

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10837 OF 2013

Shashikant Gangadhar Nikam } Petitioner
versus
State of Maharashtra and Ors. } Respondents

Mr.J.G.Reddy(Aradwad)for the petitioner.

Mr. B. V. Samant-AGP for State.

Mr. P. R. Arjunwadkar for respondent nos.
4 and 5.

**CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.
DATE :- JUNE 22, 2018**

P.C. :-

1. We have heard both sides.
2. The petitioner's services were terminated by an order dated 15th October, 2013, copy of which is at page 24 of the paper book, which order very clearly says that the petitioner initially was working as Shikshan Sevak and was required to complete the tenure as Shikshan Sevak so as to be termed as an Assistant Teacher. He was working, at the relevant time, in the Shri.Samarth Shripatibaba Janta Vidyalaya, Tadiwala Road, Pune-01. This is, according to the petitioner, an institution, which is duly recognised by the Shikshan Mandal, Pune Municipal Corporation. That is why the order has been passed by the Administrative Officer of the Shikshan Mandal.

3. This order of 15th October, 2013 (Exhibit-'F') was challenged in this petition and notice was issued on this petition. After issuance of notice on 6th January, 2014, another Division Bench of this court delivered an order in Writ Petition No. 9477 of 2013 and other petitions, decided on 24th April, 2015. This court took a view that once the employment of teachers similar to the petitioner is not disrupted nor are they terminated on the basis of the identical communications, they should be considered for the benefit of Rules 25, 25A and 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. In the case of the present petitioner, the applicable Rule, according to the Administrative Officer, was Rule 26.

4. Based on the order passed on 6th January, 2014 and since the termination had not come into effect, the petitioner has claimed the benefit of the order passed by this court and the subsequent order of the same Administrative Officer dated 15th January, 2014, directing the Head Master of the very Samarth Shripatibaba Janta Vidyalaya, Pune to continue the petitioner's services as a Shikshan Sevak. Therefore, the school allowed the petitioner to resume duties. The duties were resumed on 16th January, 2014.

5. The petitioner made a detailed representation on 28th January, 2014 requesting the Education Department to ensure that he obtains the salary and in terms of his continued employment. His representation has been answered in a peculiar manner, according to the petitioner. The petitioner was informed on 13th February, 2014, through the Head Master of the school, that this court's order can at best continue the petitioner in the services, but he will not be entitled to any salary, since this court has not passed any order directing the payment or release of the salary. Upon such a strange understanding by the Administrative Officer of the order passed by this court, the petitioner has been working, but, as complained by him, without any benefits.

6. These are indeed dismal state of affairs and prevailing in the Municipal Corporation of Pune. When none of the statements in the writ petition and the additional affidavit dated 15th March, 2014 are controverted or denied and the petitioner is not a surplus teacher and in any event, the petitioner's name was not communicated by the Management as a surplus teacher, his services were terminated, but this termination has not come into effect on account of the petitioner being protected by this court. In these circumstances, the petitioner's claim that he is continuously working and without any disruption in service, we

are of the firm opinion that the understanding of the Administrative Officer of this court's order, apart from lacking in common sense and very poor, is also contrary to the Rules. This court never directed that the services of a teacher should be protected, but no salary need to be paid. If his services are protected, it is implicit in this court's order that all the emoluments and salaries have to be paid and released.

7. In these circumstances, on account of the subsequent developments, this writ petition stands allowed. The concerned Administrative Officer as also the Department of the State Government shall treat the petitioner to be in continuous service and disruption, if any, is not brought about because of any act attributable to the petitioner. Therefore, he is entitled to the benefits of his service rendered with the fourth respondent school. He shall be taken to have rendered such service without any disruption and his salary and emoluments be computed accordingly. They shall be released within a period of four months from the date of receipt of a copy of this order. Since the petitioner's absorption in the V. P. S. Primary School, pursuant to the order of 20th October, 2014 is also referable to Rule 26(2) of the Rules, all the more, the above relief deserves to be granted.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)