

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1261 OF 2014

Samina Mukhtar Dalwai	 Petitioner
Vs.	
Navkokan Education Society, D.B.J. College, Chiplun & Others	 Respondents

Mr. C.R. Sadasivan i/by Mr. N.M. Ganguli for
the Petitioner.

Mr. Harshad Sathe i/by Mr. Harshad Bhadbhade
for Respondent Nos.1 & 2.

Mr. S.B. Kalel, AGP, for the Respondent-State.

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

DATE : FEBRUARY 15, 2019

P.C:

1. This petition under Article 226 of the Constitution of India has been filed in the year 2013 and to be precise, on 19-11-2013. The relief prayed is that, the 3rd respondent to this writ petition should grant approval to the appointment of the petitioner in the post of Assistant Teacher in Chemistry at respondent No.2-college for the aided and unaided sections

during the period 10-8-2010 to 12-6-2011.

2. We have heard Mr. Sadasivan at some length and we find that the petitioner in this petition has not disputed that though qualified, according to her, she was appointed in the permanently non-grant/unaided section and on clock hour basis in the aided section. She was appointed as an Assistant Teacher in Chemistry but in the unaided section and on clock hour basis in the aided section with effect from 10-8-2010. An appointment order was issued in her favour. According to her, her services were purportedly terminated by a termination order of 13-4-2011. She approached the Tribunal and the Tribunal refused to assist her. That was because she approached the Tribunal belatedly and could not satisfy it as to sufficiency of the cause which prevented her from approaching the Tribunal earlier. The order of the Tribunal dismissing her appeal was challenged in this Court by filing Writ Petition No.9383 of 2012 and that was also dismissed on 20-6-2013. The petitioner claims that while she was in service, the workload approved was six clock hours per week in the aided section and to be paid at the

rate of Rs.72/- per hour. The approval was also granted to such an appointment but the petitioner claims that she was not paid the amount and particularly when she was in the aided section but as a full-time teacher, the approval was not sought by the Management to such an appointment and the result was that the petitioner could not obtain the pay-scales which are admissible to the teachers placed at her level. She worked on a consolidated amount of Rs.8,000/- per month from 10-8-2010 to 30-4-2011. Thus she was deprived of her full salary and admissible to this post. Now she desires such a salary and a direction to that effect be issued, is the argument of Mr. Sadasivan.

3. Pertinently, the appointment in the aided section made by the Management was brought to the knowledge of the Government only in the year 2011. Secondly, that appointment which is stated to be made in the unaided section but at full workload was not approved and the petitioner was not, therefore, granted the pay-scales in such workload. The petitioner accepted that and till the date of her termination did

not question it. The termination also was unsuccessfully assailed. As far as the work done in the aided section and on clock hour basis is concerned, we do not find that any serious grievance was made nor any dispute was ever raised about the limited hour work which was taken from her.

4. To our mind, the petitioner cannot argue that, what I have challenged and sought relief against was only the termination. That was allegedly unlawful and illegal. The writ petition lies insofar as relief of salary is concerned.

5. In the facts and circumstances of this case such an argument is difficult to accept, for what might have been sought is deemed to have been sought and refused and now to say that though the termination is final, the other relief can still be granted for the period during which the petitioner was working, is a plea in desperation. It is clear that if the termination had been set aside, then, all the permissible reliefs would have been granted but the termination remains and now in such a petition, after nearly six years, we cannot grant that relief which is

consequential to the termination of the petitioner being set aside. To our mind, this writ petition is entirely misconceived. It is, therefore, dismissed.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)