

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

**WRIT PETITION NO. 6609 OF 2015**

Nageshkumar Sadhuram Salunke                      ..     **Petitioner**  
**Versus**  
The State of Maharashtra and others..     **Respondents**

Mr. Pradeep Deshmukh h/f. Mr. Yogesh P. Deshmukh,  
Advocate for the Petitioner.  
Mr. S. K. Tambe, A.G.P. for Respondent No. 1.  
Respondent No. 2 – served.  
Mr. V. D. Kodale h/f. Mr. V. D. Gunale, Advocate  
for Respondent Nos. 3 and 4.

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

**DATE: 4<sup>th</sup> September, 2018**

**PER COURT :**

1. Mr. Deshmukh, the learned counsel submits that petitioner was appointed in the year – 2001. In the year – 2005, the services of the petitioner were terminated. The petitioner filed an appeal before the Presiding Officer, School Tribunal, Latur. The School Tribunal allowed the appeal under the judgment and order dated 16.09.2011 granting continuity of service to the petitioner with back wages from the date of termination till

reinstatement. The management challenged the order before this Court by filing the writ petition. The learned Single Judge of this Court under order dated June 14, 2012 in Writ Petition No. 2647 of 2012 stayed the order to the extent of payment of back wages only. Subsequently, the petitioner is reinstated by the respondent – Institution. However, the Deputy Director of Education while granting approval initially granted approval since the year – 2007 as a 'Shikshan Sevak', subsequently changed the said order and granted approval from 14.09.2012 as a 'Shikshan Sevak'. According to the learned counsel, the petitioner having been appointed in the year – 2001 his services ought to have been approved from the year – 2001.

2. The learned counsel for the Institution submits that the petitioner has suppressed many facts. The post was not available. From the year 2008 – 2012 the petitioner worked under the 'Sarva Shiksha Abhiyan' scheme, as such, was not

entitled to be considered for approval as a teacher in the respondent – school.

3. The learned A.G.P. supports the order passed by the Deputy Direction of Education and submits that the Deputy Director of Education has considered the staffing pattern and thereafter has passed the order.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. Judicial Order has been passed wherein it is considered that the petitioner initially in the year 2001 - 2002 was appointed as a part time teacher. The petitioner for the first time was appointed as a full time teacher on probation under order dated 16.06.2003. The School Tribunal while allowing the appeal filed by the petitioner has directed reinstatement with continuity of his service and the back wages.

6. The Deputy Director of Education cannot sit

over the judicial order passed by the School Tribunal. The School Tribunal had directed continuity in service. The petitioner is appointed on probation on 16.06.2003, as such, his services are required to be considered from 16.06.2003.

7. Naturally, initial service from 16.06.2003 will have to be considered as a 'Shikshan Sevak'.

8. It has been submitted by the learned counsel for the petitioner that initially the school where the petitioner is appointed was on non grant basis and subsequently in the year 2006 – 2007 it has brought on grant-in-aid.

9. The impugned order does not depict that the order passed by the School Tribunal was considered. The contention of the respondent – school that since the year 2008 up to 2012 the petitioner worked under the 'Sarva Shiksha Abhiyan' scheme would be a relevant consideration while denying back wages to the petitioner, however, the petitioner cannot be faulted with for

working under 'Sarva Shiksha Abhiyan' scheme, as at the relevant time the petitioner was terminated from service. For his livelihood, he could have taken some employment.

10. In the light of above, the impugned orders are quashed and set aside. The Deputy Director of Education shall consider the judgment delivered by the School Tribunal in Appeal No. 65 of 2007 dated 16.09.2011 and decide the proposal seeking approval to the appointment of the petitioner afresh. Naturally the proposal that would be decided would be subject to the decision in Writ Petition bearing no. 2647 of 2012.

11. Writ Petition accordingly stands disposed of.  
No costs.

**[S. M. GAVHANE, J.]**

**[S. V. GANGAPURWALA, J.]**

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