

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

WRIT PETITION NO. 8659 OF 2016

**SHASHIKALA PITAMBAR FIRKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr.B.S.Deshmukh, Advocate for the petitioner
Mr.V.S.Badakh, AGP for the respondent/State
Mr.H.P.Kshirsagar, Advocate for respondent No.3
Mr.U.R.Awate, Advocate h/f Mr.N.E.Deshmukh, Advocate for
respondent No.4

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.**

DATED : 11.09.2018

P.C. :-

The petitioner disputes the order of approval to the extent it is granted from 12.02.2009. According to the petitioner, the petitioner is initially appointed in the year 1991 and since then he is working. In the year 1991 was orally terminated. The petitioner filed an appeal before School Tribunal. The School Tribunal allowed the appeal and directed reinstatement to the original post, by setting aside the oral termination of the year 1999. According to the petitioner, the petitioner is continuously in service from the year 1991. Initially the approval was granted from 12.02.2009 as an untrained teacher. Subsequently, that has been corrected as a trained teacher under order 30.12.2013. However, the grant of approval from year 2009 is erroneous and it should be from initial date of

appointment.

2. We heard Mr. Awate, learned counsel for the respondent. The learned counsel for the Education Officer submits that considering the record and decision of this Court the order has been passed by Education Officer.

3. The School Tribunal in an appeal filed by the petitioner bearing Appeal No.59 of 1999 has set aside the original termination order and directed reinstatement in Appeal No.59 of 1999. It has been held that the petitioner is in service in 1991. The School Tribunal has passed following order:

"1. Appeal is allowed.

2. The act of the respondent No.1 and 2 not allowing the appellant to work in Rosland Madhyamik school run by them with effect from 01/10/99 is amounts to otherwise termination of her services which is illegal void and hence hereby set aside.

3. Order dated 31/10/99 passed blow stay application is hereby made absolute.

4. The resp.No.1 and 2 are directed to reinstate the appellant on her original post of an assistant teacher in the Rosland Madhyamik School run by them and pay her full back wages with benefit of continuity of services, if they have not reinstated her or have not paid her arrears.

5. They are directed to report the compliance of this order within a period of 40 days from the date of receipt of this order.

6. Parties to bear their own cost."

4. The said order of the School Tribunal is challenged by the institution by filing a Writ Petition before this Court bearing Writ Petition No.6996 of 2007. The said Writ Petition is admitted and stay is granted only to the extent of backwages.

5. While considering proposal seeking approval to the appointment of petitioner, the respondent authority was bound by the order passed by the School Tribunal in Appeal No.59 of 1999 filed by the present petitioner. The order of the School Tribunal is judicial order and the initial date of appointment was required to be considered as per the judicial order passed. The order of approval that may be granted by the Education Officer would be subject to the decision in the Writ Petition filed by the management against the order of the School Tribunal. However, the Education Officer could not have ignored the judgment of the School Tribunal and while granting approval ought to have considered the finding given by the School Tribunal about the continuous officiation of the petitioner from the earlier date.

6. In the result the impugned order is quashed and set aside. The Education Officer shall consider the proposal seeking approval to the appointment of the petitioner in tune with the judgment of the School Tribunal in Appeal No.59 of 1999, dated 11.04.2007. The said proposal shall be decided expeditiously preferably within four months.

7. The management shall submit the proposal in

tune with the judgment of the School Tribunal within a period of six weeks from today. On receipt on the said proposal the Education Officer shall decide the same within four months thereafter.

8. The respondent shall also consider the pay-scale applicable to the petitioner commensurate to his qualification and availability of post.

9. The Writ Petition is disposed of. No costs.

[S.M. GAVHANE, J.]

[S.V. GANGAPURWALA, J.]