

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2255 OF 2017

Mansuri Gulabkhan Musakhan Mansuri .. **Petitioner**

Versus

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

Shri Pawan B. Pawar, Advocate for the Petitioner.

Shri K. N. Lokhande, A.G.P. for Respondent Nos. 1 and 2.

Shri Mukulanand R. Wagh, Advocate for Respondent Nos. 3 & 4.

**CORAM : S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

DATE : 4th July, 2018

PER COURT :

1. Mr. Pawar, learned counsel submits that petitioner was appointed on 26.06.1991 as an Assistant Teacher with the respondent - institution. In the year - 1999, the petitioner was illegally terminated. The petitioner approached the Presiding Officer, School Tribunal, Nasik Region, Nasik. The School Tribunal allowed the appeal directing reinstatement with continuity in service. The said Judgment is confirmed by this

court in the writ petition filed by the management. The learned counsel submits that in spite of the Judgment of the School Tribunal, the institution submitted a fresh proposal and issued an appointment order in the year - 2004, showing that the petitioner is appointed afresh. An approval is sought on that basis. The same is erroneous. The petitioner was granted continuity in service from the year - 1991.

2. Mr. Wagh, learned counsel for the institution submits that in the year – 1991 when the petitioner was appointed he was untrained. He did not work with the institution from the year - 1996. In the year 1995- 1996 the school was brought on grant-in-aid and the proposal of the petitioner was also submitted. However, that was not approved by the Education Officer. In the year - 1996 he was terminated. According to the learned counsel, petitioner got the qualification of B.Ed. only in the year - 1999. Prior to the said date, the petitioner could not be treated as a qualified teacher. Considering that the earlier proposal was rejected the fresh proposal was submitted showing him to be in service from the year - 2004.

3. The fact that the petitioner is in employment since the year - 1991 cannot be a subject matter of debate in the present writ petition. The petitioner was terminated in the year – 1999. Challenging the said termination the petitioner approached the School Tribunal. The School Tribunal allowed the appeal filed by the petitioner directing respondent nos. 1 and 2 to reinstate him as an Assistant Teacher with continuity of service. It is held in the said Judgment by the school tribunal that petitioner was appointed on 26.06.1991 as a full time teacher. It is also further observed that as an untrained teacher the petitioner worked continuously. In the view of that, it will have to be held that the petitioner was working since the year - 1991 but as an untrained teacher and the petitioner would be considered as a trained teacher in the year – 1999. However, the continuity has to be given to him.

4. In the view of that, the institution is required to forward proposal to the Education Officer showing the petitioner to be in employment since the year - 1991. Of course, the institution may put forth his noting about the petitioner being untrained at the

said time and further that since the year - 1999 the petitioner would be considered as trained teacher. The said proposal shall be forwarded within six (6) weeks. The Education Officer shall consider the said proposal considering the Judgment of the School Tribunal granting continuity in service from the year - 1991. The decision shall be taken by the Education Officer within four (4) months from the date of receipt of the proposal. However, the Education Officer shall also consider the date when the petitioner acquired the trained teacher qualification and the said continuity would be considered for notional purposes.

5. The request of the petitioner for payment of the salary for the period 01.02.2003 to 27.08.2004 is negated on the ground of delay.

6. With these observations, writ petition stands disposed of.
No costs.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

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