

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

WRIT PETITION NO.2756 OF 2002

Smt.Pratibha Yeshwant Salve,
Age : 26 years, Occupation : Nil,
R/o Dhongde Digar, Taluka Sakri,
District Dhule.

...PETITIONER
(Orig. Appellant)

-VERSUS-

- 1 The Head Master,
Post Basic Adivasi Ashram Shala,
R/o Dhongde Digar, Taluka Sakri,
District Dhule.
- 2 The Chairman,
Dhule Zilla Kokni Adivasi Mandal,
R/o Dhongde Digar, Taluka Sakri,
District Dhule.
- 3 The Project Officer,
Ekatmik Adivasi Vikas Prkalpa,
Nandurbar, District Dhule.
- 4 The Post Basic Adivasi Ashram Shala,
Dhongde Digar, Taluka Sakri,
District Dhule.

...RESPONDENTS
(Orig. Respondents)

...
Advocate for the Petitioner : Shri S.P.Brahme a/w Shri M.S.Shah.
Advocate for Respondents 1, 2 and 4 : Shri P.R.Patil a/w Ms.Kalyani
Deshmukh.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st February, 2019

Oral Judgment :

1 The Petitioner/ original Appellant is aggrieved by the judgment and order dated 23.04.2001 delivered by the School Tribunal, by which, her Appeal No.DHL-20/1999 has been dismissed. Her challenge to the alleged oral termination dated 31.07.1999 has been rejected.

2 I have heard the strenuous submissions of Shri Brahme, learned Advocate for the Petitioner and Shri Patil, learned Advocate appearing on behalf of Respondent Nos.1, 2 and 4/ Management. Despite service of court notice, Respondent No.3 has chosen to remain absent.

3 Having heard the learned Advocates for the respective sides, it is apparent that there was no advertisement published by the Management calling for applications to the post of Assistant Teacher. On an application made by the Petitioner/ Appellant, she was issued with an appointment order dated 02.06.1997 clearly setting forth the terms of her appointment. The Petitioner was made aware that her appointment was of temporary nature, was for one academic year and that after the conclusion of the academic year, she would stand relieved. Similar order was issued on 02.06.1998 continuing her service for one academic year on temporary basis. It is undisputed that the Petitioner had worked for two academic years as a temporary Assistant Teacher.

4 The record reveals that Respondent No.3 granted an approval

for the temporary engagement of the Petitioner for the academic year 1997-1998. Vide order dated 28.04.2000, the said Project Officer has recorded that the permission to appoint an Assistant Teacher was not obtained by the Management and as such, there was no approval for the academic year 1998-1999. Another reason for not according approval is that the Project Officer does not have any record as regards the appointment of the Petitioner for the academic year 1998-1999.

5 The learned counsel for the Petitioner relies upon the eleven grounds formulated in the memo of the petition for challenging her disengagement. It is contended that having worked for two academic years, would imply that the Petitioner has completed her probation period. She was willing to work and was disallowed by the Management from reporting for work in the academic year 1999-2000.

6 It is quite obvious from the record that the Management has not followed the selection process. There was no advertisement and there is no record to indicate that the applications were invited from aspiring candidates for the post of Assistant Teacher. The Petitioner should have been alert and should have ascertained as to whether, she was applying pursuant to the selection process and as to whether, the position on which she was being appointed, was of a permanent nature.

7 The learned Advocate for the Petitioner submits that though she had worked from June, 1998 to April, 1999, the Management has not

paid her monthly salary.

8 The learned Advocate for the Respondent/ Management submits that this Court cannot entertain disputed questions. He submits that the contention was put forth before the School Tribunal that the Management has not paid the Petitioner her salary from 01.05.1998 till her disengagement on 30.04.1999. The School Tribunal has left the issue open for the Petitioner/ Appellant to approach the competent authority and raise such claim.

9 Considering the above, I find that the appointment of the Petitioner was not by following the due procedure applicable. In the absence of a valid selection process, merely because the Petitioner had worked as a temporary Assistant Teacher for two years, would not entitle her for reinstatement in service.

10 In the light of the above, this Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

11 It is, however, left open for the Petitioner/ Appellant to approach the Commissioner, Tribal Development, Nashik for raising her claim for unpaid salary for the academic year 1998-1999. In the event, the Petitioner approaches the said Authority within a period of SIX WEEKS from today, the concerned Authority shall cause a hearing in the matter. Respondent Nos.1, 2 and 4/ Management shall cooperate in the hearing before the said Authority and shall not seek unnecessary adjournments.

The competent authority would endeavour to decide the claim of the Petitioner as expeditiously as possible and in any case, on or before 31.05.2019.

kps

(RAVINDRA V. GHUGE, J.)