

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1822 OF 2012

Vaishali Mohan Kasar,
Age 35 years, Occ. Nil,
R/o Hudco, Shri Chatrapati
Nagar, Tuljapur,
District Osmanabad.

..Petitioner

Versus

1. The Education Officer (S),
Zilla Parishad, Osmanabad.

2. Prerna Shikshan Prasarak
Mandal, Kesegaon, Taluka and
District Osmanabad, through
its Secretary.

3. The Head Master,
Dnyan Vardhini Vidyalaya,
Kesegaon, Tq. and Dist.
Osmanabad.

4. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai. 400 032.

..Respondents

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Advocate for Petitioner : Shri Nagargoje Ankush N.
AGP for Respondents 1 & 4 : Shri Korde D.R.
Advocate for Respondents 2 & 3 : Shri Ghute Patil K.J.
h/f Shri Tripathi Manish P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 19, 2016

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ORAL JUDGMENT :-

1. Heard.
2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. A short issue is raised for the consideration of this Court. There is no dispute that the petitioner was appointed as an Assistant Teacher on 16.8.2008 on probation for a period of two years. Prior thereto, the petitioner, pursuant to the advertisement dated 6.6.2006, was appointed for a period of one year on 1.7.2006 as an Assistant Teacher on the post reserved for the O.B.C. The petitioner belongs to the O.B.C. This appointment concluded on 30.4.2007. He was again continued by order dated 24.7.2007, which tenure concluded on 30.4.2008.

5. The Education Officer informed that one post stood reduced on account of the staffing pattern for the year 2009-10. Consequentially, the petitioner was terminated on 30.9.2009 only for the reason that a post was abolished.

6. The petitioner approached the School Tribunal by filing Appeal No.64 of 2010, which has been dismissed by the impugned judgment dated 18.10.2011 purely on the ground that one post was abolished and hence the petitioner, who was on probation, was rightly terminated.

7. It is an admitted position that besides the abolition of the post, there is no other reason for terminating the services of the petitioner.

8. My attention is drawn to the staffing pattern approved by the respondent - Education Officer for the academic years 2010-11 and 2011-12, dated 2.8.2011. One post is shown to have increased for the VIII to X standard classes. The chart indicates that one post has increased as grants were made available.

9. Shri Nagargoje, learned Advocate for the petitioner submits on instructions that the petitioner is willing to waive all backwages and is willing to accept reinstatement on any post including a post on "no grant basis". If in future, the post is converted to "grantable", he may claim benefits, if any, strictly by following the due procedure of law.

10. Shri Ghute, learned Advocate appearing on behalf of the respondent / management submits that the petitioner was terminated only on account of the abolition of the post. By order dated 9.12.2009, the Deputy Director of Education conveyed to the Education Officer to reconsider the situation.

11. The petitioner was initially appointed on no-grant basis in the

year 2006. Thereafter, when a post on grant basis fell vacant, the petitioner applied for appointment and was given a fresh appointment on probation for two years on 16.8.2008. Now, the said post was subsequently abolished resulting in the termination of the petitioner.

12. The Education Officer has filed affidavits in reply, dated 17.12.2013, 27.1.2014, 24.6.2014 and 19.8.2015. Shri Ghute points out that the Education Officer has consistently stated that one post on “no-grant basis” is available and the petitioner can be accommodated on the said post. I find such statements in paragraph No.5 of the affidavit dated 17.12.2013, in paragraph No.4 of the affidavit, dated 27.1.2014 and in paragraph No.4 of the affidavit, dated 19.8.2015.

13. I, therefore, find that the Education department has taken a consistent stand that the petitioner can be absorbed notionally on the vacant post, which is on no-grant basis for the academic year 2011-12. In doing so, the petitioner can be notionally reinstated for the academic year 2011-12 and based on the same the management can forward the proposal of the petitioner to the Education Officer for being declared as surplus in accordance with the Rules applicable, in the event, there is no post available to continue the petitioner in employment in any academic year subsequent to the

academic year 2011-12.

14. I am arriving at this conclusion in the light of the statement of the petitioner as is recorded herein above and the affidavits in reply filed by the Education Officer, which go to indicate that the reason for terminating the petitioner stood nullified in the light of one post being available in the academic year 2011-12.

15. In the light of the above, this petition is partly allowed. Owing to the subsequent events, the impugned judgment of the School Tribunal, dated 18.10.2011 is modified. The respondent / management shall reinstate the petitioner on the post available on no-grant basis for the academic year 2011-12 and forward the proposal of the petitioner to the Education Officer for approval for the said year. In the event the post is not available from the academic years 2012-13 onwards, the petitioner can be considered for being declared as surplus in accordance with the procedure. Needless to state, the petitioner will not be entitled for wages from the date of reinstatement, save and except, notional continuity of service from the date of termination.

16. It is expected that the management shall forward the proposal for notional approval and for declaring the petitioner surplus within a period of two weeks and the Education Officer shall, thereafter,

decide the said proposal within eight weeks.

17. Rule is made partly absolute in the above terms. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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