

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

WRIT PETITION NO.5544 OF 2014

Prakash s/o Haribhau Jadhav
Age: 38 Yrs., occ. Service,
r/o Ujani, Tq. Ausa,
District Latur.

= **PETITIONER**

VERSUS

- 1) Bhartiya Rashtriya Sikshan
Sanstha, Lohara, Dist.
Osmanabad through its
Secretary.
- 2) The President,
Bhartiya Rashtriya Sikshan
Sanstha, Lohara, Dist.
Osmanabad.
- 3) The Principal,
Netaji Subhashchandra Bose
Junior college, Lohara,
District Osmanabad.
- 4) The Deputy Director of
Education, Latur Division,
Latur, Tq. And Dist.Latur.

= **RESPONDENTS**

Mr.VD Salunke, Advocate for Petitioner;
Mr.VR Dhorde, Adv. For Resp.Nos.1 to 3;
Mr.UH Bhogle, AGP for Respondent No.4.

CORAM : P.R.BORA, J.

DATE : 20th June, 2016.

ORAL JUDGMENT:

- 1) Heard. Rule. Rule made returnable
forthwith with consent of the learned Counsel

appearing for the respective parties.

2) Order dated 27th March, 2014 passed by the School Tribunal, Solapur (for short, the Tribunal) in Appeal No.34/2013, is questioned in the present petition by the appellant, who had filed the appeal before the School Tribunal. The petitioner had filed the aforesaid appeal, praying for setting aside the order of oral termination by the present respondents and consequently, for his reinstatement with continuity and back wages.

3) It was the contention of the present petitioner that he was duly appointed in the respondent school w.e.f. 4.7.2007 and further that his appointment was also duly approved by the Education Officer on the period of probation. It was alleged by the petitioner that though he was working with the respondent school till the year 2012, he was not paid his salaries from the year 2009 and from 2012 he was not allowed to

sign the Muster Roll and in 2013, he was prevented from attending the school by oral instructions. In the circumstances, the petitioner filed the aforesaid appeal before the School Tribunal.

4) Before the School Tribunal, it was the contention of the present respondents/management that the petitioner himself stopped from attending the school, which resulted in reducing the strength of the students of music subject and ultimately the post of Music Teacher was abolished. The respondent management has denied all the allegations raised by the petitioner in regard to his oral termination.

5) After having heard the learned Counsel appearing for the respective parties and on perusal of the impugned judgment, it is revealed that only on one ground that the appellant failed in producing on record the original appointment order, the Tribunal has dismissed the appeal. In

fact, there was no dispute in regard to the appointment of the appellant and the respondents themselves have admitted the said fact in their say filed before the School Tribunal. There was further no dispute that the approval was also accorded to the appointment of the appellant on the post of Music Teacher w.e.f. 4.7.2007 on probation. Further it was the case of the management itself that the appellant was appointed after following due process of law. The allegation of the appellant was that his services were terminated by oral orders. As against it, it was the contention of the respondent management that the appellant himself remained absent from duties and his unauthorized absence resulted in reducing the strength of the students opting for the subject of Music. It was further contention of the management that ultimately, the post of Music Teacher was abolished in the staffing pattern for want of students. Thus, the issues, which were required to be dealt with by the Tribunal were, - Whether the appellant proves

his allegation of oral termination and whether the management establishes its contention that the appellant voluntarily remained absent and consequently, the post of Music Teacher came to be abolished. The Tribunal has not addressed the aforesaid issues while deciding the appeal before it.

6) In the above circumstances, only option before me is to remit back the matter to the School Tribunal for its decision afresh by taking into account all the objections raised in the memo of appeal by the appellant and the defences raised by the respondent management in reply to the said objections. Hence, the following order,

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ORDER

i) The order dated 27th March, 2014 passed by the School Tribunal, Solapur in Appeal No.34/2013, is quashed and set aside;

ii) The matter is remitted back to the School Tribunal, Solapur for deciding the aforesaid appeal afresh, taking into account the observations made, as aforesaid, in the present judgment, by providing due opportunities to the parties to the appeal, as expeditiously as possible and preferably within a period of six months from today.

iii) The writ petition stands disposed of in the aforesaid terms. Pending Civil Application, if any, stands disposed of.

Sd/-

(P.R.BORA,J.)

bdv/