

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

WRIT PETITION NO.5393 OF 2013

Anita w/o. Venkatrao Kadam ..Petitioner

Vs.

The State of Maharashtra
and ors. ..Respondents

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Mr.V.D.Salunke, Advocate for petitioner

Mr.P.N.Kutti, AGP for respondent no.1

Mr.V.D.Gunale, Advocate for respondent nos.2 and 3

Mr.S.B.Pulkundwar, Advocate for respondent no.4

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

DATE : APRIL 03, 2017

ORDER :

Heard.

2. The petitioner assails the order dated 18.03.2014 passed by the Education Officer thereby rejecting the proposal for approval to the appointment of the petitioner. The petitioner also seeks directions against respondent nos.2 to 4 for

payment of back wages as per the order passed by the School Tribunal and further salary.

3. Mr.Salunke, learned Counsel for the petitioner submits that the petitioner was appointed on 28.07.2005 and she has joined the school on 01.08.2005. The appointment of the petitioner was made by following the proper procedure. The petitioner was orally terminated with effect from 07.09.2009. The petitioner filed Appeal No.34 of 2009 before the School Tribunal, Latur. The School Tribunal allowed the said appeal and directed the respondents to reinstate the petitioner so also directed the respondent – Institution to pay back wages and further salary to the petitioner. The Management of the Institution challenged the said order by filing Writ Petition before this Court, which came to be dismissed.

4. The learned Counsel for the petitioner submits that the respondents have not paid back

wages to the petitioner. After filing the present petition, the proposal for grant of approval to the appointment of the petitioner, is also refused. The learned Counsel submits that a person namely, Nitin Hadole was appointed in the year 2007 and his appointment has been approved. According to the learned Counsel for the petitioner, the position on the the date of appointment of the petitioner ought to be considered

5. Mr.Pulkundwar, learned Counsel for respondent no.4 – Education Officer submits that there were only four sanctioned posts. One Hadole was already appointed and approval to his appointment was also granted. Therefore, approval to the appointment of the petitioner could not be granted because it would be beyond the sanctioned posts. According to Mr.Pulkundwar, continuity is also given to said Hadole, however, subsequently, he was also declared surplus.

6. Mr.Gunale, learned Counsel for respondent nos.2 and 3 – Institution submits that since April, 2014, as approval was rejected, the petitioner had left the school and has not attended the school. Mr.Salunke, learned Counsel for the petitioner, disputes the statement made by Mr.Gunale.

7. We have considered the submissions canvassed by the learned Counsel for the parties. It is not in dispute that the petitioner was appointed on 28.07.2005 and the petitioner had joined the school on 01.08.2005. It is also a matter of record that the appeal filed by the petitioner was allowed by the School Tribunal, which order has been confirmed by this Court. As per the order passed by the School Tribunal, the respondents were directed to reinstate the petitioner on his original post and the Institution was also directed to pay the back wages to the petitioner.

8. The position on the day of the appointment of the petitioner will have to be considered while deciding the proposal for approval to the appointment of the petitioner. The Education Officer is required to consider the position which was existing on 01.08.2005 when the petitioner had joined the school. On that day, whether the petitioner was appointed on sanctioned post, is only required to be considered by the Education Officer and naturally, considering the roster and other aspects. However, the proposal could not have been rejected on the ground that subsequently, in the year 2007, one more teacher was appointed. Said analogy would not be proper.

9. We are not concerned with the dispute, as to whether from April, 2014, the petitioner was attending the school or not. The basic question is about rejection of the approval to the appointment of the petitioner. It is stated that said Hadole, who was appointed in the year 2007, has been

subsequently declared as surplus and he has also been absorbed in other institution.

10. Be that as it may, if upon finding the appointment of the petitioner in the year 2005 to be on a sanctioned post and the procedure having been followed, naturally, approval will have to be granted to the appointment of the petitioner and if it is found that subsequently, the post became surplus, the candidate can be declared as surplus, to be absorbed in other institution. However, that will depend upon the facts and circumstances, then existing.

11. In view of the above, we pass the following order:-

(i) The impugned judgment and order dated 18.03.2014 passed by the Education Officer, rejecting the proposal seeking approval to the appointment of the petitioner, is quashed and set aside.

(ii) The Education Officer shall reconsider the said proposal taking in view the appointment of the petitioner on 01.08.2005 and the position of the staffing pattern on 01.08.2005.

(iii) This exercise shall be done within a period of three months from today.

12. With these directions, the Writ Petition stands disposed of. No costs.

[SANGITRAO S. PATIL, J.] [S.V. GANGAPURWALA, J.]

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