

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.4261 OF 2015**Shri Mulla Abbas Bashumiya Vs. The State of Maharashtra and others.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.A.V.Patil (Indrale), advocate for the petitioner.
 Mr.B.V.Virdhe, A.G.P. for the State.
 Mr.D.K.Thote, advocate for Respondent Nos.4 and 5.

**CORAM : S.V.GANGAPURWALA AND
 K.L.WADANE, JJ.**
Date : 20.10.2016.

PER COURT :

1. Heard.
2. Mr.Patil, learned counsel submits that the petitioner was appointed as Assistant Teacher with the Respondent No.5 School in the year 2005. In 2007, the petitioner was terminated. The petitioner filed an appeal before the School Tribunal. The School Tribunal allowed the appeal holding that the appointment of petitioner is legal and valid. The proposal seeking approval to the appointment of the petitioner is rejected. The petitioner is not being reinstated with Respondent No.5 on the ground that now the post is not available nor the Education Officer is treating the

petitioner as a surplus candidate.

3. Learned A.G.P. submits that the qualification of petitioner is B.Sc.B.Ed. and his subjects were Physics, Chemistry and he was appointed to teach Science subject. In the year 2003 already one teacher Bargaje was appointed to teach Science subject. There was no post available for the petitioner, still, the Management illegally appointed the petitioner. The approval as such can not be granted and as approval is not granted, the petitioner can not be considered as a surplus candidate.

4. We have also heard learned counsel for Respondent Nos.4 and 5.

5. The fact that the petitioner was appointed in the year 2005 is not disputed by Respondent Nos.4 and 5. The petitioner was terminated in the year 2007. The petitioner preferred appeal before the School Tribunal. The School Tribunal allowed the appeal filed by the petitioner holding that the appointment of the petitioner is legal and valid. The Education Officer was party to the said proceedings. The defence of the Education Officer was that the appointment of the petitioner is not as per roster and the same is against the backlog meant for reserved category candidate. The Education Officer in the said proceedings never took the plea that the post on which the petitioner was appointed was not admissible. The School Tribunal gave a finding that the appointment of the

petitioner is after following due procedure of law, adhering to the provisions of the M.E.P.S. Act. Point Nos.1 and 2 were framed as under :

"1. Whether the appellant proved that his appointment was done as per the M.E.P.S. Act and Rules.?"

2. Whether the appointment of the appellant made by the respondents was not following the rules of roster point.?"

6. After considering the case put forth by the respective parties, the Tribunal arrived at the conclusion that the appointment of the petitioner was in observance of the roster point, so also adhering to the provisions of the M.E.P.S. Act and Rules. Judicial finding has been given by the School Tribunal. Once the School Tribunal has held that the appointment of the petitioner is legal and valid and in consonance with the roster point, it would be too late in the day for the Education Officer to now contend that the appointment of the petitioner was improper and not as per the staffing pattern. The Education Officer was party to the proceedings before the School Tribunal. After considering the case put forth by the Education Officer, judicial finding has been arrived at by the School Tribunal. The same would be binding on the Education Officer.

7. It is stated that the said post now is not admissible in the Respondent No.5 School. To resolve the anomalous situation, we

pass the following order :

- a) The Respondent No.3 shall grant approval to the appointment of the petitioner and shall place the petitioner in the list of surplus candidates and shall pass orders of absorption of petitioner as per seniority. The petitioner shall be entitled for the salary from the date the petitioner is absorbed in service.
- b) The Writ Petition is accordingly disposed of. No costs.

(K . L . WADANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.20.10.2016.
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