

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 748 OF 2016

Sadique Ainul Haq Khan

..... Petitioner

VERSUS

The State of Maharashtra & Ors.

..... Respondents

Mr.A.A.Maniyar for the Petitioner.

Mr.J.Saluja, A.G.P. for the Respondent nos. 1, 2 and 3.

CORAM : R.D. DHANUKA, J.

DATED : 12th APRIL, 2016

P.C.

By this writ petition filed under Article 226 of the Constitution of India, the petitioner has impugned an order dated 22nd January, 2016 passed by the Education Inspector granting approval to the appointment of the petitioner to the post of Head Master only from the date of the order passed by the school tribunal and refusing to grant approval to the continuity of service as agreed between the petitioner and the management in the consent terms filed between them before the school tribunal.

2. Learned counsel for the petitioner invited my attention to the prayers in the appeal filed by the petitioner before the school tribunal and also the consent order passed based on the consent terms arrived at between the petitioner and the management. By the said consent terms, the petitioner and the management had agreed that the appeal filed by the petitioner be allowed in terms of prayer clause (a). Admittedly the Education Officer though was a party to the appeal, was not a party to the said consent terms.

3. The management thereafter passed a resolution to the effect that the Government may approve the appointment of the petitioner for the post of Head Master from 3rd December, 2015 or as per the rules applicable for approval of the Education Inspector.

4. A perusal of the record indicates that the Education Inspector considered the said resolution passed by the management and has accordingly granted approval to the appointment of the petitioner from the date of the order of the school tribunal accepting the consent terms and refused to accord approval to the petitioner with grant continuity of service.

5. Learned counsel for the petitioner submits that though the Education Inspector was a party to the appeal filed by the petitioner, the Education Inspector did not appear and thus the order passed by the school tribunal in the consent terms filed by the petitioner and the management would be equally binding on the Education Inspector. He submits that the petitioner at this stage does not seek any payment based on the continuity of service but only seeks that the approval be granted with continuity of service.

6. Mr.Saluja, learned A.G.P. submits that admittedly the Education Inspector was not a party to the consent terms and thus the said consent terms are not binding upon the Education Inspector. He submits that in any event the management themselves had passed a resolution that an approval to the appointment of the petitioner to the post of Head Master to be granted from the date of school tribunal passing an order on the consent terms. He submits that the Education Inspector thus was right in granting approval from the date of the school tribunal passing an order based on consent terms and rightly did not consider the

continuity of service though the same must have been agreed between the petitioner and the management. He submits that if the continuity of service is granted, there will be additional financial burden on the Education Department and since the Education Department being not a party to the consent terms, no additional liabilities can be imposed upon the Education Department.

7. In my view the learned A.G.P. is right in his submission that the Education Inspector being not a party to the consent terms, no order could be obtained by the petitioner and the management behind the back of the Education Inspector and thus the said consent terms are not binding on the Education Department. In my view the learned A.G.P. is also right in his contention that if the petitioner is granted continuity of service, the same will have bearing on the additional financial burden on the Education Department and thus the consent terms cannot be held binding upon the Education Department.

8. A perusal of the record indicates that the Education Inspector was not a party to the consent terms and thus the said consent terms are not binding on the Education Inspector. The Education Inspector has passed an order of approval based on the resolution passed by the management. In my view there is thus no infirmity in the order passed by the Education Inspector. The petition is devoid of merits and is accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]