

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5629 OF 2016

Aarti Bhalchandra Kolwankar	...Petitioner
vs.	
Indian Education Society Through Secretary and Others	...Respondents

Mr. S.S. Jadhav, for the Petitioner.
Mr. A.G. Kothari, for Respondent Nos. 1 and 2.
Mr. V.N. Sagare, AGP for Respondent Nos. 3 to 5.

CORAM : SHANTANU S. KEMKAR &
PRAKASH D. NAIK, JJ.

DATE : **MARCH 01, 2017**

P.C.:

- . Parties through their counsel.
2. Feeling aggrieved by the order dated 19th September, 2015 by which the Petitioner's approval on the post of Assistant Teacher which was granted on 4th February, 2015 has been cancelled, the Petitioner has filed this Petition.
3. In the impugned order the reason assigned for the cancellation of the Petitioner's approval is that the Management did

not inform the Education Officer about the withdrawal of the provident fund amount by the Petitioner.

4. Briefly stated the Petitioner was appointed as an Assistant Teacher in 1989. Her appointment was duly approved. For certain medical reasons, she submitted resignation on 21st August, 2008 which was accepted by the Management on 9th January, 2009. Thereafter, the Petitioner applied for withdrawal of the resignation letter. However, since no decision was taken on it the Management and the Petitioner approached the School Tribunal for redressal of her grievances. The School Tribunal disposed of the Petitioner' appeal vide order dated 8th July, 2013 as per the consent terms. Thereafter, Petitioner was reinstated on the terms and conditions mentioned in the order dated 8th July, 2013 in the form of consent terms.

5. When the matter stood thus, the Respondent No. 3 without giving any opportunity of hearing to the Petitioner vide order dated 19th September, 2015 the Management that since the Petitioner had withdrawn the provident fund and this fact was not made known to Respondent No. 4 - Education Inspector, the order of approval

passed on 4th February, 2015 is cancelled.

6. The case of the Petitioner is that after submission of the resignation and after submitting the letter of withdrawal of the resignation since it was not accepted by the Management, under the *bonafide* belief that the amount of provident fund can be withdrawn, she withdrew the amount. It is stated that since the Petitioner being reinstated as per the order passed by the School Tribunal, the approval which was already invogue could not have been cancelled by Respondent No. 4 merely on the ground that the Petitioner had withdrawn the amount of provident fund that too without giving any opportunity of hearing to the Petitioner.

7. On the other hand, the learned AGP submits that the Petitioner having withdrawn the amount of provident fund cannot come forward with a case that the cancellation of approval is illegal. It has been argued that since neither the Management nor the Petitioner brought it to the notice of the Respondent No. 4. The Respondent No. 4 had committed no error in cancelling the approval.

8. Having considered the submissions of the learned counsel for the parties and having gone through the impugned order and the annexures filed by the parties, we are of the view that merely on account of withdrawal of the provident fund amount by the Petitioner, it was not justified on the part of the Respondent No. 4 to have cancelled the approval, more particularly when the Petitioner was already ordered to be reinstated by the School Tribunal. True it is, that the Petitioner should have deposited the said amount immediately on her reinstated but we are inclined to accept the statement made on behalf of the Petitioner that she was under *bonafide* belief that the amount need not to be deposited.

9. Accepting the aforesaid explanation, we dispose of this Petition by setting aside the impugned order dated 19th September, 2015 passed by the Respondent No. 4 and restoring the original order of approval passed on 4th February, 2015 by the Respondent No. 4 on the condition that the Petitioner shall deposit the amount of provident fund withdrawn by her within one month from today before the concerned authority.

10. With the aforesaid direction this Petition stands disposed of.

(PRAKASH D. NAIK, J.)

(SHANTANU S. KEMKAR, J.)