

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

WRIT PETITION NO. 10001 OF 2015

Smt.Hemlata Tanaji Thingale,
Age : 35 years, Occ : Nil,
R/o Basrawal, Taluka Sakri,
District Dhule.

...PETITIONER

-VERSUS-

- 1 The President,
Mr.Anil Mahadu Chaudhari,
Age : 50 years, Occ : Social and
Cultural Association,
Kusumbe, Taluka and District Dhule.
- 2 The Chairman,
Mr.Anil Mahadu Chaudhari,
School Committee Madhayamik
Vidyalaya, Basrawal, Tq.Sakri,
District Dhule.
- 3 Head Master,
Vinayak Jaising Vasave
Madhyamik Vidyalaya, Basrawal,
Tq.Sakri, Dist.Dhule.
- 4 The Education Officer (Secondary),
Zilha Parishad, Dhule,
Dist.Dhule.

...RESPONDENTS

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Advocate for Petitioner : Shri Brahme Shailesh P.

AGP for Respondent 4 : Shri D.V.Tele.

Advocate for Respondents 1 to 3 : Shri Sachin S. Deshmukh.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th January, 2016

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner is challenging the order dated 02.07.2015 delivered by the School Tribunal in Appeal No.18/2013 by which an application (Exhibit 40) filed by the Petitioner for seeking production of documents, has been rejected.

3 The Petitioner has challenged the order of termination dated 28.03.2013 vide Appeal No.18/2013. Respondent Nos.1 to 3 in the appeal is said to be the Management. Respondent No.4 is said to be the Education Officer. The application for seeking production of documents dated 20.03.2014 runs into four pages. Insofar as the Management is concerned, the Petitioner has set out 09 documents in the application.

4 Shri Brahme, learned Advocate for the Petitioner, clarifies that the Management by its Say to the said application has shown its willingness to produce the documents at Sr.Nos.7 and 9.

5 Shri Brahme further submits that insofar as the documents in the custody of the Education Officer are concerned, same are set out in the said application. The grievance is that the application has been rejected on the ground that the interim relief application of the Petitioner was decided on it's merits and the Petitioner has not explained in the application as to why does she desire the production of the said documents. She has not made an attempt to collect those documents from the Respondents by taking recourse to the Right to Information Act, 2005.

6 Shri Brahme submits that the School Tribunal has apparently lost sight of Order 11 Rule 12 and/or Rule 14 of the Code of Civil Procedure. In the pending proceedings, a litigant can issue a notice for production of documents from other side. The School Tribunal should not have relegated the Petitioner to the Right to Information Act, 2005 and should not have rejected the application on the ground that the recourse to RTI has not been taken.

7 He refers to the documents sought from the Management as set out in the application and submits that when the Petitioner was granted her first approval as a part-time teacher by the Education Officer on 29.01.2005 and the approval as a full-time teacher by order dated

16.08.2010, it is unexpected on the part of the Management to contend that no proposal was sent to the Education Officer. He submits that reference numbers of the proposals have been set out in both the said orders and as such, the reply of the Management is a mere pretence.

8 He then draws my attention to the order of termination dated 28.03.2013 wherein, the Management has attempted to take a stand that the documents are fictitious. He, therefore, submits that having worked for 11 years, having discharged duties, having earned salary from the same Management and that too on the basis of the approval orders, it would be too much for the Management to contend that the documents are fictitious. Shri Brahme, therefore, submits that the School Tribunal has taken a casual view of the matter and has rejected the application unmindful of the pending proceedings.

9 Shri Deshmukh, learned Advocate for the Respondents/ Management, has strenuously supported the impugned order. His submission is that the Management is unaware as to how the Petitioner can canvass service of 11 years, when no proposal was submitted to the Education Department. The proposals referred to in the application for production of documents, are not traceable in the custody of the Management. A detailed Written Statement has been filed supporting the

order of termination.

10 He further submits that the burden lays on the Petitioner to convince the School Tribunal that the documents are germane to the cause of action. If the said burden is not discharged, the application had to be rejected and the School Tribunal has rightly done so. Unless the impugned order appears to be perverse or erroneous, this Court would not be in a position to interfere with the impugned order.

11 He relies on the affidavit in reply filed through the Headmaster and canvasses that the Petitioner has been unable to discharge her burden and hence, onus would not shift to the Management. He, therefore, prays for the dismissal of the petition with costs.

12 The learned AGP appearing on behalf of the Education Department submits that a detailed Say has been placed on record in Appeal No.18/2013. He contends that the first time approval as a part-time teacher and the approval as a full-time teacher has been granted by the Education Officer only after receiving the proposals from the Management. The Petitioner is duly qualified to work as an Assistant Teacher. She belongs to a reserved category and has, therefore, rightly been appointed. She has been working from 2002 onwards till her

termination. Even as a full time teacher, since she has completed two years on probation and she has attained the deemed status of permanent employee under Section 5(2) of the MEPS Act, 1977.

13 I have considered the submissions of the learned Advocates as have been recorded herein above.

14 Prima facie, it appears that the Management is taking a stand after about 11 years that the documents in relation to the services of the Petitioner appear to be fictitious. This Court had an occasion to deal with similar set of facts in **Writ Petition No.485/2015** (*Balasaheb Ramchandra Burke vs. The President, Bahujan Samaj Prabodhan Shikshan Sanstha and others*) and other connected petitions decided on 29.07.2015 wherein, the Management, after allowing the teachers to work for 12 to 18 years, had taken a stand that none of these teachers were appointed by following the due procedure, their documents are fictitious, they could not be continued in employment and hence, they were terminated. This Court had interfered with the said act of the Management and granted reinstatement to all the teachers.

15 In the peculiar facts of this case, the stand taken by the statutory authority would gain significance. The Education Officer has

filed it's Say contending that the approvals were granted on the basis of the proposals forwarded by the Management. It would be far from the truth to accept the contentions of the Management that the record with relation to the services of the Petitioner is fictitious. The School Tribunal should have kept in mind that the Petitioner was left with no option, but to make an application for direction to produce the documents. Rather than taking a pedantic view in the matter, the School Tribunal should have endeavoured to ensure that the truth surfaces and the main issue is adjudicated upon properly. The production of documents prayed for would have assisted the School Tribunal in locating the truth and adjudication of the proceedings would have then ensured that justice is dispensed to the litigating sides.

16 Considering the above, I am unable to agree with the conclusions of the School Tribunal. Same are not aimed at meeting the ends of justice. The impugned order is, therefore, perverse and erroneous.

17 In the light of the above, this Writ Petition is allowed. The impugned order dated 02.07.2015 is quashed and set aside. Application Exhibit-40 stands allowed. The Management and the Education Officer are directed to produce the documents set out in the said application, which are germane to the cause of action and which would indicate the date of

appointment, the proposals for approval and the conclusions drawn by the Education Officer while granting approvals. These documents would assist the School Tribunal in deciding the appeal.

18 Needless to state, these documents shall be produced by the concerned parties within a period of SIX WEEKS from today before the School Tribunal, failing which the School Tribunal would be at liberty to draw an adverse inference as per the provisions of the Indian Evidence Act.

19 Rule is made absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)