

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

920. WRIT PETITION NO. 4805 OF 2001

Smt. Prabha Narayanrao Inamdar,
age 43 years occupation service as
Assistant Teacher (terminated)
R/o Lohara Taluka Omerga Dist. Osmanabad.

...Petitioner

VERSUS

1. The President,
School Committee, Kanya Prathamik Shala,
Lohara Taluka Omerga District Osmanabad
2. The Secretary,
High School, Lohara
Taluka Omerga Dist. Osmanabad
3. The Head Mistress,
Kanya Prathamik Shala, Lohara
Taluka Omerga Dist. Osmanabad
4. The Education Officer (Primary),
Zilla Parishad, Osmanabad.

...Respondents

*Mr. M.P. Tripathi, Adv., h/f. Mr. A.D. Gadekar, Adv. for petitioner.
Mr. T.B. Bhosale, Advocate for respondents No. 1 & 2*

CORAM : RAVINDRA V. GHUGE, J.

DATE : 27th June, 2019

ORAL JUDGMENT:

1. The petitioner-employee from the teaching staff is
aggrieved by the judgment of the School Tribunal dated 7th

February, 2001, by which, though the Tribunal quashed and set aside his termination dated 28th March, 1997 for being illegal and unsustainable, instead of granting reinstatement, the Tribunal directed the management to pay compensation of one month's salary to the petitioner. Consequently, Appeal No. 165 of 1997 filed by the petitioner was partly allowed.

2. The grievance of the petitioner is that though she acquired her postal D.Ed. qualification alongwith two other employees, namely, Smt. Surekha Haribhau Mahajan and Smt. Sulbha Pralhad Joshi, she was singled out for termination and the other two employees were granted regularisation.

3. The learned Counsel for the petitioner submits that the petitioner was S.S.C. qualified when she joined as an Untrained Teacher with the respondent-management primary school on 1st September, 1988. According to the existing rules, under Schedule 'C' of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, the qualification of S.S.C. for Untrained Teacher was prescribed. She continued with the respondent-school and between 10th May, 1993 to 5th June, 1993 she was approved for undergoing Postal D.Ed. Course. She completed her said course in July, 1996 and received the Postal D.Ed. Certificate. Having acquired such a certificate, she became

a Trained Teacher from academic year 1996 onwards.

4. It is further submitted on the basis of the record that the Education Officer granted approval for four academic years to the petitioner, vide his order dated 31st October, 1992. Smt. Surekha Haribhau Mahajan and Smt. Sulbha Pralhad Joshi were also granted similar approval alongwith the petitioner. They all had joined the Postal D.Ed. course at the same time and acquired the qualification at the same time.

5. The issue raised in this petition is, as to whether the direction of the School Tribunal to the management to pay one month's salary as compensation when her termination was quashed and set aside for being illegal and unsustainable, can be said to be correct ? The learned Advocate for the petitioner submits that merely because the Education Department had not granted approval for the academic year 1996-1997, though such approval was not refused, the petitioner has been terminated.

6. The issue as to whether an employee could be terminated on account of lack of approval, has been settled by the learned Full Bench of this Court in the matter of *St. Ulai High School and another Vs. Devendraprasad Jagannath Singh and another, 2007(1) Mh.L.J. 597*. It is concluded that lack of approval would not be a ground for terminating the service of an Assistant Teacher. It

cannot be disputed that the petitioner had acquired qualification of a Trained Teacher in July, 1996. A copy of the certificate dated 18th September, 1996 was placed on record before the Tribunal and the original is also shown to this Court across the bar.

7. The learned Advocate for respondents No.1 and 2-management submits that the petitioner was appointed on a vacant post. She was terminated by order dated 29th March, 1997 with effect from 31st March, 1997.

8. I have perused the order of termination, which is in Marathi and which indicates that the Secretary of the Education Society has terminated the petitioner for the following reasons : -

- (a) She did not reply to a letter dated 7th March, 1997,
- (b) She has not complied with some Rules (an allegation)
- (c) The approval of the Deputy Director of Education, Aurangabad, has not been obtained for her services after the academic year 1995-1996.

9. Even a cursory glance at the order of termination would convince that the management has put-forth lame excuses and has terminated the service of the petitioner. Her two colleagues, who are on identical footing, have been treated differently and have been continued in employment. This amounts to legal and factual victimization.

10. I find from the impugned order that the School Tribunal has declined to reinstate the petitioner on the ground that she did not show the original postal D.Ed. Certificate to the Tribunal. A copy of the certificate was placed on record, which has been ignored by the Tribunal. It was not the contention of the management that she had not been granted the postal D.Ed. Certificate in July, 1996. The certificate was issued on 18th September, 1996. After five years of being qualified with Postal D.Ed. Certificate, I find that the impugned order of the Tribunal demonstrates non-application of mind. The career of the petitioner has been ruined on account of the illegal act of the management and the failure on the part of the school Tribunal in applying its mind to the relevant record, which was available for its perusal.

11. In so far as the issue of back-wages is concerned, the learned Advocate for the management of the Education Institution, submits that an appropriate order be passed. The learned Advocate for the petitioner submits that the petitioner was 40 years old in 1997 and is now 62 years of age. She has crossed the age of superannuation. The learned Advocate, therefore, submits that as the chance of reinstatement is already lost, at least 50% back-wages should be granted alongwith

continuity in service, so that the petitioner would be entitled for retiral and pensionary benefits.

12. Considering the above, since I have held that the management has passed an illegal and unsustainable order, which has already been set aside by the School Tribunal and the management has not chosen to challenge the said verdict, this petition is allowed. The impugned judgment of the School Tribunal is set aside only to the extent of clause (2) and (3), vide which, the petitioner was granted compensation of 30 days' salary and was denied reinstatement. The said direction shall stand replaced with the direction that the petitioner shall be deemed to be notionally reinstated in service from 31st March, 1997 and shall be deemed to be in continued service till her actual date of attaining the age of superannuation.

13. The petitioner is entitled for 50% (fifty per cent) of the salary scale as per the relevant pay commission recommendations and as have been paid to Smt. Surekha Mahajan and Smt. Sulbha Joshi, for the period from 31st March, 1997 till her date of superannuation. These back-wages shall be paid within 60 (sixty) days to the petitioner, failing which, it shall carry interest at the rate of 6% per annum from the date of her superannuation.

14. The respondent No.1 & 2 -School Management-Education Society shall prepare an appropriate proposal of the petitioner for pensionary benefits and shall submit the said proposal within four weeks from today to respondent No.4-Education Officer (Primary), who shall take necessary steps and ensure that the proposal is cleared within 6 (six) weeks thereafter.

15. Rule is made partly absolute in the above terms.

**(RAVINDRA V. GHUGE)
JUDGE**

Madkar