

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

WRIT PETITION NO. 6152/2015

(DEVIDAS KESHAV GABHANE **VERSUS** PRADNYA PRAGATI SEVA MANDAL, NERI & OTHERS)

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

Court's or Judge's orders

Shri I.G. Meshram, counsel for the petitioner.
 Shri S.M. Ukey, Additional G.P. for the R-3 & 4.

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

DATE : AUGUST 25, 2016.

By this writ petition, the petitioner seeks a direction against the respondent nos.1 to 3 to appoint the petitioner on his original post as a Shikshan Sevak in the respondent no.2-Ashram School run by the respondent no.1-Society.

The respondent no.2-Ashram School, that was run by the respondent no.1-Society, was de-recognized on 29.11.2012. It is the case of the petitioner that before the de-recognition of the respondent no.2-Ashram School by the State Government, the petitioner was appointed as a Shikshan Sevak in the said school. It is stated that the petitioner is the only teacher that was duly appointed and duly qualified to hold the post of Shikshan Sevak. According to the petitioner, though the petitioner was appointed by following the due procedure of selection, the respondent no.1-Management, for the reasons best known to the management, did not pay the salary to the petitioner. It is stated that the order of cancellation of the recognition of the respondent no.2-Ashram School was set aside by the Government and the recognition of the school was restored. It is stated that after the recognition of the school was restored, some of the teachers that were working in the school were reinstated by the management but, the

management did not reinstate the petitioner. In this background, the petitioner has approached this Court for a direction against the respondent nos.1 to 3 to permit the petitioner to join his duties in the respondent no.2-Ashram School and a direction against the management to pay the salary.

Shri Ukey, the learned Additional Government Pleader appearing on behalf of the respondent nos.3 and 4, states by referring to the affidavit-in-reply filed on behalf of the respondent no.3, that the services of the petitioner were never approved by the respondent no.4. It is stated that the proposal for grant of approval to the appointment of the petitioner was sent back by the respondent no.4 to the management as there was no vacancy in the post of Shikshan Sevak when the petitioner was appointed. It is stated that there were only six posts of Shikshan Sevaks and the petitioner was the seventh one, to be appointed. It is stated that till date, the services of the petitioner are not approved by the respondent no.4. It is stated that a direction could be issued against the authorities to absorb an employee in a school that regains its recognition only if he/she is an approved employee. It is stated that since approval was never granted to the services of the petitioner, the writ petition is liable to be dismissed.

On hearing the learned counsel for the parties, it appears that the relief sought by the petitioner cannot be granted. Several disputed questions of facts arise for determination in this case. Though the petitioner may have been appointed after following the due process of selection, it is a fact that the respondent no.4 had never granted approval to the appointment of the petitioner. The petitioner claims to have been appointed in the year 2006 and that means that no

approval was granted to the appointment of the petitioner for ten long years. When the recognition of the school was cancelled in the year 2012, the petitioner was not an 'approved' employee. If that be so, a direction cannot be issued against the respondent no.4 to reinstate or absorb the petitioner in the school, that has regained its recognition. Even if the petitioner is duly qualified to hold the post, a direction cannot be issued against the respondents to re-employ the petitioner, specially when the approval to his appointment was not granted and only approved teachers could be absorbed/reinstated in an aided Ashram School that regains its recognition. Merely because the petitioner claims to have worked for a number of years with the respondent nos.1 and 2, the petitioner would not be entitled to the relief claimed, when his services were not approved. The prayer made on behalf of the petitioner for a direction against the respondents for payment of back wages is also liable to be rejected, as the claim for monetary relief appears to be barred by limitation. The school was de-recognized in November-2012 and the writ petition is filed on 15.09.2015. It is well settled that the claim for back wages or monetary relief would be restricted only for a period of three years preceding the filing of the writ petition. By filing a writ petition in 2015, salary for the period from 2003 to 2012 cannot be claimed. Mere making of representations to the authorities and the management for payment of salary would not stop the limitation. It would be necessary to refer to the judgments reported in **(1995) Supp. (4) SCC 593** (*Administrator of Union Territory of Daman and Diu and others Versus R.D. Valand*), **(1997) 11 SCC 13** (*Jai Dev Gupta Versus State of H.P. & Another*) and **(2006) 4 SCC 322** (*Karnataka Power Corporation Limited, through its Chairman & Managing Director & Another Versus K. Thangappan & Another*), in this regard.

Since the relief sought by the petitioner cannot be granted, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

APTE

CERTIFICATE

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

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