

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5652 OF 2016

Rafioddin s/o Shafioddin Tamboli,
Age : 31 years, Occu.: Service as
Assistant Teacher,
R/o.: Arfath Chowk, Latur,
Taluka and District Latur

PETITIONER

VERSUS

1. The State of Maharashtra,
Through it's Secretary,
School Education Department,
Mantralaya, Mumbai-32
2. The Education Officer (Primary),
Zilla Parishad, Latur
3. The Secretary,
Vaishalitai Deshmukh Shikshan
Prasarak Mandal, Dhanegaon,
Taluka and District Latur
4. The Head Mistress,
Uzma Urdu Primary School,
Mahada Colony, Latur,
Taluka and District Latur
5. Sayyed Shahin d/o Sharafat Ali
(Borikar)
Age : 40 years, Occu.: Not known,
now Claiming to be Asstt. Teacher,
r/o. Anjali Nagar, Latur,
Taluka and District Latur

RESPONDENTS

Mr. S.R. Chawkidar, Advocate holding for
Mr. I.D. Maniyar, Advocate for the Petitioner
Mr. A.V. Deshmukh, A.G.P. for the respondent/State
Mr. D.S. Mali, Advocate for respondent No.2
Mr. N.P.Patil-Jamalpurkar, Advocate for respondent No.3
Mr. M.C. Syed, Advocate for respondent No.5

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

DATE : 30th MARCH, 2017

ORAL ORDER :

Heard.

2. The petitioner assails the order dated 5th May, 2016, passed by respondent Nos.3 and 4, terminating his services and also seeks multifarious directions.

3. We have heard Mr. S.R. Chowkidar, the learned counsel for the petitioner, Mr. N.P. Patil-Jamalpurkar, the learned counsel for respondent No. 3- Institution, Mr. M.C. Syed, the learned counsel for respondent No. 5, Mr. D.S. Mali, the learned counsel for respondent No. 2 and the learned A.G.P., representing the State.

4. The precarious position of the petitioner has arisen because of the pending litigation. Respondent No. 5 was appointed with respondent No. 4. It appears that respondent No. 5 was terminated. The proceedings were filed before the Grievances Committee and thereafter before the School Tribunal. The proceedings filed by respondent No. 5 before the School Tribunal

came to be dismissed. The Writ Petition filed in this Court by respondent No. 5 bearing Writ Petition No. 3451/2013 came to be allowed under judgment and order dated 2nd September, 2015. The Review Petition filed by the Management came to be dismissed. As such, respondent No. 5 is reinstated in service by respondent No. 4.

5. During the interregnum i.e. the period when respondent No. 5 was not in service and terminated, respondent No. 4 appointed the petitioner in the year 2007. Since then, till the impugned order, the petitioner was in continuous service with respondent No.4. It would be seen that for almost over eight years, the petitioner has worked with respondent No. 4, thereby getting the status of a permanent employee. Because of re-induction of respondent No. 5 in respondent No.4 school, the post is not available with respondent No.4 school for accommodating the petitioner. Respondent No.4 is bound to comply with the order passed by this Court and as such, had to reinstate respondent No.5. Respondent No. 5 and the petitioner both cannot coexist with respondent No. 4 school. As such, respondent No. 4

has passed the impugned order.

6. If we consider the factual matrix, it would be clear that none of the party is at fault. Though in strict sense, the argument of the Institution that the petitioner would have a remedy before the School Tribunal would be reasonable one, still considering the facts of the present case, we are exercising our extraordinary jurisdiction.

7. Considering the above, we pass the following order:-

- (i) The impugned order, dated 5th May, 2016, issued by respondent Nos.3 and 4, thereby terminating the services of the petitioner is quashed and set aside.
- (ii) The petitioner is hereby declared surplus.
- (iii) Respondent No.2 shall take steps to absorb the petitioner in any other Institution as per his qualification. In case it is not possible to absorb the petitioner in the district, the efforts shall be made by respondent No.2 to

absorb the petitioner at regional level or the State level. The same shall be done expeditiously.

- (iv) The petitioner shall be entitled for salary from the date of his absorption in service with any other Institution; however, the period from his termination till his actual absorption in service shall be counted for the purpose of continuity in service and other consequential benefits thereof.

8. With the above directions, the writ petition is disposed of. No costs.

[SANGITRAO S. PATIL]
JUDGE

[S.V. GANGAPURWALA]
JUDGE