

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5045 OF 2001
WITH
CIVIL APPLICATION NO.3399 OF 2006
IN
WRIT PETITION NO.5045 OF 2001

Shri Auti Nagnath Shivram,
Age : 30 years, Occupation : Assistant
Teacher, R/o At Post Astha (Kasar),
Taluka Omerga, District Osmanabad.

...PETITIONER

-VERSUS-

- 1 The Headmaster,
Anjanee Prashala Naldurg,
Taluka Tuljapur,
District Osmanabad.
- 2 The President,
Damayant Mahila Shikshan
Sanstha, Naldurg which runs
Anjanee Prashala, Taluka Tuljapur,
District Osmanabad.
- 3 The Education Officer (Secondary),
Zilla Parishad, Osmanabad.
- 4 The State of Maharashtra.

...RESPONDENTS

...
Shri G.N.Chincholkar, Advocate for the Petitioner.
Shri S.N.Morampalle, AGP, for Respondent Nos.3 and 4.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 11th May, 2017

Oral Judgment :

1 The Petitioner is aggrieved by the judgment and order dated 06.07.2001 passed by the School Tribunal, Aurangabad by which his Appeal No.181/1996 has been dismissed.

2 None appears for the Respondent/ Management. The learned AGP appears for Respondent Nos.3 and 4.

3 I have considered the strenuous submissions of the learned counsel for the Petitioner, who has canvassed the following points:-

- (a) The Petitioner is qualified to be appointed as an Assistant Teacher.
- (b) The Petitioner was orally allowed to work in the School from 16.11.1994.
- (c) He was orally terminated by the Management on 10.06.1996.
- (d) The claim of the Management that he was terminated by a written order on 29.04.1996 is false and incorrect.
- (e) Even if there is backlog to be filled in, the Petitioner could not have been terminated.
- (f) The Petitioner has attained the deemed status of permanent teacher under Section 5(2) of the MEPS Act, 1977.

- (g) Salary for the duration that he has worked in the school, has not been paid by the Management.

4 The Petitioner has filed the appeal before the Tribunal under Section 9 of the MEPS Act, 1977 alleging oral termination on 10.06.1996. The above mentioned grounds were canvassed. The Management filed it's Written Say and contended that the Petitioner was orally engaged. He was terminated on 29.04.1996 at the end of the academic year. He has pleaded oral termination on 10.06.1996 only to ensure that his appeal dated 04.07.1996 would be within the limitation period of 30 days.

5 The Education Department had filed it's Say indicating that when the Petitioner was appointed, there was already a backlog of one post for the Scheduled Caste category and one for the Scheduled Tribe category. There were 138 girl students in the school. A female teacher appointed on 15.07.1995 was the only lady teacher in the school. The Petitioner was the last male candidate orally appointed. He was from the Open Category. Hence, the approval was refused and he could not be continued since the backlog of reservation had to be cleared by the Management.

6 There is no dispute that the Petitioner accepted his temporary

engagement with the Respondent Management without any appointment order and obviously without undergoing any selection procedure. It is obvious that the Petitioner has unnecessarily taken the risk of entering service through the back door without an appointment order. It is also undisputed that the backlog of two posts (Scheduled Caste and Scheduled Tribe) is seen from the record as only 04 posts were sanctioned from the Open Category. These candidates from Open Category were appointed in 1991 and 1993. The Education Department, therefore, could not approve the engagement of the Petitioner since the backlog was to be cleared and there was no selection process followed. It is in these circumstances that the Tribunal concluded that the appeal deserves to be dismissed. I do not find that the impugned judgment could be termed as being perverse or erroneous.

7 However, the learned counsel for the Petitioner solemnly submits that the Petitioner has not been paid his salary. He has made a specific statement in paragraph 7 of the appeal that from 16.11.1994 till 10.06.1996, he has not been paid his salary. It is, therefore, submitted that when the Respondent Management has admitted in the Written Statement that the Petitioner was orally engaged and was terminated on 29.04.1996, the Respondent Management ought to pay unpaid wages to the Petitioner.

8 Considering the above, this Writ Petition is disposed of. Rule is discharged. The pending Civil Application, if any, stands disposed of.

9 However, in order to ensure that the ends of justice are met and that no employee should be made to work without salary, Respondent No.3/Education Officer is directed to initiate appropriate steps against the Respondent/ Management for the recovery of unpaid salary of the Petitioner for the period 16.11.1994 till 29.04.1996, if not already paid. This exercise should be completed within three months from today and compliance be reported to the Registrar (Judicial) of this Court within FOUR WEEKS thereof.

kps

(RAVINDRA V. GHUGE, J.)