

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

WRIT PETITION NO. 5826/2015

(VAISHALI LAXMANRAO SALVE **VERSUS** DEPUTY DIRECTOR OF EDUCATION, NAGPUR & OTHERS)

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

Court's or Judge's orders

Shri P.V. Vaidya, counsel for the petitioner.
Shri P.S. Tembhare, A.G.P. for the R-1 to 3.

CORAM : SMT. VASANTI A NAIK AND
KUM. INDIRA JAIN, JJ.

DATE : AUGUST 16, 2016.

By this writ petition, the petitioner seeks a direction against the respondents to pay the arrears of salary and the regular salary to the petitioner.

The respondent no.4-Sanstha runs a school in which the petitioner was appointed as a Shikshan Sevak, on 30.03.2011. Before appointing the petitioner on the post of Shikshan Sevak, the respondent no.4 had duly sought the permission of the Education Officer (Secondary), Zilla Parishad, Wardha, and the same was granted. In pursuance of the permission, the respondent no.4 issued the advertisement and after following the due process of selection, the petitioner was appointed on the post of Shikshan Sevak. The petitioner completed her services as a Shikshan Sevak and was appointed as a regular Assistant Teacher with effect from 01.04.2014. The management sent the proposal of the petitioner for grant of approval on the post of Assistant Teacher to the Education Officer (Secondary). The Education Officer granted approval to the appointment of the petitioner by the order dated 06.02.2015. By the said order of approval, the petitioner's services were approved with effect from 01.04.2014. Despite the grant of approval, as the salary is not paid to the petitioner,

the petitioner has filed the instant petition seeking a direction to the respondents to pay the salary of the petitioner with effect from 01.04.2014.

Shri Vaidya, the learned counsel for the petitioner, submitted that the respondent-Authorities may be directed to release the arrears of salary in favour of the petitioner. It is stated that the approval to the petitioner's appointment, as granted by the order dated 06.02.2015 still subsists and in view of the subsistence of the order of the approval, it would be the duty of the respondent-Authorities to release the salary of the petitioner. It is submitted that the appointment of the petitioner was made after following the due procedure prescribed by law and the Education Officer (Secondary) had also approved the appointment of the petitioner with effect from 01.04.2014.

Shri Tembhare, the learned Assistant Government Pleader appearing on behalf of the respondent nos.1 to 3, has denied the claim made by the petitioner. It is submitted that in the year 2011, there was no vacancy in the post of Assistant Teacher and by supplying some incorrect information, the management had secured the permission to appoint a Shikshan Sevak. It is stated that the permission granted to the respondent no.4-Sanstha to appoint a Shikshan Sevak in the year 2011 is based on wrongful information supplied by the respondent no.4-Sanstha and, hence, the petitioner cannot claim the salary from the education authorities. It is, however, fairly stated that till date, the approval to the appointment of the petitioner is not cancelled and no steps are taken by the respondent-Authorities for cancellation of the approval of the petitioner. It is stated that the said steps were not taken in view of the pendency of the writ petition.

On hearing the learned counsel for the parties, we find that it would be necessary to direct the respondent-

Authorities to release the arrears of salary to the petitioner, with effect from 01.04.2014. Even if, we assume that the management has supplied some wrongful information to the education authorities while seeking permission, till date, the approval to the appointment of the petitioner is not cancelled. Even assuming that the management is at fault, the petitioner cannot be penalized when the approval to the appointment of the petitioner still subsists. The respondent-Authorities ought to have taken appropriate action for cancellation of the approval that was granted on 06.02.2015, if they were of the view that the approval was wrongfully secured. Though the writ petition is filed on 31.08.2015, we find that no action was taken by the respondent-Authorities for cancellation of the approval till that date. The respondents could have even informed this Court about the wrongful information supplied by the management after a notice was served on the respondents in October-2015 and could have sought permission from this Court to take appropriate action against the petitioner for cancellation of the approval. However, this was not done. We do not find any merit in the submission made on behalf of the respondent that no action for cancellation of approval was initiated due to the pendency of the writ petition. The cancellation of approval is another matter and the cause of action for cancellation of approval and the cause of action for filing the writ petition is different. In any case, since we are of the view that the petitioner cannot be deprived of the salary after the approval is granted to her appointment, a direction to the respondent-Authorities to release the arrears of salary payable to the petitioner, would be necessary. Such a direction would be necessary as it is not the case of the respondent that the respondent no.4 had appointed two Shikshan Sevaks on one post and salary was paid to one of the Shikshan Sevaks. If at all,

proper information was not supplied by the respondent no.4 to the Education Officer (Secondary) while seeking permission to fill up the post of Shikshan Sevak, the respondent-Authorities are free to take appropriate action against the management as well as the petitioner for cancellation of the approval to the appointment of the petitioner, in accordance with law.

Hence, for the reasons aforesaid, the writ petition is allowed. The respondent nos.1 to 3 are directed to release the arrears of salary to the petitioner with effect from 01.04.2014 till the month of July-2016 within one month. The respondent no.4 is directed to submit the salary bills of the petitioner, if they are not yet submitted, to the Education Officer (Secondary) within one week from the date of receipt of this order. The respondent nos.1 to 3 should continue to pay the salary to the petitioner till the services of the petitioner remain approved.

Order accordingly. No costs.

JUDGE

JUDGE

CERTIFICATE

I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.

Uploaded by: Rohit D. Apte.

Uploaded on : 19.08.2016.