

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

WRIT PETITION NO.11864 OF 2016

Keshav s/o. Eknath Kolhe ..Petitioner

Vs.

The State of Maharashtra
and others ..Respondents

Mr.R.I.Wakade, Advocate for petitioner
Mr.K.N.Lokhande, AGP for respondent nos.1 to 4
Mr.S.D.Tawshikar, Advocate for respondent nos.5 and 6
Mr.S.A.Jahagirdar, Advocate for respondent nos.7 and 8
Mr.V.Y.Bhide, Advocate i/b. Mr.A.R.Devakate, Advocate
for respondent no.9

AND

WRIT PETITION NO.11971 OF 2016

Keshav s/o. Eknath Kolhe ..Petitioner

Vs.

The State of Maharashtra
and others ..Respondents

Mr.R.I.Wakade, Advocate for petitioner
Mr.K.N.Lokhande, AGP for respondent nos.1 to 4
Mr.S.D.Tawshikar, Advocate for respondent nos.6 and 7

**CORAM : S.V. GANGAPURWALA AND
 R.G. AVACHAT, JJ.
DATE : OCTOBER 17, 2018**

PER COURT :-

In Writ Petition No.11864 of 2016, the petitioner assails the orders of approval passed in favour of respondent nos.7 to 9, whereas in Writ Petition No.11971 of 2016, the petitioner seeks direction against the respondents, to pay the entire salary due since 2009.

2. Mr.Wakade, learned Advocate for the petitioner, submits that the petitioner is working as Assistant Teacher with the respondent since 2005. According to the learned Advocate, the respondent – Institution orally terminated the services of the petitioner on 27.01.2009. Therefore, the petitioner had filed an appeal in the School Tribunal, in which a compromise took place between the parties and the respondent – Institution agreed to reinstate the petitioner on a grant-in-aid post, as and when it becomes available. Learned Advocate submits that the respondent/Institution absorbed respondent nos.7 to 9

in defiance of the claim of the petitioner, though respondent no.8 and respondent no.9 are juniors to the petitioner in the list of seniority. He further submits that the petitioner has not been paid salary since the year 2009.

3. Mr.Tawshikar, learned Advocate for the respondents – Institution, submits that the petitioner had not challenged the absorption of respondent no.8 on grant-in-aid post in the year 2011. Therefore, the petitioner is deemed to have waived his right and now the petitioner cannot turn around and challenge the same. The salary has been paid to the petitioner as per the rules. He submits that the Writ Petitions, as such, are not maintainable.

4. Learned Advocate for respondent no.9 submits that respondent no.9 was not a party to the compromise. He has been accommodated on a grant-in-aid post by the Institution after following the

proper procedure.

5. We have considered the submissions advanced by learned Counsel for the parties. The respondents – Institution had entered into a compromise, wherein respondent no.5 has unequivocally accepted to appoint the petitioner on grant-in-aid post, as and when the that post would be vacant. The said compromise was entered into between the parties on 05.12.2009 and the contents thereof were read, recorded and admitted by the School Tribunal on the same day. It appears that subsequently, respondent no.8 was absorbed on grant-in-aid post in the year 2011. It appears that the petitioner did not raise any objection immediately upon absorption of respondent no.8 in the year 2011. It will be too late now to raise a grievance about the order of approval in favour or respondent no.8. As far as respondent no.7 is concerned, he is shown senior to the petitioner in the seniority list. In view of this, the petitioner

cannot make a grievance in respect of absorption of respondent no.7 on grant-in-aid post earlier to the petitioner.

6. Respondent no.9 is absorbed on the 100% grant-in-aid post in the year 2015. Respondent no.9 is at serial no.5 in the seniority list maintained by the Institution, whereas the petitioner is at serial no.1. The respondent – Institution is duty bound to absorb the petitioner on the grant-in-aid post ahead of respondent no.9, in view of the compromise entered into between the parties so also as per the seniority list. Approval is already granted to the services of respondent no.9 on 100% grant-in-aid post from 2015, whereas the petitioner is absorbed from the year 2015 in 20% grant in aid post. In the circumstances, the respondents – Institution shall pay 80% of the salary to the petitioner for the year 2015 and the salary for the remaining years deducting the salary received through grant-in-aid sanctioned for the said post,

till the petitioner's post becomes 100% grant-in-aid. Moreover, the petitioner shall be treated and as senior to respondent no.9 for all purposes.

7. The respondent – Institution shall pay 80% salary to the petitioner in the account of the petitioner from the year 2015 viz. since the date of his absorption on grant-in-aid. The institution shall pay salary to the petitioner as per the pay scale, after deducting the amount received by the petitioner through grant-in-aid. The arrears shall be paid within a period of six months from today.

8. The Writ Petitions are accordingly disposed of. No costs.

[R.G. AVACHAT, J.]

[S.V. GANGAPURWALA, J.]

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