

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
42 WRIT PETITION NO.7638 OF 2018**

SAVITA LAXMAN BHOLE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Avishkar S. Shelke, Advocate for the
Petitioner.

Mr. S. M. Ganchari, AGP for Respondents-State.

Mr. Prakash S. Paranjape, Advocate for Respondent
Nos.3 and 4.

...

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATED : 26th FEBRUARY, 2019.

PER COURT:-

1. The petitioner assails the order of approvals dated 05.10.2017 and 06.12.2017 to the extent of approval granted to the service of the petitioner, as if the petitioner is transferred from non-grant to grant-in-aid. According to the learned counsel the petitioner is not transferred from B.Ed. to D.Ed. scale. It was only because the post was not available at the time the petitioner was reinstated under the orders of the Court, the petitioner accepted to work on the vacant available post for D.Ed. and subsequently when the B.Ed. post became vacant the petitioner is accommodated on the B.Ed. Post.

2. Mr. Ganachari, learned A.G.P. submits that as per the circular dated 28.06.2016 the Education Officer has rightly passed the order.

3. In fact, the circular dated 28.06.2016 would be inapplicable to the case of the petitioner. The petitioner was already appointed on B.Ed. Scale in the year 2008. He was terminated from the services by the institution. The petitioner filed Appeal before the School Tribunal. The School Tribunal allowed the Appeal. Even, this Court upheld the judgment of the School Tribunal directing reinstatement of the petitioner with back wages. The said order was not complied with. The petitioner approached this Court by filing writ petition no.8681/2014 and writ petition no.3702/2016. This Court under order dated 12.04.2017 allowed the writ petitions. The paragraph nos.9 and 10 of the order read thus:

"9. The petitioner is already reinstated in the year 2013. The respondent/institution shall accommodate the petitioner on the D.Ed. pay scale from January 2016 i.e. the date when the post became vacant. The institution shall submit the proposal to the Education Officer seeking approval to the appointment of the petitioner on the said post. The Education Officer shall not reject it on the ground that, there were surplus candidates to be accommodated. The institution will also submit the salary bill from January 2016 to the Education Officer, which shall be processed by the Education Officer.

10. As and when the post in B.Ed. scale would become vacant, the respondents would accommodate the petitioner in B.Ed. scale, as the petitioner possesses necessary qualification. We have passed this order to

adjust the equities. The services from the date of dismissal till reinstatement and the respondents absorbing the petitioner shall be counted for the purpose of continuity in service and other consequential benefits. The writ petitioners accordingly are disposed of with aforesaid observations. No costs"

4. The order is passed to adjust the equities. Safeguard was also made that the Government is not required to pay dual salary. The accommodation of the petitioner is pursuant to the orders of this Court. In view of that the respondent-authorities cannot consider the case of the petitioner as transfer from D.Ed. to B.Ed. scale and vice versa *inter alia* the circular dated 28.06.2016 would be inapplicable.

5. The petitioner shall be deemed to be accommodated on D.Ed. scale from 01.02.2016 and on B.Ed. scale from 01.06.2017, dehors the circular dated 28.06.2016. The part of the impugned order directing the payment of salary as per the circular dated 28.06.2016 is set aside. The respondents shall pay the salary to the petitioner accordingly.

6. Writ Petition accordingly stands allowed. No costs.

(A. M. DHAVALÉ)
JUDGE

(S. V. GANGAPURWALA)
JUDGE