

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

WRIT PETITION NO. 7365 OF 2015

Gorakshnath Ganpat Dherange, ... **Petitioner**
Age 38 years, Occu: Service
R/o Behind New English School,
At Post Shirasgaon,
Tq. Shrirampur
Dist. Ahmednagar

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai
2. The Director of Education,
Maharashtra State, Pune
3. The Deputy Director of
Education, Pune Division,
Pune
4. The Education Officer
(Primary),
Zilla Parishad, Ahmednagar.
5. Shankarrao Gaikwad Gramin
Education Society, Sirasgaon,
Tq. Shrirampur, Dist.
Ahmednagar, Through its
President, Shankarrao Baburao
Gaikwad, Age 57 years, Occu:
Agri, R/o Ward No.6,
shrirampur, Tq. Shrirampur
District Ahmednagar
6. Sau. Subhadrabai Baburai ... **Respondents**
Gaikwad Primary School,
Shrirampur, Tq. Shrirampur,
dist. Ahmednagar,
Through its Headmistress

Advocate for Petitioner : Mr. R. N. Dhorde, Senior
Advocate i/by Mr. Dhorde Vikram R.
Advocate for Respondents 1 to 3: Mrs. M. A. Deshpande
Advocate for Respondent No.4 : Mr. S. T. Shelke
Advocate for Respondents 5 & 6: Mr. Santosh S. Jadhavar

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 29th September, 2016

ORDER:

1. Mr. Dhorde, the learned Senior Advocate for the petitioner states that at the time of filing of the present writ petition, respondent Nos. 5 and 6 Management was not allowing the petitioner to join the duties though this Court had dismissed the writ petition filed by the Management. The learned counsel submits that even the salary of the petitioner is not paid. The petitioner was terminated w. e. f. 01.10.2010 vide order dated 01.01.2011. The petitioner had filed an appeal (Appeal No.2/2011) before the School Tribunal which eventually came to be allowed on 01.04.2014. Writ petition filed by the Management came to be dismissed on 30.01.2015, thereby confirmed the judgment of the appellate tribunal in the appeal. The Appellate Tribunal had directed Respondents to reinstate the petitioner with full back wages. The petitioner is entitled for the same. Though approval

is granted to the petitioner by the Education Officer, the salary has not been paid. The learned Senior Advocate submits that the during the pendency of the petition, the respondent Institution has allowed the petitioner to join duties on 14.10.2015 and since the date of joining, the petitioner is receiving regular salary.

2. Mr. Shelke, the learned counsel for Respondent No.4 Education Officer, submits that because of the illegal action of respondent Nos. 5 and 6, the petitioner was terminated. The said action has been set aside by the School Tribunal. For the illegal action on the part of respondent Nos. 5 and 6, it is the respondent Nos. 5 and 6 who are bound to pay salary during the said period. According to the learned counsel, the petitioner was not in employment during the interregnum. As such, respondent No.4 would not be liable to pay salary. Even respondent Nos.5 and 6 did not allow the petitioner to join duties after the appeal filed by the petitioner was allowed and the writ petition filed by the management was dismissed by this Court. The learned counsel submits that the action of respondent Nos.5 and 6 is highhanded for which they alone are responsible.

3. Mr. Jadhavar, the learned counsel for respondent Nos. 5 and 6 submits that there was a valid dispute between the parties. Twice the appeal was dismissed by the school tribunal and when the matter was remitted back for the third time, the appeal thereafter came to be allowed. Respondent Nos. 5 and 6 filed writ petition before this Court which eventually came to be dismissed on 30th January, 2015. Respondent Nos. 5 and 6 were also contemplating to approach the Supreme Court by filing Special Leave Petition. However, the said action was aborted. According to the learned counsel, the petitioner did not join the duties. It is not the case that the Management did not allow the petitioner to join but the petitioner did not want to do the work and only to have the benefit of salary and as such, the petitioner did not join the duties.

4. We have considered the submissions.

5. The petitioner is working as Assistant Teacher with respondent No.6. The petitioner was terminated in the sense that resignation was taken from him. The case of respondent Nos. 5 and 6 was that the petitioner had resigned on his own volition. Whereas the case of the petitioner was that the petitioner had never resigned

from the services and a signed letter of the petitioner is misused. The dispute went before the School Tribunal. After two rounds, the School Tribunal decided that the petitioner had never resigned on his own volition at any point of time and directed the respondents to reinstate the petitioner along with full back wages. The said order came to be passed on 01.04.2014. Respondent Nos. 5 and 6 assailed the said order by filing writ petition (No.7266/2014) before this Court which eventually came to be dismissed on 30th January, 2015.

6. It appears that there was a triable dispute between the parties i.e. the petitioner and respondent Nos. 5 and 6, which eventually was decided in favour of the petitioner.

7. We had asked the learned counsel for respondent Nos. 4 to 6 that during the interregnum, i.e. from the date, the petitioner was terminated from service, till he was reinstated and allowed to join duties, whether any other person was appointed in place of the petitioner and salary being paid to the said person. It is reported that every year one person was appointed in place of the petitioner on year to year basis. This

Court had, in the writ petition, directed the respondents authorities i.e. the Education Officer, not to grant approval to the said appointments, because of which respondent No.4 had not granted approval to the appointment of the said persons on temporary basis. It is also stated that salary of the persons appointed temporarily in place of the petitioner is borne by respondent Nos. 5 and 6 and not by respondent No.4.

8. It would be seen that even respondent No.4 was the party in appeal before the School Tribunal. The appeal is allowed in toto.

9. As the dispute was pending before the Competent Court up to 30th January, 2015 and the Education Officer was not burdened with the payment of salary of any persons appointed in place of the petitioner and that the Management was required to bear the salary of the persons appointed during the interregnum, naturally the salary of the petitioner i.e. the back wages will have to be paid by respondent no.4 as the petitioner was on a sanctioned grant-in-aid post. However, it appears from the record that inspite of the order passed by this Court dismissing the writ petition on 30.01.2015 respondent Nos. 5 and 6 did not allow the petitioner

to join. The same is clear from the letter issued by the Education Officer dated 6th May, 2015, wherein, reference is also given to the earlier letters and the reply given by respondent Nos. 5 and 6 that they are intending to approach the Apex Court. Naturally, it is the Management who did not allow the petitioner to join the duties. As such from 1st February, 2015 to the date of joining i.e. up to 13th October, 2015, it is respondent Nos. 5 and 6 who will be liable to pay salary to the petitioner. Respondent Nos. 5 and 6 shall pay salary for the said period to the petitioner. In the result, we pass following order:

O R D E R

- (1) Respondent Nos. 5 and 6 shall submit the salary bills of the petitioner from 01.10.2010 to 30.01.2015 to respondent No.4. Respondent no.4 shall process the said salary bills and make payment of the salary to the petitioner in accordance with law and as would be admissible.
- (2) The salary bills as directed above shall be forwarded by respondent Nos. 5 and 6 to the respondent no.4 within four weeks from today. Upon receipt of the said salary bills, respondent no.4

shall process the same and take appropriate steps and if there is no impediment, shall pay it within a period of three months thereafter.

(3) Respondent Nos. 5 and 6 shall pay the salary to the petitioner for a period from 1st February, 2015 to 13th October, 2015 expeditiously, preferably within a period of three months.

(4) Writ petition is accordingly allowed in above terms. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC