

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 12305 OF 2017

Mrs. P.V. Madhubala.

..Petitioner.

V/s.

The Chairman/Secretary & ors.

..Respondents.

Mr. S. B. Naik, advocate for Petitioner.

Mr. M.V. Joglekar I/b. Mr. Siddhesh Shetye, advocate for respondent No. 1.

Mrs. Manasi Bane, AGP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : SEPTEMBER 26, 2018.

P. C. :

1 Heard the learned Counsel for the respective parties.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner herein is aggrieved by the order dated 27/9/2016 passed by the Presiding Officer, School Tribunal, Navi Mumbai in Appeal No. 18 of 2014. The qualification of the petitioner is M.Sc. B.Ed. She was appointed as a Assistant Teacher in the Secondary section of the respondent No. 1 school on 21/9/1992. According to the Petitioner, she was appointed on a clear vacancy with effect from September, 2010. On several occasion she had requested the school to

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pay her the salary as per the rules. However, the same was denied on one or the other ground and she was assured that on completion of her probation period, she would be entitled to her regular salary. However, it remained to be only an assurance. Thereafter, she was otherwise terminated from the said school, she was not given termination letter, but was not allowed to sign muster roll. It was a case of oral termination. She had issued a notice to the school authority and in reply to the said notice, she was informed that her services are no more required by the respondent school. It is in these circumstances that she was constrained to approach the tribunal. The learned Tribunal had perused the papers and considered the same. The respondent had denied the contention of the appellant in the appeal memo. Initially the contention of the respondent was that she was given an appointment of temporary basis since 2009 and at the time of appointment, she was more than 28 years of age. That the school authorities had not issued any appointment letter to her till the academic year 2013-2014 and after 2013-2014 she had not attended the school and hence, her services were discontinued on account of voluntary abandonment of service. The learned Tribunal had dismissed the appeal mainly on the ground that the appellant was unable to prove that she was appointed by the respondent school by following due procedure of law. She could not place on record the appointment order and therefore, she was not entitled to

claim permanency in service or reinstatement in service by setting aside the order of oral termination. Hence, this Writ Petition.

4 The learned Counsel for the respondent has submitted that it is true that the petitioner had rendered her services to the school. However, she was not appointed by following due procedure of law since her services were not taken on a permanent and clear vacancy. It was a temporary appointment and the post was offered to her with a clear understanding that it is temporary service and that she would not be entitled to the salary as per the rules and regulations. However, the respondent No. 2 has fairly accepted that she had rendered services and today, since she would be age-bar, she cannot use the same as experience and may not be able to seek other services on that ground. According to them, the oral termination is not stigmatic and therefore, to compensate the petitioner, the respondents have fairly and voluntarily accepted to pay her compensation in the sum of Rs. 10 Lakhs, which they would pay to her on or before 30/10/2018 by way of demand draft or pay order.

5 The petitioner is present in the court. The learned Counsel for the petitioner upon instructions submits that in view of the observations of the tribunal it would be futile to proceed with any further litigation

and that she desires to start her career afresh in other available ways and therefore, has accepted the compensation offered by the respondent.

6 In view of this, since the matter is settled by way of amicable settlement between the parties, it would not be necessary to consider the petition on merits. Hence, the petition stands disposed of as withdrawn by accepting compensation. Rule is accordingly discharged.

7 The learned Counsel for the respondent upon instructions submits that since the matter is amicably settled, they would issue an experience certificate in favour of the petitioner.

[SMT. SADHANA S. JADHAV, J.]

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