

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3109 OF 2016

[Nikhat Parveen Mohd. Khan .vs. The State of Maharashtra and others]

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

Court's or Judge's orders

Shri R.N. Ghuge, counsel for the petitioner,
Ms. R.V. Kaliya, AGP for respondent nos.1 and 2.

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CORAM : SMT. VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATED : JUNE 27, 2016.

By this writ petition, the petitioner seeks a direction to the respondents to forthwith regularize the services of the petitioner on the available vacancy on regular and permanent basis in the interest of justice.

According to the petitioner, though the petitioner is holding the requisite qualification and was eligible for appointment on the post of Assistant Teacher in a clear vacancy, the respondent - Zilla Parishad has appointed the petitioner on clock hour basis on honorarium. It is stated that the petitioner is working since October 2010 and hence it would be necessary to direct the respondents to regularize the services of the petitioner.

In the circumstances of the case, the relief sought by the petitioner cannot be granted. The petitioner is not appointed by following the regular process of selection that is required to be followed by the Zilla Parishad while appointing Assistant Teachers. The petitioner is appointed only on clock hour basis and honorarium is paid by considering the hours of teaching. The petitioner is paid the honorarium at the rate of Rs.72/- per clock hour. The appointment is only for a period of 29 days and the services of the petitioner are continued from time to time.

Merely because there are vacancies on the post of Assistant Teachers in the Zilla Parishad, the petitioner cannot seek the regularization of his services. The Zilla Parishad would be required to follow the due and regular procedure for appointments. The petitioner can compete with others if such process is undertaken. It would be necessary to refer to the judgments reported in 2007 (6) Mh.L.J. 667 [Priyadarshini Education Trust and others .vs. Ratis (Rafia) Bano d/o Abdul Rasheed and others], 2011 AIR SCW 1332 [State of Orissa and another .vs. Mamata Mohanty] and 2014 (2) Scale 262 [Renu and others .vs. District and Sessions Judge, Tis Hazari and another] in this regard. Even as per the judgment of the Hon'ble Supreme Court, reported in (2014) 7 SCC 223 [State of Jharkhand .vs. Kamal Prasad and others], regularization could be granted only if the service is continuous, for more than ten years. In the circumstances of the case, the relief sought by the petitioner cannot be granted.

For the reasons aforesaid, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE