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

WRIT PETITION NO.6927 OF 2016

Salim Khan s/o Amir Khan,
Age: 39 years, Occ: Nil,
R/o. C/o. Mohammad Zahir Khan,
Munir Khan, Jama Masjid Road,
Chalis Mohalla, Jamner,
Tq. Jamner, Dist. Jalgaon-424206 ..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary School
Education, Mantralaya,
Mumbai-32.
2. The Deputy Director fo Education,
Nashik Region, Nashik.
3. The Education Officer (Secondary),
Zilla Parishad, Jalgaon,
4. The Chief Officer,
Municipal Council, Bhusawal,
Through its Standing Committee,
Tq. Bhusawal, Dist. Jalgaon.
5. The Head Master,
M.I. Teli Urdu High School, Bhusawal,
(Municipal School No.3,
Khadka Road, Tq. Bhusawal,
Dist. Jalgaon.
6. Dayaram Tukaram Netake,
Age: Major, Occ: Retired,
Behind Sant Gadge Baba Chowk,
Jalgaon, Dist. Jalgaon. ..RESPONDENTS

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Ms Surekha P. Mahajan, Advocate for petitioner;
Mr A.P. Basarkar, A.G.P. for respondent Nos. 1 to 3;
Mr G.V. Wani, Advocate for respondent No. 4

CORAM : NITIN W. SAMBRE, J.

DATE : 6th NOVEMBER, 2017

ORAL ORDER :

After appointment of the petitioner on fixed honorarium vide order dated 5th July, 2004 the Education Officer, (Secondary) granted approval to the appointment of the petitioner from 14th June, 2004 vide order 31st January, 2009.

2. On 18th February, 2010 the Chief Officer – respondent No. 4 directed the present petitioner to deposit the amount of difference in between honorarium of Rs.4000/- received by the petitioner, as it is claimed that petitioner was entitled to Rs.3000/- only. In the said communication, it was admitted by respondent No. 4 that he was appointed w.e.f. 1st June, 2005 to 30th November, 2008 and entitled for honorarium of Rs.3000/- by virtue of Government Resolution No. 13th October, 2000.

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3. It appears that out of certain difference, the petitioner was terminated from his service by respondent No.4 - Chief Officer, which has prompted him to file petitions before this Court. Amongst others, Writ Petition No.5002 of 2010 is withdrawn with liberty to pursue alternate remedy vide order dated 11th October, 2011, Writ Petition No.5085 of 2012 is disposed of on 22nd August, 2012 with direction to decide pending appeal/representation, Writ Petition No.10538 of 2012 against rejection of representation/appeal under Section 79(6) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter shall be referred to 'Act' for sake of brevity), decided on 9th January, 2014 with order of remand, Contempt Petition No.386 of 2014 arising out of Writ Petition No.10538 of 2012 decided on 18th January, 2016.

4. By the last order, the order which is questioned in the present petition, based on the

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resolution passed by respondent-Council, the claim of the petitioner for his reinstatement came to be rejected. As such, this petition.

5. Ms. Mahajan, learned Counsel for the petitioner would invite attention of this Court to the factual matrix that similarly placed employees are still continue in service, who were appointed by following same procedure, as that of present petitioner. She has also produced copies of appointment orders qua other similarly placed employees to whom approval was granted by the Education Officer vide order dated 31st January, 2009. According to her, the respondent, a statutory authority is required to conduct itself in accordance with the principles of equity and fair play, whereas in violation thereof, the petitioner's claim is singled out by terminating his services, whereas other similarly placed employees are continued. She would urge that the reasons which holds goods for continuation of services of other similarly placed employees should

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also governs the case of the petitioner. According to her, in-spite of directions, respondent No.4 has not filed affidavit justifying the stand of discrimination.

6. Per contra, Mr. Wani, learned Counsel for respondent No.4 and learned A.G.P. for respondent Nos. 1 to 3 support the impugned order and submits that respondent No. 4 has already taken out proceedings before the Education Officer intimating about about alleged illegalities and irregularities committed by the petitioner for getting appointment orders.

7. Mr. Wani, learned Counsel for respondent No.4 would then urge that the appointment was granted under the orders signed by incompetent person, as the appointments are to be issued by the Municipal Council. He submits that the case of petitioner is considered as a lead case and respondent No. 4 shall follow same decision practice in case of other employees and as such, he sought dismissal of the petition.

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8. Considered rival submissions. It is not in dispute that the petitioner was appointed by the appointment order dated 5th July, 2004 and he was granted approval alongwith other similarly placed employees, who were appointed with him by order dated 31st January, 2009 by the Education Officer (Secondary).

9. Respondent No.4, in his communication, dated 16th April, 2016 at Annexure-C, has admitted that the petitioner was appointed for the academic year 2009-2010 and his services will come to an end by the same order w.e.f. 30th April, 2010 in view of academic session coming to an end.

10. It is also required to be noted that earlier services of the petitioner w.e.f. 1st June, 2005 to 30th November, 2008 are duly admitted by respondent No.4 vide communication dated 18th February, 2010 when the petitioner was directed to deposit difference of honorarium, as he has drawn

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honorarium on higher side. Copy of the said communication was also forwarded to Collector, Jalgaon for appropriate information.

11. All these acts on the part of respondent No.4 speaks nothing more of appointment of the petitioner on the post of teacher vide order dated 5th July, 2004 till date of order of dismissal i.e. 30th April, 2010.

12. Though affidavit in reply is filed by respondent No.4, however, respondent No. 4 has failed to clarify as to how the case of petitioner is not at par with other similarly placed employees, whose appointment orders and orders of approval are already produced on record by the petitioner, as is apparent from Exhibit-J collectively placed on record. Respondent No. 4 being statutory authority receiving grants-in-aid from the Government, is required to conduct itself within four corners of law, particularly provisions of Article 14 of the Constitution of India are very much applicable to the respondent.

13. While singling out the case of petitioner, the respondent by terminating his services, has acted contrary to the scheme of Article 14 of the Constitution of India, as the petitioner though similarly placed is treated unequally amongst equal i.e. other similarly placed employees.

14. Though the said illegality is sought to be covered by respondent No.4 by making submissions that the petitioner's case be considered as lead case and other employees, who are similarly placed, will be dealt with same manner, however, it is difficult to accept such submissions from respondent No.4, as same are contrary to the very scheme of Article 14 of the Constitution of India.

15. In the wake of above, the order impugned is not sustainable and is quashed and set aside. The order impugned terminating services of the petitioner passed on 26th April, 2010 at Annexure-C is hereby quashed and set aside. It is directed

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that the petitioner be reinstated in service on the same post and on the same service conditions forthwith.

16. So far as backwages are concerned, having observed that fault could not be noticed with the petitioner qua termination of his services and the respondents are solely responsible for alleged act viz., illegal termination of the services of the petitioner, in the facts and circumstances, it will be just and proper and in the interest of justice to order payment of 50% back wages. The back wages will be paid in two instalments; first instalment of the aforesaid 50% backwages be paid by 31st December, 2017 and remaining instalment on 28th February, 2018.

17. The writ petition stands allowed in above terms.

(NITIN W. SAMBRE, J.)