

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

WRIT PETITION NO. 2 OF 2006

1. Shardashram Vidyamandir
A Public Trust, having Office at
Dr. Bhavani Shankar Dadarkar Marg,
Dadar, Mumbai-400 028.
2. Shardashram Vidyamandir's
Technical School
Dr. Bhavani Shankar Dadarkar Marg,
Dadar, Mumbai-400 028.

...Petitioners

Vs.

1. The State of Maharashtra
Through the Department of
Vocational Education and Training
Mantralaya, Mumbai-400 032.
2. The Deputy Director of Vocational
Education and Training,
49, Kherwadi, Ali Yawar Jung Marg,
Bandra(East), Mumbai-400 051.
3. The District Vocational Education
and Training Officer
Having office at Government
Technical School,
Veer Savarkar Marg
Dadar, Mumbai 400 028.
4. Medha A. Patil
An Adult Indian Inhabitant
Residing at 7/61, New Labour Camp
Worli, Mumbai-400 025.

...Respondents

Ms. Varsha Palav for the Petitioners

Mr. Himanshu Takke, AGP for the Respondent Nos. 1 & 2

CORAM : A.A. SAYED &

M.S. KARNIK, JJ.

RESERVED ON: 12TH JUNE, 2017

PRONOUNCED ON : 21ST JUNE, 2017

ORDER (PER M.S. KARNIK, J.):

1. The Petitioners Shardashram Vidyamandir are praying for appropriate writ, order or direction to the Respondent Nos. 1 to 3 for reimbursement of the amount of Rs. 3,96,985/- paid by the Petitioners to the Respondent No.4 towards the arrears of salary for the period from May, 2000 to June, 2003.
2. The Petitioners appointed the Respondent No.4 as a full time Teacher with the Petitioner No.2 School by an order dated 1st August, 1998. By an order dated 24th March, 2000 the Petitioners terminated the services of Respondent No.4 with effect from 30th April, 2000 as her appointment was approved for the academic year 1999-2000 and the approval was to come to an end on 30th April, 2000. The Respondent

No.4 approached the School Tribunal by filing an Appeal No.41 of 2000 challenging the order of termination. By the order dated 20th April, 2000 the learned Tribunal was pleased to stay the termination order.

3. By an interim order dated 4th May, 2000 the learned School Tribunal directed the Education Inspector to continue to pay the salary grant of Respondent No.4. The learned School Tribunal by the judgment and order dated 23rd September, 2002 was pleased to quash and set aside the termination and allowed the appeal. The Tribunal observed that the Respondent No.4's appointment was on an open and permanent vacancy and the same was approved up to the date of termination. According to the Tribunal the Petitioner is a deemed permanent employee of the Petitioner No.2 School. The operative order of the School Tribunal reads thus:

“O R D E R

1. *The Appeal filed by above named Appellant bearing No.MUM/41/2000 is hereby allowed.*
2. *The alleged termination order dated*

24.3.2000 issued by the School Committee terminating the services of Appellant w.e.f. 30/4/2000 is bad in law and hence quashed and set aside.

3. *Respondents are directed to reinstate the Appellant in service with continuity in service and with full backwages and other service benefits.*

Compliance shall be reported within 40 days from the receipt of the order.

4. *Parties to bear their own cost.”*

4. The Petitioners challenged the order of the Tribunal in this Court by filing Writ Petition No.2690 of 2003. For the reasons recorded by this Court the Writ Petition came to be dismissed on 21st July, 2003.

5. The Petitioners on 11th October, 2003 forwarded the proposal for approval of the Respondent No.4 as Assistant Teacher. In the said proposal it has clearly been mentioned that a proposal for approval for the academic year 2000-2001

was also forwarded to the appropriate authority.

6. The Respondent No.4 filed Writ Petition No.310 of 2004 in this Court for arrears. This Court by the order dated 8th March, 2004 was pleased to dispose of the Writ Petition by passing the following order:

“3. The Respondent No.1 shall pay to the petitioner the arrears of wages for the period May, 2000 to June, 2003. The said arrears of wages shall be paid by the respondent no.1 in installments of Rs.45,000/- every three months. The first installment of Rs.45,000/- shall be paid on or before 8th June, 2004 and the balance amount shall be paid thereafter in regular installments every three months.

4. The respondent nos. 3 and 4 shall pay to the petitioner the arrears of wages for the period July 2003 to February, 2004 within a period of two months from today. The respondent nos. 3 and 4 shall regularly pay to the petitioner the monthly salary from March, 2004 onwards.

5. *The respondent nos. 3 and 4 shall also pay to the petitioner her wages for the period 1st May, 1999 to 12th June, 1999.*

6. *The respondent no.1 may make an application to respondent nos. 3 and 4 for reimbursement of the salary amounts to be paid to the petitioner as aforesaid and the respondent nos. 3 and 4 shall decide the same as per the provisions of law within three months from today”.*

7. The Petitioners by an application dated 11th October, 2004 made pursuant to the directions dated 8th March, 2004 of this Court in Writ Petition No.310 of 2004 requested for reimbursement of the salary paid by the Petitioners to the Respondent No.4. By an order dated 23rd November, 2004 the Respondent No.2 rejected the application made by the Petitioners for reimbursement.

8. According to the Respondent No.2 as the Society has terminated the services of Respondent No.4 from 1st May, 2000 without taking prior permission and as the Petitioners

have not submitted any proposal for reappointment it will be binding upon the Petitioners to pay full arrears of the salary with all benefits as per the order dated 8th March, 2004 of this Court for the period from 1st June, 2000 to 20th July, 2003. The Respondent No.2 while rejecting the claim of reimbursement appears to have proceeded on the footing that the directions of the School Tribunal as well as this Court in Writ Petition No.310 of 2004 only provide for continuity in service and that there are no directions entitling the Petitioners for any benefits from the Government.

9. The Petitioners in response to the communication dated 23rd November, 2004 addressed a letter to the Respondent No.2 setting out the material facts and once again submitted the proposal for the approval of the appointment of the Respondent No.4 for the period from 1st May, 2000 to 20th July, 2003 and reimbursement of amount of salary paid to her for the said period.

10. The learned Counsel for the Petitioners contended that

the justification given by the Respondent No.2 declining reimbursement cannot be accepted and the same is contrary to the letter and spirit of the order passed by this Court. According to the learned Counsel for the Petitioners even before the order of termination took effect, the Respondent No.4 obtained stay to the termination from the School Tribunal. The Respondent No.4 accordingly continued to work with the Petitioners even for the period from 1st May, 2000 to 20th July, 2003. According to the learned Counsel for the Petitioners the Respondent No.2 has proceeded on an erroneous footing that as this Court had only granted continuity of services, therefore the Petitioners are not entitled to claim reimbursement.

11. The learned AGP on the other hand supported the decision of the Respondent No.2 dis-entitling the Petitioners for reimbursement. According to the learned AGP the action on the part of the Petitioners in terminating the services of the Respondent No.4 is illegal and the same was done without taking permission from the Respondent No.2. The Respondent

No.2 did not submit a fresh proposal for the year 2000-2001 and instead proceeded to terminate the services of the Respondent No.4. According to the learned AGP it is the responsibility of the Petitioners to pay the salary to the Respondent No.4 for the period from 1st May, 2000 to 20th July, 2003 and the Petitioners therefore are not justified in claiming reimbursement.

12. We have heard the learned Counsel for the Petitioners and the learned AGP for the Respondent Nos. 1 to 3. There is no dispute that the Respondent No.4's appointment as an Assistant Teacher was approved for the period from 1998-1999 and thereafter from 1999-2000. It is also not in dispute that the Petitioners proceeded to terminate the services of the Respondent No.4 by an order dated 24th March, 2000 effective from 30th April, 2000. The Respondent No.4 approached the School Tribunal and the order of termination was stayed, as a result of which the Respondent No.4 continued to discharge her duties as an Assistant Teacher. There is also an order dated 4th May, 2000 passed by the School Tribunal directing

the Education Inspector for payment of salary to the Respondent No.4. The School Tribunal has given a finding that the appointment of the Respondent No.4 was in a clear and permanent vacancy and that the Respondent No.4 is a deemed permanent employee of the Petitioner No.2 School. Accordingly the School Tribunal reinstated the Respondent No.4 in service with continuity in service and full back-wages and other service benefits.

13. This Court in Writ Petition No. 310 of 2004 permitted the Petitioners to make an application to the Respondent No.2 for reimbursement of the salary amounts which application was to be decided as per the provisions of law within a period of three months from 8th March, 2004. In our opinion the Respondent No.2 is not justified in denying the benefits of salary grants to the Petitioners for payment of salary to the Respondent No.4 for the period from 1st May, 2000 to 20th July, 2003. It is not disputed that even before the termination could take effect, the Respondent No.4 obtained stay and thus continued as an Assistant Teacher in the Petitioner No.2

School for the period from 1st May, 2000 up to 20th July, 2003. Though the Petitioners terminated the services of the Respondent No.4, she however continued by virtue of the interim order and ultimately the order of termination came to be set aside by the Tribunal which order was confirmed by this Court. The Tribunal directed reinstatement of Respondent No.4 with back-wages and continuity of service. This Court by the order dated 8th March, 2004 directed the Petitioners to make an application for reimbursement of the salary amounts paid to the Respondent No.4 which the Respondent No.2 had to consider in accordance with law. The Respondent No.2 has rejected the request for reimbursement on the ground that no prior permission was taken from the Respondent No.2 before terminating the services of the Respondent No.4. According to us the termination having been set aside, the ground on which the Respondent No.2 has rejected the Petitioners' application cannot be sustained. We find that the Respondent No.2 has proceeded on an erroneous footing that neither the School Tribunal nor this Court has held that the Petitioners are entitled to recover the salary

grants from the Respondent No.2, thereby completely loosing sight of the directions of this Court on 8th March, 2004 in Writ Petition No.310 of 2004. This Court had permitted the Petitioners to make an application for reimbursement of salary grants which the Respondent No. 2 ought to have considered on its own merits.

14. In any case it is an admitted position that pursuant to the orders passed by the Tribunal and this Court the Respondent No.4's appointment has been approved from the year 2003 onwards. Approval was also granted for the academic year 1998-1999 and 1999-2000. Even during the period from 1st May, 2000 to 20th July, 2003 the Respondent No.4 has discharged her duties as an Assistant Teacher in a clear and permanent post. We therefore find that the action on the part of the Respondents in refusing to reimburse the salary of the Respondent No.4 payable from 1st May, 2000 to 20th July, 2003 is unjustified. The present Writ Petition thus succeeds. Hence the following order:

ORDER

1. The Respondent Nos. 1 to 3 are directed to

reimburse to the Petitioners the amount paid to the Respondent No.4 towards the arrears of salary for the period of May, 2000 to June, 2003 within a period of eight weeks from today.

2. No orders as to costs.
3. Rule is made absolute.

(M.S. KARNIK, J.)

(A.A. SAYED, J.)

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