

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15161 OF 2017

Smt. Noorsaba Sayyed Tanvir Ahmad .. **Petitioner**

Versus

The State of Maharashtra and others .. **Respondents**

Shri Ramesh I. Wakade, Advocate for the Petitioner.

Mrs. Vaishali Patil – Jadhav, A.G.P. for Respondent Nos. 1 to 3.

Shri Rahul D. Awasarmol, Advocate for Respondent Nos. 4 and 5.

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATE : 15th February, 2018

PER COURT :

1. Mr. Wakade, learned advocate for the petitioner submits that the petitioner was appointed as a Headmistress of the respondent No. 5-school. For three years the petitioner worked as a Headmistress. Her appointment as a Headmistress was approved by the Education Officer. Under the impugned order the approval has been cancelled. The learned Advocate states that the Education Officer has no power of Review. Once the approval is granted he cannot cancel it. The learned Advocate submits that, it was erroneous on the part of the Education Officer to observe that the petitioner does not possess the

requisite experience / qualification. The petitioner possesses the qualification and the teaching experience also. The other reason that one Smt. Ahemadi Siddiqui Abdul Majid being eligible for Headmistress, on account of the judgment of the School Tribunal also does not survive, as subsequently the said lady is terminated after departmental enquiry. The petitioner is only eligible to be appointed as a Headmastress and other senior teacher had communicated their unwillingness to officiate as a Headmistress.

2. Learned A.G.P. submits that in view of the judgment and order of the School Tribunal dated 31.7.2015, the petitioner cannot claim her right for the post of Headmistress. The Education Officer has rightly considered the said aspect.

3. The appeal filed by Smt. Ahemadi Siddiqui Abdul Majid bearing appeal No. 1 of 2014, is allowed by the School Tribunal under judgment and order dated 31.7.2015. The School Tribunal set aside the order appointing the present petitioner as a Headmastress and directed the appellant before it viz. Smt. Ahemadi Siddiqui Abdul Majid to be appointed as a Headmistress subject to the pending enquiry.

4. In view of that, the Education Officer has no alternative but to abide by the orders of the School Tribunal.

5. It is stated by the petitioner that subsequently upon conclusion of the departmental enquiry Smt. Ahemadi Siddiqui Abdul Majid has been terminated.

6. In that event, it will be for the management to submit the proposal for appointment of a eligible and qualified person as a Headmistress / Headmaster. The management shall submit the proposal for appointment of a qualified and eligible candidate as a Headmistress / Headmaster as per Rule 3 of The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, within eight (8) weeks from today. On receipt of the proposal, the Education Officer shall take decision upon it on its own merits. If such proposal is received, the interested persons can put forth their objections as may be permissible.

7. As far as recovery of the amount is concerned, it is not the case of the respondents that apart from the petitioner some other person officiated as a Headmistress at the relevant time. In view of that, the salary paid to the petitioner as a Headmistress shall not be recovered.

8. The writ petition is accordingly disposed of. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

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