

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5451 OF 2015

Sameer Dilip Shiralkar ... Petitioner

V/s.

State of Maharashtra & ors. ... Respondents

Mr. Manoj Harit i/b. Manoj Harit & co. for the petitioner.
Mr. Vikas Mali, AGP for the State.

**CORAM : NARESH H. PATIL AND
A.A. SAYED, JJ.**

8th January, 2016.

P.C.

The petitioner was appointed as Shikshan Sevak by respondent. It is submitted that he worked for two years and one month. On communication dated 31st October, 2011 his services came to be terminated. The petitioner preferred the present writ petition on 13th April, 2015 against the order of termination.

2. Learned Counsel appearing for the petitioner while explaining delay in approaching this Court submitted that during the period after termination before filing of the petition as and when the work was available, the petitioner was employed by the management. Therefore,

the petitioner did not chose to approach this Court. Learned Counsel submits that there are now three vacancies of Assistant Teachers. The petitioner could be considered by the management in the post of Assistant Teacher. Learned Counsel has placed reliance on the order dated 24th April, 2015 passed by the Division Bench of this Court (Coram: Anoop V. Mohta and K.R. Shriram, JJ) in group of petitions in Writ Petition No. 9477 of 2013 alongwith connected matters.

3. The Counsel appearing for respondent submits that petitioner has alternate efficacious remedy in view of judgment in the case of ***Principal, Our Lady of Salvation High School v/s. Rashmi Upadhyay & others {2009 (3) Bom. C.R. 401}***. Learned Counsel submits that delay is inordinate and cannot be condoned. Learned Counsel further submitted that Education Officer declared the petitioner surplus and there was no option with the management but to terminate the services of the petitioner.

4. We have perused the record placed before us and the judgment cited supra. The view adopted by the Division Bench in batch of petitions in 9477/13 cannot be made applicable to the present case on facts. The Division Bench of this Court in the case of ***Principal, Our Lady of Salvation High School (cited supra)*** held that Shikshak Sevak do have right to approach the School Tribunal if they are aggrieved by the order of termination. In the facts, we find that the petitioner has approached this Court at a belated stage. The explanation tendered is not convincing. It is noticeable that the Education Department has declared the petitioner as surplus and based on the same the management had no other option

but to terminate the services of the petitioner.

5. In case the petitioner is desirous of applying against the post of Assistant Teacher which according to the petitioner is available with the management, the petitioner is free to do so as and when management advertises the said post. In case such an advertisement is issued and petitioner applies for the same, the management may look into application of the petitioner on its own merits alongwith the other applicants.

6. Petition is dismissed.

(A.A. SAYED, J.)

L.S. Panjwani, P.S.

(NARESH H. PATIL, J.)