

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

WRIT PETITION NO. 415/2015

(JITENDRA SHANKARRAO BATWE **VERSUS** THE EDUCATION OFFICER (PRI.), ZILLA PARISHAD,
 GADCHIROLI & 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.N. Shende, counsel for the petitioner.
 Shri S.M. Ukey, counsel for the R-1.
 Shri R.B. Dhore, counsel for the R-2 & 3.

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

DATE : SEPTEMBER 30, 2016.

By this writ petition, the petitioner seeks a direction against the Education Officer (Primary), Zilla Parishad, Gadchiroli to grant approval to the appointment of the petitioner on the post of Teacher in the middle school. The petitioner has challenged the order of the Education Officer (Primary), dated 29.04.2015, rejecting the prayer made by the petitioner for grant of approval to his appointment. The petitioner has sought a direction against the respondent-Management to pay the regular salary of the petitioner from the date of his reinstatement, on 25.03.2013.

The petitioner possesses the qualification of H.Sc., B.P.E. (Bifocal). The petitioner was appointed by the respondent-Management as a middle school teacher on 13.09.1995. The management terminated the services of the petitioner on 16.09.1997 and the petitioner challenged the order before the School Tribunal in an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The School Tribunal

allowed the appeal filed by the petitioner, by the judgment dated 13.09.2012 and directed the management to reinstate the petitioner in service with continuity and back wages. The judgment of the School Tribunal was challenged by the respondent-Management in a writ petition. In the writ petition, the management and the petitioner entered into a compromise, whereby the petitioner gave up his claim for back wages against the management. The management agreed to reinstate the petitioner in service on 25.03.2013, with continuity of service. The management had undertaken to send the proposal in regard to the appointment of the petitioner to the Education Department for grant of approval. In terms of the compromise as aforesaid, the writ petition filed by the management was disposed of by the order dated 18.03.2013. The management sent the proposal of the petitioner to the Education Officer (Primary) for grant of approval. The Education Officer by the impugned communication, dated 29.04.2015, rejected the proposal of the petitioner. The petitioner has challenged the said order in the instant petition and has also sought a direction against the Education Authorities, as also the management to pay the salary to the petitioner for the period from the date of his reinstatement on 25.03.2013.

Shri Shende, the learned counsel for the petitioner, states that the Education Officer was not justified in holding that the petitioner was not qualified to hold the post of a middle school teacher. It is stated that the proposal in respect of the petitioner could not have been rejected only because there were surplus teachers in the school of the respondent-Management. It is stated that in any case, the

respondent-Management would be liable to pay the salary of the petitioner from 25.03.2013.

Shri Ukey, the learned counsel for the respondent no.1, has supported the order of the Education Officer, dated 29.04.2015. It is stated that the petitioner cannot rely on the judgment of the School Tribunal to hold that the petitioner possesses the requisite qualification for appointment on the post of a middle school teacher as the judgment of the School Tribunal was challenged by the respondent-Management in the writ petition and as the matter was compromised between the petitioner and the respondent-Management, the judgment of the Tribunal got merged in the order of compromise. It is stated that at the relevant time when the proposal of the petitioner was sent to the Education Officer for grant of approval, several teachers in the school run by the respondent-Management were declared surplus and even at the time of the passing of the impugned order, five surplus teachers remained to be absorbed in the other schools. It is stated that in the circumstances of the case, approval could not have been granted to the appointment of the petitioner in the school run by the respondent-Management. In any case, according to the learned counsel, the salary for the period from 25.03.2013 would be payable by the management and not by the Education Authorities.

Shri Dhore, the learned counsel for the respondent nos.2 and 3, submitted that since the petitioner is not found to be qualified by the Education Department, the petitioner would not be entitled to the regular salary that is payable to a trained teacher. It is submitted that since the petitioner has entered into a compromise, the judgment of the

Tribunal merges in the order of the compromise by which the writ petition was disposed of. It is stated that the respondent-Management has deposited a sum of Rupees Two Lakhs in this Court towards the salary but, the petitioner would not be entitled to the sum of Rupees Two Lakhs as he is an untrained teacher. It is, however, fairly stated that till the petitioner is continued in service, the management would pay the salary to the petitioner. It is stated that the petitioner may withdraw the amount of Rupees Two Lakhs towards the salary till date though the amount payable to the petitioner would be less than Rupees Two Lakhs. It is stated that monthly salary would be paid to the petitioner from November-2016.

On hearing the learned counsel for the parties, we find that the Education Officer was justified in rejecting the proposal of the petitioner for grant of approval to his appointment. At the relevant time, twelve teachers in the school run by the respondent-Management were declared surplus and despite the best efforts of the Education Officer, only eight of them were absorbed in other schools and four of them still remain to be surplus. In this background, the Education Officer rightly rejected the proposal of the petitioner. The other aspect of the matter whether the petitioner was duly qualified or not to hold the post of a teacher in the middle school need not be decided in this writ petition as the approval is rejected on two grounds and we find that the other ground on which the approval is rejected is valid and legal and the order refusing to grant the approval cannot be faulted with, when there were several surplus teachers in the schools run by the management.

The claim of the petitioner for arrears of salary from 25.03.2013 till date is seriously disputed by the respondent-Management. It is disputed that the petitioner would be entitled to regular salary as he is duly qualified to hold the post of a teacher in the middle school. In the circumstances of the case, since the claim in regard to the payment of salary is seriously disputed, by keeping the issue in regard to the payment of arrears of salary to the petitioner, open, we permit the petitioner to withdraw the sum of Rupees Two Lakhs that is deposited by the management in this Court towards the arrears of salary along with interest accrued thereon, if any. We accept the statement made on behalf of the respondent-Management that the management would pay the admissible salary to the petitioner from the month of November-2016 till the petitioner remains in the services of the respondent-Management.

With the aforesaid directions and observations, we dispose of the writ petition with no order as to costs.

JUDGE

JUDGE

APTE

CERTIFICATE

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

Uploaded by: Rohit D. Apte.

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