the eyes of law.

4. Mr. Bhavthankar, learned Counsel appearing on behalf of Respondent No.1-management submits that the management had temporarily engaged the petitioner. Neither was any post available, nor was any advertisement published. No applications were called for and no interviews were held for selecting any candidate.

5. He submits that the petitioner was appointed temporarily for one academic year. After the conclusion of the academic year, she was informed that her temporary engagement has come to an end. She was given an option to file an application or meet the Headmaster for seeking further continuation. Whenever she was engaged, a specific order of appointment for a particular academic year was issued to her.

6. He further submits that by communication dated 03.04.1995, the petitioner was informed that her temporary engagement has come to an end after the completion of the academic year 1994-95. She has not challenged the said letter dated 03.04.1995. By another communication dated 16.05.1995,

she was intimated that since the post is reserved for the ST category, she may apply if she so desires provided an advertisement is published. Such an advertisement was subsequently published in Dainik Tarun Bharat. The petitioner has not applied pursuant to the said advertisement. One candidate Mr. C.P. Shelke from the ST category was selected pursuant to the advertisement dated 20.05.1995 and was given an appointment order on 26.06.1995. Since he did not join, the management has selected Mr. C.D. Pardhe, a person belonging to the SC category and his appointment was approved by the Zilla Parishad.

7. He therefore submits that neither was the petitioner selected against a sanctioned vacant post, nor was the petitioner appointed on probation against any post. An employee appointed purely on temporary basis, will have no right to be continued on the post.

8. I have considered the submissions of the learned Counsels.

9. There is no dispute as regards the orders of appointment issued to the petitioner for the academic years 1993-94 and 1994-95. Similarly, there is no dispute with regard to the letters of termination having been issued to the petitioner whenever the academic year had come to an end. It is equally undisputed that the petitioner has never challenged any of her previous termination orders.

10. It emerges from the record that the management had neither published any advertisement, nor had called for any applications for selecting a candidate. The respondent has come up with a defence that the Education Officer intimated the management that since there was a backlog for the ST category and the post was reserved for ST category, the petitioner could not continue on the said post and that the said post deserves to be advertised.

11. By way of this petition, this Court is to consider the claim of the petitioner. Whether the respondent-management has properly advertised the post or has incorrectly appointed the

candidate from the SC category against the ST category because the candidate belonging to the ST category did not join, is a matter of adjudication for the competent authorities who are to grant approval in such circumstances. Issue is as to whether the petitioner would have any right to continue on the post which was neither advertised nor any selection process/procedure followed while appointing her.

12. The petitioner was communicated by the letter dated 03.04.1995 that her services have come to an end after the conclusion of the academic year 1994-95. The petitioner has not challenged the said communication which appears to be an order of concluding her temporary services. Instead, the petitioner chose to claim oral termination with effect from 17.06.1995.

13. Be that as it may, neither the appointment of the petitioner was made by following the due procedure of law, nor was the petitioner appointed on a permanent vacant post in the open category. However, it cannot be ignored that the management must have been aware about its backlog and that the

post was reserved for the ST category. Even if it is presumed that the management acted ignorantly and did not look into the aspect of reservation and therefore continued the petitioner for two years, such ignorance or negligence cannot be at the cost of the petitioner.

14. This Court in the matter of *Ujwal Shikshan Sanstha, Amgaon (Dighori) and Another Vs. Presiding Officer, Addl. School Tribunal, Nagpur, 2015(1) Mh.L.J. 194* has concluded that when the management misleads a candidate and utilizes his services and then dispenses with his services on the ground that no approval is granted, such management deserves to be saddled with costs.

15. In the light of the above, the judgment of the School Tribunal, Aurangabad is neither perverse nor erroneous. The same does not call for any interference.

16. However, since the respondent-management has continued the petitioner for two academic years despite being

aware of the backlog and the post being reserved for ST category, I deem it proper to impose costs of Rs.75,000/- on the respondent-management to be paid to the petitioner within a period of six weeks from today as costs for misrepresentation and for making the petitioner suffer rigours of litigation.

17. In the light of the above, this petition is disposed off with the direction to the respondent-management to pay the costs as above. Rule is discharged.

**(RAVINDRA V. GHUGE, J.)**