

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5949 OF 2012

Laxman Tuljiram More,
Age 34 years, Occ. Service
R/o Sarola, Tq. Washi
District Osmanabad.

..Petitioner

Versus

1. The State of Maharashtra
Through Secretary
School Education Department,
Mantralaya, Mumbai.

2. The Dy. Director of Education,
Latur Division, Latur.

3. The Education Officer (S),
Zilla Parishad, Osmanabad.

4. The Marathwada Gramin
Shikshan Prasarak Mandal,
Through its Secretary,
Uadhav Keshavrao Kothwala,
R/o Pimpalga Kothla,
Tq. Washi, Dist. Osmanabad.

5. The Head Master
Vasant Vidhyalaya,
Pimpalgaon Kothla,
Tq. Washi, Dist. Osmanabad.

..Respondent

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Advocate for Petitioner : Shri Adhate M.S. h/f Shri Jadhav N.L.
Addl.GP for Respondents 1 to 3: Smt. Deshpande Manjusha
Advocate for Respondent 4 : Shri Patil S.A. h/f Shri Salunke V.D.
Advocate for Respondent 5 : Shri Nagarsoge S.A.

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CORAM : RAVINDRA V. GHUGE & SUNIL K. KOTWAL, JJ.
Dated: November 08, 2017

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ORAL JUDGMENT : (PER RAVINDRA V. GHUGE, J.):-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is before us praying for a direction that the Educational institution should comply with the order of the Deputy Director of Education, dated 15.12.2011, which was passed under the orders of this Court dated 5.7.2011 in Writ Petition No.6212 of 2008.
5. We have considered the strenuous submissions of the learned Advocates for the respective sides and have gone through the record available.
6. Shri Salunke, learned Advocate for the management vehemently submits that it is respondent No.5 / Head Master who has illegally appointed the petitioner as a Teacher and the management is not a party to such an appointment. The due

procedure laid down in law was not followed. No advertisement was published. The management had no intention of filling any post. It is only because the Head Master wanted to appoint the petitioner, that the petitioner has been inducted in employment.

7. It is further submitted that the petitioner was terminated on 11.6.2006. After his termination, he had approached the School Tribunal, which has granted him reinstatement with continuity and full backwages. The management had approached this Court in Writ Petition No.5160 of 2009. By order dated 13.8.2009, the judgment of the School Tribunal dated 20.10.2008 in Appeal No.46 of 2006 was stayed. By a subsequent order dated 6.10.2009, the learned Single Judge modified the earlier interim order and stayed the backwages. Consequently, the petitioner had been reinstated in service, is working ever since and has been drawing his regular salary.

8. Learned counsel for respondent No.5 / Head Master has filed an affidavit-in-reply, dated 6.1.2013, contending that an advertisement was published prior to the appointment of the petitioner. Procedure laid down in law was complied with. The appointment cannot be said to be illegal. The petitioner has worked in the educational institution in the presence of the Chairman / Vice

Chairman / Secretary of the institution and hence they cannot pretend that they do not know as to how the petitioner secured entry in the service of the respondent. He hastens to add that this is not an issue before this Court in this petition and this Court cannot consider the aspect of the legality of the petitioner's appointment since this defence was taken by the management before the Tribunal and is now the subject matter of Writ Petition No.5160 of 2009.

9. Despite the vehement submissions of Shri Salunke, we are unable to enter into a roving enquiry with regard to the appointment of the petitioner under Article 226 of the Constitution of India and especially in the light of the fact that the grounds for terminating the petitioner and the legality of the judgment of the Tribunal, allowing his appeal, is a subject matter of Writ Petition No.5160 of 2009.

10. The fact situation before us is that undisputedly, the petitioner has worked from 7.7.2001 till 11.6.2006, notwithstanding the contention of the management that the petitioner was not appointed by the management. The petitioner had approached this Court earlier in Writ Petition No.6212 of 2008, praying for his regular salary for the abovesaid period in which he has worked. By order dated 5.7.2011, the petition was dismissed with liberty to the petitioner to avail of the remedy under Section 4 of the Maharashtra

Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the MEPS Act" for short). The petitioner has taken recourse to the said remedy under the orders of this Court by moving an application on 28.7.2001. A hearing was conducted by the Deputy Director of Education on 1.12.2011 and an order dated 15.12.2011 was passed concluding that the petitioner had worked for the said duration and was, therefore, entitled to earn his salary. This order is not challenged by the Management.

11. In so far as the payment of the salary was concerned, the Deputy Director has concluded that since the petitioner was working on a provisional approval and there were no grants in aid available to the educational institution for the period 7.7.2001 till 11.6.2006, the appointing authority will have to pay the salary.

12. Learned counsel for the Head Master submits that he has acted on instructions and he has no interest in the matter. He issued the appointment order to the full knowledge of the management and the petitioner has been working for the said period.

13. We are not required to go into this aspect for the reasons recorded above. We, however, cannot ignore that when the petitioner worked in the educational institution for the period for

which the salary was unpaid, he has discharged his duties, not for the Head Master, but for the educational institution by conducting Lectures and imparting education to the students admitted in the educational institution. If the management felt that the petitioner is a stranger to the institution, it could have blocked the petitioner immediately on noticing that a stranger has entered the School premises. Be that as it may, we are unable to accept this contention of the management for the reason that it is unbelievable that the petitioner has been working for more than six years by conducting Lectures, imparting education, participating in the educational activities of the institution and yet the Chairman or the Secretary do not know the identity of the petitioner.

14. In the light of the above, this petition is allowed. Respondent No.2 / educational institution is directed to comply with the orders of the Deputy Director of Education dated 15.12.2011 and in the light of our observations, within a period of four weeks and shall pay the unpaid salary to the petitioner from 7.7.2001 to 11.6.2006 as per the pay scale as is payable to the regular Assistant Teacher similarly situated. This payment shall be made within a period of four weeks from today. We deem it appropriate to impose interest at the rate of 6% per annum on the unpaid salary with effect from 1.1.2012, keeping in view the direction of the Deputy Director of

Education dated 15.12.2011. If the said amount is not paid within four weeks as is directed, respondent No.4 would be liable to pay interest at the rate of 12% per annum from 1.1.2012, until the amount is actually paid.

15. Rule is made absolute in the above terms.

(SUNIL K. KOTWAL, J.)

(RAVINDRA V. GHUGE, J.)

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