

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

WRIT PETITION NO. 11854 OF 2015

**SUNITA BABAN SOLSE
VERSUS
THE STATE OF MAHARSHTRA AND OTHERS**

Mr.Ramesh I. Wakade, Advocate for the petitioner
Mr.N.T.Bhagat, AGP for the respondent/State
Mr.Pandurang M. Gaikwad, Advocate for respondent
Nos. 4 and 5

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

DATED : 28.08.2018

P.C. :-

. The petitioner under present writ petition seeks multifarious reliefs such as direction against the respondent-institution to pay arrears of salary and other allowances since December, 2014. So also, all the arrears of salary and allowances and to pay difference amount to the petitioner from the date of appointment till the month of November, 2014. The petitioner also seeks directions against the institution to forward the proposal of the petitioner for approval.

2. Mr. Wakade, learned counsel submits that the petitioner was appointed on 18.07.2006 as a

Shikshan Sevak. On 30.04.2008 the petitioner was terminated. The petitioner had filed an appeal before the School Tribunal. On 11.07.2011 the matter was compromised by the petitioner with the Management and the petitioner was reinstated. The Management passed the Resolution on 23.09.2010. The petitioner is also issued with an experience certificate by the Headmistress on 25.07.2015. Learned counsel submits that since the date of appointment the petitioner is paid honorarium of Rs.1000/- to 1500/- per month. Learned counsel submits that the petitioner is entitled for the salary as per Schedule "C" of the MEPS Act. According to the learned counsel after November, 2015 the petitioner is not allowed to perform the duties. The respondent assured the petitioner that as and when the vacancy arises, the petitioner would be accommodated in the vacancy.

3. Mr. Gaikwad, learned counsel appearing for the Management submits that the petitioner was not issued with any appointment order nor the petitioner was appointed after following selection process. The petitioner wanted experience and at the request of the petitioner, the respondent Management allowed

the petitioner to teach on honorarium of Rs.1000/- per months. Subsequently, the petitioner was also paid Rs.1500/- per month. It is only at the request of the petitioner for getting the experience, the institution appointed the petitioner. The petitioner is not in service of the respondent from 19.11.2015. The petitioner had earlier not made any grievance. The petitioner only gave an application in 2015 to increase her honorarium.

4. We had directed the Deputy Director of Education to inspect the record and submit his report. Pursuant to our order, the Deputy Director has verified the record and submitted his report. The Deputy Director of Education found that the appointment of the petitioner is not within the sanction limit of the staffing pattern. The signature of the petitioner does not appear in the Musterbook. The petitioner has been paid an amount of Rs.26,215/-.

5. The fact that the petitioner has worked with the institution for a period as referred to above is not disputed even by the respondent Management. The Management contends that the

petitioner was appointed at the request of the petitioner for getting experience and that the appointment of the petitioner was not on sanctioned post and that no selection process was followed.

6. In fact the Management is not supposed to appoint such candidates. The Management is running an Educational Institution and casually cannot allow persons to teach the students without considering the interest of the students. It is stated by the Management that the selection process was never followed while appointing the petitioner. If that is the case fault lies with the Management in allowing such person to teach the students without verifying the competency and the capability. The students are sufferers. In an Educational institution interest of the students is paramount. The Educational institution cannot be allowed to play with the career of the students in such casual manner.

7. It is not disputed that the petitioner is working with the respondent on honorarium of Rs.1500/-. When the respondent institution is extracting the work from the petitioner, the

institution is required to pay the respectable emolument to the petitioner.

8. Schedule "C" deals with the salary to be paid to the teacher. Schedule "C" was not amended in the year 2015 with regard to the payscale applicable as per 6th pay commission. Schedule "C" prescribed the payscale as was applicable on 5th pay commission. Be that as it may, reasonable amount was expected to be paid by the Management when it ventures to appoint the petitioner and allow the petitioner to teach the students.

9. As far as claim of the petitioner that respondent be directed to absorb the petitioner on the vacant post is concerned, it cannot be considered by us in the present petition. The petitioner is discontinued from service on/after 19/20.11.2015. The petitioner may take appropriate remedy as may be permissible in the law.

10. The petitioner may approach the Education Officer with regard to the emoluments to be paid for the period of three years prior to filing of the present petition i.e. from 13.10.2012 till the date

the petitioner was discontinued from the service. The Education Officer shall consider the payscale that may be applicable for such posts on which the petitioner was working and shall decide the same within a period of three months from the date the petitioner would file the application. The same shall be decided after hearing the petitioner and the Management.

11. The writ petition stands disposed of. No costs.

[S.M.GAVHANE, J.]

[S.V. GANGAPURWALA, J.]