

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3277/2015

(BHOLANATH SUSHIL SARKAR **VERSUS** INGALE SHIKSHAN PRASARAK MANDAL, CHANDRAPUR & ORS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.N. Shende, counsel for the petitioner.
Shri N.D. Khamborkar, counsel for the R-1.
Respondent No.2 is Deleted.
Shri N.R. Rode, A.G.P. for the R-3.

CORAM : SMT.VASANTI A. NAIK, J.

DATE : APRIL 2, 2016.

By this writ petition, the petitioner challenges the judgment of the Presiding Officer, School Tribunal, Chandrapur, dated 19.12.2014 allowing the appeal filed by the petitioner under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

The petitioner claims to have been appointed as Assistant Teacher from time to time, from 1996 to 1999 temporarily. According to the petitioner, he was appointed in pursuance of an advertisement issued by the respondent no.1-Society on 26.06.1999. The petitioner claims to belong to 'Namo Shudra' which, according to the petitioner, falls in Scheduled Castes, though the post was reserved for the Scheduled Tribes. It is the case of the petitioner that the petitioner was a deemed confirmed teacher after his appointment on 26.06.1999 on probation and the respondent no.1-Society was not justified in terminating his services. Since the petitioner was not permitted to sign the muster roll during the academic session 2008-09, the petitioner filed the appeal under Section 9 of the Act before the School Tribunal.

The respondent no.1-Society filed the reply. It was stated in the reply that the petitioner was not appointed as per the selection procedure that was required to be followed. It was pleaded that the post on which the petitioner was appointed was reserved for the Scheduled Tribes and that he was appointed in place of Shri Naukarkar, who in turn was appointed on a post, on which Ku.Chiwande was working with the respondent no.1-Society. It was pleaded that after Ku.Chiwande was terminated, she challenged her termination before the School Tribunal and the School Tribunal allowed the appeal of Ku.Chiwande. It was stated that since the stay was refused in the writ petition filed by the respondent no.1-Society against the judgment of the School Tribunal in the case of Ku.Chiwande, the respondent no.1-Society was required to reinstate Ku.Chiwande in service in the academic session 2008-09 and, hence, the services of the petitioner were terminated. On an appreciation of the material on record, the School Tribunal dismissed the appeal of the petitioner. The petitioner has challenged the said judgment in the instant petition.

On hearing the learned counsel for the parties and on a perusal of the impugned judgment, it appears that there is no scope for interference with the judgment of the School Tribunal, in exercise of the writ jurisdiction. Though the petitioner claims to have been appointed in the clear vacancy, the Tribunal held on an appreciation of the entire material on record that the petitioner was appointed in the vacancy caused by the termination of Ku.Chiwande who had challenged her termination before the School Tribunal. The School Tribunal had allowed the appeal of Ku.Chiwande and after the stay was refused in the writ petition filed by the respondent no.1-Society against the judgment of the School Tribunal in the case of Ku.Chiwande, the respondent no.1-Society reinstated

Ku.Chiwande in service during the academic session 2008-09. The Tribunal found on the basis of the material on record, specially the judgment and order in the case of Ku.Chiwande and the undertaking given by the petitioner to the respondent no.1-Society, that the appointment of the petitioner was in place of Ku.Chiwande and since Ku.Chiwande was required to be reinstated, the services of the petitioner were rightly terminated. The Tribunal further found that though the petitioner had mentioned that he belongs to the Scheduled Castes and his caste is 'Namo Shudra', the said caste was not included in the list of Scheduled Castes in the State of Maharashtra. The Tribunal found that since the vacancy on which the petitioner was appointed, was caused due to the termination of Ku.Chiwande and since the appeal filed by Ku.Chiwande was allowed and she was directed to be reinstated, the services of the petitioner were rightly terminated. The Tribunal also considered the undertaking submitted by the petitioner to the respondent no.1-Society at the time of his appointment. There is no reason to interfere with the impugned order in exercise of the writ jurisdiction.

In the result, the writ petition fails and is dismissed with no order as to costs.

JUDGE

APTE