

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.3251 OF 2019
(Rama Sonu Adakmol Vs. Bari Samaj Madhyamic Vidhayalaya and
others)

IN
WRIT PETITION NO.3580 OF 2014

Mr.A.R.Syed h/f Mr.S.P.Brahme, Advocate for the applicant.
Mr.G.V.Wani, Advocate for respondent Nos. 1 to 4.
Mr.S.R.Yadav, AGP for respondent No.5.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 12/04/2019

PER COURT :

1. The applicant/employee has succeeded before the School Tribunal vide judgment dated 25/10/2013 in his Appeal No.70/2012.

2. The petitioner/Management approached this Court. After hearing the rival sides, the petition was admitted by order dated 27/07/2015, which reads as under :-

"1. I have heard the learned Advocates with regard to the issue of interim relief.

2. Respondent No.1 is said to have been appointed by order dated 04/12/2004 for the period 06/12/2004 till 05/12/2007.

His service was to conclude by efflux of time. The monthly honorarium was @ Rs.3,000/- per month.

3. *The Education Department, by order dated 13/07/2006, refused to grant approval to the appointment of respondent No.1 as another Assistant Teacher Shri.Kadu Zipru Yewool was earlier appointed in the said place and the dispute with regard to his termination was subjudice.*

4. *Writ Petition No.6871/2006 in between the petitioner and Mr. Yewool was compromised on 12/02/2008. He was thereafter reinstated. However, since approval was refused by the Education Officer, the services of respondent No.1 were terminated vide letter dated 30/11/2007 w.e.f. 05/12/2007. She, therefore, preferred a review petition in W.P. No.6871/2006 (disposed of). This Court disposed of the review petition on 13/02/2012 granting liberty to respondent No.1 to prefer a proper appeal before the School Tribunal.*

5. *Respondent No.1 preferred Appeal No.70/2012. Delay was condoned. The appeal was allowed by judgment dated 25/10/2013 vide which respondent No.1 was reinstated in service with continuity and full back wages.*

6. *Grievance of Mr.Wani is that two persons cannot occupy the same post and back wages could not have been granted to respondent No.1 merely on the ground that the termination is set aside. He is seriously aggrieved by the order of the School*

Tribunal granting back wages even for the entire period of delay caused in filing the petition.

7. Mr.Brahme, learned Advocate submits that there is no connection in between respondent No.1 and Mr. Yewool since she was appointed on a clear vacant post, which was reserved for SC category. She is equipped with the caste certificate, which is placed on record. Mr.Brahme, therefore, submits that she can very well be accommodated on the clear vacant post despite the employment of Mr.Kadu Yewool, who belongs to OBC category.

8. In the light of the above, **Rule.** Learned Advocates and learned AGP waive service of Rule for the respective sides. Rule is made returnable on 10/09/2015.

9. During the pendency and decision of this petition, the petitioner shall reinstate respondent No.1. Her reinstatement would be subject to the result of this petition and would not create any equities in her favour. However, by way of interim relief, there shall be a 'stay' to the payment of back wages, as ordered by the School Tribunal. The reinstatement of respondent No.1 shall occur on or before 14/08/2015, failing which, the relief of stay to the back wages shall stand vacated."

3. The applicant/employee was reinstated in service and this Court has stayed the payment of back wages.

4. The grievance of the applicant is that the Management has forwarded a proposal to the Education Department treating him as a new employee inducted in 2015. This Court has not stayed the direction of continuity in service and has also recorded that her reinstatement would be subject to the result of the petition.

5. The applicant/employee submits that because she is treated as a fresh employee, she is getting a salary of about 28,000/- per month, instead of getting salary as per the 6th pay recommendations, treating her to be an employee inducted in service in 2004.

6. Learned Advocate for the Management submits that if this civil application is allowed, the applicant would get all the reliefs and the petition filed by the Management would be rendered infructuous. He points out that any relief granted to the applicant is subject matter of the writ petition, but it would not mean that the applicant should be granted even final reliefs, when the petition is still pending.

7. The learned AGP submits that as the petitioner/Institution is grant-in-aid, the State would release such salary to the applicant/employee as is permissible under the 6th pay commission recommendations or as per the applicable scale as the case may be,

keeping in view that the 7th pay recommendations have still not been made applicable.

8. I find that this Court has stayed the back wages and not the order of reinstatement with continuity in service.

9. In view of the above, this civil application is partly allowed. The Management is directed to forward the proposal of the applicant / employee for payment of monthly salary and for an approval treating her to be an employee who had joined as a Shikshan Sevak in 2004. The said approval would be subject to the result of the petition. The applicant cannot be paid meager salaries in the light of this fact situation. As such, the Management shall forward a revised proposal as directed in this order within a period of 3 weeks from today and subject to the result in the petition, the Education Department would sanction / grant the approval. Needless to state, the salary scale of the applicant would be at par with comparable teachers who have joined in 2004-2005 with the Education Institution.

10. Needless to state, as the applicant insists on being given the benefit of the Old Pension Scheme, this disputed issue will have to be

kept open, to be decided when the petition would taken up for final hearing.

(Ravindra V.Ghuge, J.)