

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13762 OF 2016

Pradeep Kalpanath Singh

... Petitioner

vs.

Shivam Shiksha Samitee & Ors.

... Respondents

Mr. Ashok Kumar S. Dubey for the Petitioner.

Mr. Arvind G. Kothari for the Respondent Nos.1 and 2.

Mr. Pradeep Thorat a/w Mr. Vinod Mahadik for the Respondent Nos.3 to 5.

Coram : **A.A.Sayed, J.**

Date : 15 March 2017.

P.C. :

1 The Petitioner by this Petition invoking Article 226 of the Constitution has sought the following reliefs:

“(a) this Hon'ble Court may be pleased to issue a Writ of Mandamus under Article 226 of the Constitution of India or any other appropriate writ, order and direction in the nature of mandamus, thereby directing Respondent No.3 to call upon the papers and proceedings of the Petitioner's pending appeal bearing No. LCT/6285/MC/2010 and after examining the legality, validity and propriety thereof, be pleased (i) to quash and set aside the said impugned suspension or termination dated 23.02.2011, and (ii) further direct the Respondent No.3 to consider the Petitioner's pending aforesaid Appeal on merits for reinstatement with all back wages.

(a-1) That the order dated 28.04.2016, passed by Brihanmumbai Municipal Corporation – Education Department, and signed by the Deputy Education Officer, on 04.05.2016, bearing No.DEO/SR/OD/54. Be quashed and set aside.”

2 The aforesaid prayer clause (a-1) was added pursuant to an amendment sought in the Writ Petition.

3 The Petitioner was appointed on 1 July 1999 as an Assistant Teacher in the Respondent No.2 School, Primary Section, run by the Mumbai Municipal Corporation. On 18 February 2010 the Petitioner was suspended from service and was eventually terminated on 15 April 2010. In the interregnum, the suspension was revoked on 2 March 2010. The Petitioner thereafter challenged the termination order dated 15 April 2010 (hereinafter referred to as the ‘first termination order’) before the Education Officer by filing an Appeal. The Petitioner thereafter also challenged his first termination order dated 15 April 2010 before this Court by filing Writ Petition. By an order dated 29 July 2010 the said Writ Petition was disposed of by this Court by directing the Education Officer to decide the pending Appeal within four weeks.

4 On 22 October 2010 the Education Officer decided the Appeal of the Petitioner. The Education Officer concluded that the rules under the Maharashtra Employees Private Schools (Conditions of Service)

Regulation Act, 1977 (MEPS Act) were not followed while conducting the enquiry and held that termination of the Petitioner was illegal. The Education Officer further directed the Respondent Management to conduct the enquiry afresh by following the Maharashtra Employees Private Schools Rules, 1981 (MEPS Rules) and to submit a report within three months. The Education Officer also directed that suspension allowance shall be paid to the Petitioner from the date of suspension. Inasmuch as the Petitioner was not reinstated pursuant to the order dated 22 October 2010 of the Education Officer, the Petitioner filed an Appeal being Appeal No.LCT/6285/MC/2010 before the Municipal Commissioner. Pertinently, the Petitioner did not obtain any stay from the Municipal Commissioner (as regards the direction of conducting a fresh inquiry) and the Municipal Corporation therefore, conducted the fresh enquiry in terms of the order of the Education Officer dated 22 October 2010. After conducting the enquiry, a fresh termination order dated 23 February 2011 (hereinafter referred to as the 'second termination order') came to be passed by the Respondent Management.

5 Instead of challenging the second termination order dated 23 February 2011 before the Education Officer, the Petitioner approached this Court by filing Writ Petition No.2353 of 2012. On 9 January 2013 the Division Bench of this Court passed the following order and disposed of the said Writ Petition:

“The petitioner must in the first instance challenge the fresh termination order before the Education Officer.

2. The Writ Petition is accordingly disposed of. In the event of appeal not being considered on merits for any reason, this petition shall stand revived.”

6 The Petitioner accordingly filed an Appeal before the Education Officer challenging the second termination order dated 23 February 2011. On 28 April 2016 the Deputy Education Officer dismissed the said Appeal which order has been impugned in the present Petition.

7 So far as prayer clause (a-1) of the Petition is concerned (i.e. to quash and set aside the impugned order dated 28 April 2016 passed by the Education Officer is concerned), the Petitioner has an alternate remedy of filing an Appeal before the Municipal Commissioner under Rule 20 of the Rules relating to the Terms and Conditions for Service for Teachers in Recognized Aided Primary Schools in Greater Mumbai. In the circumstances, I am not inclined to entertain the said prayer in the present Petition. The Petitioner would be at liberty to invoke the alternate remedy and file an Appeal before the Municipal Commissioner.

8 So far as the prayer clause (a) in the Petition (i.e. to quash and set aside the second termination order dated 23 February 2011) is concerned, the Appeal No.LCT/6285/MC of 2010 is still pending before

the Municipal Commissioner. In these circumstances, it would be in the fitness of things to direct the Municipal Commissioner to decide the Appeal of the Petitioner in a time bound manner.

9 Considering the overall facts and circumstances of the case, the present Writ Petition is disposed of by passing the following order:

- i) The Petitioner would be at liberty to challenge the impugned order dated 28 April 2016 passed by the Deputy Education Officer, Brihanmumbai Municipal Corporation (Primary Section) by filing an Appeal before the Municipal Commissioner. Let that be done within a period of six weeks from today.
- ii) The Appeal No.LCT/6285/MC of 2010 pending before the Municipal Commissioner and the proposed Appeal that may be filed by the Petitioner against the order of the Deputy Education Officer dated 28 April 2016 shall be decided together expeditiously and in any event before 30 August 2017.
- iii) In the event the Petitioner does not file the proposed Appeal as stipulated above for any reason, the pending Appeal being Appeal No.LCT/6285/MC of 2010 of the Petitioner before the Municipal Commissioner shall be decided before 30 August 2017.

(A.A.Sayed, J.)