

UNREPORTED**IN THE HIGH COURT OF JUDICATURE AT****BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.2436 OF 2013**

Subhash S/o Murlidhar Kadam
Age 45 years, Occ.Nil,
R/o At Domgaon No.1,
Tq.Paranda, Dist.Osmanabad. ... Petitioner.

Versus

1. The State of Maharashtra
through the Secretary
of Education, Mantralaya,
Mumbai-32.

2. The Chief Executive Officer,
Zilha Parishad, Osmanabad,
Dist.Osmanabad.

3. The Education Officer,
(Secondary), Z.P., Osmanabad,
District Osmanabad.

4. Sadashiv Patil,
The President,
Shiv. Shankar Prasarak
Mandal, Chinchpur (Bk.),
Tq. Paranda, District
Osmanabad.

5. The Secretary,
Shiv. Shankar Prasarak
Mandal, Chinchpur (Bk.),
Tq.Paranda, Dist.
Osmanabad.

6. The Head Master,
Shiv. Shankar Prasarak

Mandal, Chinchpur (Bk.),
Tq.Paranda, Dist.Osmanabad. ... Respondents.

...
Mr.G.S.Patil, , advocate for the petitioner.
Mr.S.B.Pulkundwar, A.G.P. for the State.
Mr.Vivek Dhage, advocate for Respondent Nos.4
and 5.

...

**CORAM : S.V.GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

Date : 10.04.2017.

ORAL JUDGMENT (Per S.V.Gangapurwala, J.)

1. Heard.

2. Rule. Rule returnable forthwith. With the consent of the parties, the petition is taken for final hearing.

3. The case of the petitioner is that the petitioner was appointed as Assistant Teacher on 14.6.1993 and was continuously officiating his duties. His name also finds place in the seniority list of the Assistant Teachers maintained by the institution dated 3.1.1997. It appears that the petitioner was orally terminated in 2001. The petitioner filed appeal before the School Tribunal. Under judgment and order dated

9.2.2015, the School Tribunal allowed the appeal filed by the petitioner and directed reinstatement with back wages. Subsequently letter dated 1.4.2005 is issued stating that the petitioner has joined. It appears that the Education Officer rejected the approval on the ground that post is not vacant and thereafter the petitioner is not allowed to officiate. In the year 2006, the Education Officer directed the institution to allow the petitioner to officiate his duties. As the petitioner was not allowed to officiate his duties, the petitioner approached Lokayukta in the year 2007. In 2011, the Lokayukta observed that it does not possess any jurisdiction. Thereafter, the present Writ Petition is filed.

4. Mr.Patil, learned counsel submits that at all relevant time the petitioner was ready to officiate his duties but was not allowed to join. The petitioner bonafide and in good faith approached the wrong forum. According to the learned counsel, even the School Tribunal has observed that the petitioner would be approved

and confirmed Assistant Teacher on completion of his probation period. The probation period came to an end in 1995.

5. Mr.Dhage, learned counsel for Respondent Nos.4 and 5 submits that the School, where the petitioner was initially appointed stood transferred to the Respondent Nos.4 and 5 in the year 2007. Since 2007, the petitioner never approached Respondents. The Respondents absorbed all the teachers who were officiating their duties on the date of the transfer of the institution. The name of the petitioner did not appear in the list. Even the approval to the appointment of the petitioner is rejected by the Education Officer on 18.8.2005 on the ground that vacant post did not exist.

6. Learned A.G.P. for Respondent Nos.1 and 3 submits that in the year 2005 as the post was not vacant, approval is not granted to the appointment of the petitioner. Since 2005 the petitioner is not in service, as such the petitioner can not claim reinstatement now.

7. We have considered the submissions canvassed by the learned counsel for respective parties. As would appear from the record that the petitioner was appointed on 14.6.1993 and had worked up to the year 2001, on 13.1.2001 he was orally terminated. The petitioner preferred appeal before the School Tribunal. Under judgment and order dated 9.2.2005 the School Tribunal allowed appeal. The operative part of the order of the School Tribunal reads as under :

"1. The appeal is allowed as under.

2. The impugned order of termination dt.13.1.2001 is hereby quashed and set aside.

3. The Appellant be reinstated for within the service with continuity of service and is entitled to receive full back wages with consequential benefits from R/M alone.

4. The R/M is directed to pay full back wages to appellant until reinstatement and thereafter as per

rules and regulation of M.E.P.S.Act.

5. The appellant's service shall be deemed to be approved and confirmed as Asstt.Teacher on completion of probation period.

6. The Respondents shall comply with the aforesaid order within 35 days on their failure the Respondent No.3 E.O. Shall deduct the dues of the Appellant from grants of the R/M and he be paid directly to the Appellant.

7. Inform parties accordingly."

8. It would appear that the School Tribunal in the order itself has directed that the appellant's service shall be deemed to be approved and confirmed as Assistant Teacher on completion of probation period. The petitioner had completed his probation period in the year 1995. The name of the petitioner also appeared in the seniority list maintained by the institution for the year 1996-97. The Tribunal had directed reinstatement with full back wages. The back wages were directed to be paid as

against the Management. When the School Tribunal in the judgment itself had directed that the petitioner's service shall be deemed to be approved and confirmed as Assistant Teacher, the Education Officer thereafter could not have sat over the judgment of the School Tribunal and rejected the approval.

9. It appears from the record that the Management of the School is transferred to Respondent Nos.5 and 6. It also appears from the record that the petitioner did not approach the new Management at any point of time but was prosecuting his grievance before the Lokayukta. The Lokayukta observed that it has no jurisdiction and as such has filed the present Writ Petition. There appears some laxity on the part of the petitioner also. It is stated that at present there is no vacant post available with the Respondent Nos.4 to 6. To meet the equities and to do substantial justice, it will be appropriate to direct the Education Officer to place the petitioner in the wait list of surplus candidates to be absorbed in other institution as

per his turn. The petitioner would be entitled for the salary from the date of his absorption.

10. In the result, we pass the following order :

a) The Respondent No.3 Education Officer shall keep the petitioner in the wait list of surplus candidates and shall absorb the petitioner in any other institution as per his turn. The petitioner shall be entitled for the salary only from the date of his absorption. Though we have directed that the petitioner would not be entitled for any wages from 2005 till the date of his absorption, the said period may be counted for the purpose of continuity in service.

b) Rule accordingly made absolute in above terms. No costs.

(SANGITRAO S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

