

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

**CIVIL APPLICATION NO.7536 OF 2014
IN
WRIT PETITION NO.2417 OF 2009**

**Prashant Eknath Aarekar 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.R.N.Dhorde, Senior advocate i/by Mr.V.R.Dhorde, advocate for the applicant.
Ms.S.S.Raut, A.G.P. for the State.
Mr.V.D.Hon, Senior advocate for Respondent Nos.3 and 4.

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.
Date : 15.10.2016.**

PER COURT :

1. Heard.
2. The present application is filed for withdrawal of the amount deposited by the Respondent institution.
3. According to Mr.Dhorde, learned Senior advocate, pursuant to the order of the School Tribunal, directing reinstatement, the applicant is in employment of the Respondent institution. The applicant is attending the School and has also signed Muster.

However, the salary is not being paid to the applicant. According to the learned Senior advocate, the applicant had withdrawn the amount of Rs.5,00,000/- (Rupees five lacs) pursuant to the orders passed by this Court. The learned Senior advocate states that even the Respondents have undertaken to deposit the salary regularly.

4. Mr.Hon, learned Senior advocate for the Respondents states that the applicant is not attending the School, has not engaged any period. The salary bills of the present applicant were also submitted to the Education Officer. The Education Officer did not sanction the said salary bills as there was no grant-in-aid post vacant. According to the learned Senior advocate, without discharging his duties, the applicant is not entitled for any salary. One post is now vacant in which the applicant can be accommodated, if he is ready to work. The salary bills also would be sent.

5. The School Tribunal has already passed an order directing reinstatement of the applicant. The said order is assailed by the Respondent-institution by filing a Writ Petition. The Court has refused interim relief, thereby the order of the School Tribunal is still in force and the applicant would be deemed to be in employment.

6. The question of availability of the post would not be germane at this stage, the same would be required to be considered

while considering the petition on merits. As far as the attendance of the applicant in the School is concerned, there are rival contentions of the respective parties. By legal fiction the applicant is deemed to be in service pursuant to the orders of the School Tribunal and the same being in force.

7. There is no impediment for the applicant also to attend the School, so also for the institution in allowing the applicant to attend the School and to discharge his functions as there is no prohibitory order in that regard.

8. The Education Officer shall visit the Respondent No.4 School and also consider the record with regard to the attendance of the applicant.

9. As by legal fiction, the present applicant is in employment. The parties are bound by the order in force. The applicant is entitled to discharge his duties as may be allotted to the applicant commensurate to his post.

10. The applicant is already allowed to withdraw Rs.5,00,000/- (Rupees five lacs) vide order dated 22.8.2014 and 30.1.2015.

11. At present, we allow the applicant to withdraw Rs.2,00,000/- (Rupees two lacs) on furnishing an undertaking to this Court that in case the applicant is directed to deposit the said amount, the applicant to deposit the same within one month.

12. Mr.Hon, learned Senior advocate submits that the

Respondent institution is ready to issue an order of appointment to the present applicant on non grant-in-aid post. The copy of the said appointment order is placed on record. Mr.Dhorde, learned Senior advocate for the applicant submits that the applicant is in continuous employment with the Respondent institution, as such no question of issuing fresh appointment order to the applicant.

13. The Civil Application is disposed of.

(K . L . WADANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.15.10.2016.
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