

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4046 OF 2014

Banda Navbharat Shikshan Prasarak
Mandal and ors. .. Petitioners
Vs.
The State of Maharashtra and anr. .. Respondents

Mr.N.V.Bandiwadekar a/w Mr.Vinayak Kumbhar, for the
Petitioners.
Mr.V.M. Mali, AGP for State.

**CORAM : S.C.DHARMADHIKARI &
M.S.KARNIK, JJ.**

**RESERVED ON : 26th FEBRUARY, 2019
PRONOUNCED ON : 18th APRIL, 2019**

ORDER (PER M.S.KARNIK, J) :

. Rule. The respondents waive service. By consent,
Rule made returnable forthwith and heard finally.

2. By this Petition filed under Article 226 of the
Constitution of India, the petitioners - Banda Navbharat
Shikshan Prasarak and others pray for directions to respondent
No.2 to sanction and release grant-in-aid in favour of the

petitioners No. 1 and 2 for payment of salary to petitioner No.3 for her service in the post of full time teacher in petitioner No.2 - Junior College for the period from 12/06/2000 to 30/09/2003.

3. The facts of the case in brief are as under :-

The petitioner No.1 is an educational institution running several schools and colleges including petitioner No.2 - Saraswati Vidyamandir. It is a government recognised and aided private Junior College. Petitioner No.3 is qualified as M.Sc B.Ed. She was appointed as an Assistant Teacher in petitioner No.2 – Junior College from 22/09/1997 to 20/12/1997. Thereafter she was again appointed from 22/12/1997 to 30/04/1998. Respondent No.2 – Deputy Director of Education granted approval to the above appointment of the petitioner No.3.

4. The petitioner-Management published an advertisement on 02/05/1998 in the newspaper inviting

applications for full time post of teacher in petitioner No.2 – College. In response to this advertisement, petitioner No.3 made an application on 18/05/1998. In the selection process duly conducted, petitioner No.3 was selected and order of appointment dated 01/06/1998 was issued to the petitioner No.3 as a full time teacher. The petitioner joined on 09/06/1998. By order dated 04/11/2000, respondent No.2 granted approval to the appointment of petitioner No.3 with effect from 09/06/1998. Petitioner No.3 was appointed on probation and proposal dated 09/06/1999 was submitted to respondent No.2 for approval. By an order dated 28/04/2000, respondent No.2 granted approval to appointment of petitioner No.3.

5. Insofar as academic year 1998-99, the approval of petitioner No.3 was refused on 23/07/1999 on the ground of availability of surplus teachers and backlog of reservation.

6. Petitioner No.3 was appointed as an assistant

teacher on probation for 2 years by an order dated 08/06/2000. She joined duty on 12/06/2000. During this recruitment, one candidate from open category and one candidate from reserved category came to be appointed and thus, petitioner No.3 was given benefit of 50% reservation in that recruitment year.

7. By an order dated 23/07/2003, respondent No.2 issued order for approval to the employees. The approval to the petitioner No.3 was refused on the ground of surplus and backlog of reservation. By an order dated 29/09/2003, petitioners No.1 and 2 terminated service of petitioner No.3 from 30/09/2003. Aggrieved by the order of termination, petitioner No.3 filed Appeal No. 91 of 2003 before the School Tribunal, Kolhapur. An interim order was passed by the Tribunal directing the Management not to fill up the post until further orders. The School Tribunal set aside the order of termination and directed reinstatement of the petitioner No.3 to the original post with full back-wages and other incidental benefits by order dated 21/04/2004.

8. The petitioner No.3 was accordingly reinstated on 01/10/2004 and thereafter proposal was submitted to respondent No.2 for approval. Respondent No.2 by order dated 15/10/2004 issued order granting approval to petitioner No.3 from 12/06/2000 onwards for each academic year for next 4 years. In the said order, by way of a footnote, it was stated that approval is being granted as per the decision of the School Tribunal and the salary for the said period shall be paid by the Management.

9. The petitioner No.2 sent a letter to respondent No.2 making grievance about the aforesaid footnote regarding responsibility of Management to pay salary. On 02/01/2005, respondent No.2 informed the petitioner No.2 that the direction contained in the footnote is correct. On 10/02/2005, petitioner No.2 sent a letter informing respondent No.2 that salary of the employees working in aided school is paid by the government and therefore it cannot be responsibility of the Management to pay salary of the petitioner No.3 from 12/06/2000 to

30/09/2003. By letter dated 02/05/2005, respondent No.2 informed the petitioner No.2 that services of the petitioner No.3 were continued even after proposal was refused and therefore, it is the responsibility of the Management to pay her salary and government is not responsible for the same.

10. Learned Counsel for the petitioner contends that the petitioner No.3 was appointed on duly sanctioned vacant and aided post. Petitioner No.3 actually worked in Junior College from 12/06/2000 till 30/09/2003. Respondent No.2 has also granted approval for appointment of petitioner No.3 with effect from 12/06/2000. During that period, no other candidate was appointed in that post/vacancy except petitioner No.3. Learned Counsel for the petitioner would submit that the Management has not claimed, obtained and received from the respondents any amount towards salary grant in respect of that post and therefore, the respondents are liable to release and pay grant-in-aid for payment of salary to petitioner No.3 in respect of said post for the aforesaid period.

11. Learned AGP submitted that the petitioner No.3 is not entitled to any relief and as the petitioner was appointed on the post which was meant for surplus teachers and there was backlog of reservation. He would submit that action of the Management, terminating petitioner's service was challenged before the School Tribunal. Consequent to the direction of the School Tribunal to reinstate the petitioner, the petitioner is reinstated. Therefore for the period from 12/06/2000 to 30/09/2003, it is the responsibility of the Management to pay the salary. According to the learned AGP, pursuant to the order for reinstatement, respondent No.2 has granted approval from 11/06/2001, but the liability to pay the salary has been rightly foisted on the Management. Even the approval for the subsequent years was granted pursuant to the order passed by the School Tribunal therefore, liability to pay salary during the disputed period is that of the Management.

12. We have heard learned Counsel for the petitioners and learned AGP for the respondents. We have also gone

through the Petition and annexures. It is not in dispute that the petitioner No.3 has actually worked during the period 12/06/2000 to 30/09/2003 on a clear and permanent vacancy in a sanctioned post. The respondents raised an issue of surplus and backlog of reservation, as a result of which, the petitioner's service came to be terminated from 30/09/2003. Pursuant to the order of the School Tribunal, the petitioner No.3 was reinstated. The School Tribunal directed payment of full back-wages from the date of termination till her reinstatement and other incidental benefits such as continuity of service, increments, difference in pay etc. Pursuant to reinstatement, respondent No.2 approved the appointment of petitioner No.3. The appointment of petitioner No.3 is approved from 12/06/2000 onwards. There was therefore no reason for the respondent No.2 to have stated by way of a footnote that the liability to pay salary is that of the Management. When it is not in dispute that the petitioner No.3 has discharged her duties during this period 12/06/2000 to 30/09/2003 in clear and vacant post and when the approval to the said appointment is

granted, then it was incumbent for the respondents to have released the grant-in-aid in favour of the petitioners No. 1 and 2 for payment of salary to petitioner No.3 for her service in the post of full time teacher in petitioner No.2 - Junior College for the period from 12/06/2000 to 30/09/2003. It is not as if during this period any other teacher has worked in the said post and now the petitioners are claiming additional salary grants. It is the petitioner who has actually worked and therefore there is no reason why the salary grants for this period should not be released.

13. The Petition therefore deserves to be allowed and it is accordingly allowed in terms of prayer clause (b).

14. Rule is made absolute in the above terms with no order as to costs.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)