

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

**6 WRIT PETITION NO.360 OF 2019
WITH
CA/8764/2019 IN WP/360/2019**

**BHAGYASHRI MOHAN PAWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner :
Mr. Nimbalkar Aniruddha A.
AGP for Respondents No. 1 to 3 :
Mrs. V. N. Patil-Jadhav
Advocate for Respondents No. 4 & 5 :
Mr. Munde Dhanraj P.
Advocate for Applicant : Mr. A. N. Kakade

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**CORAM: S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATE: 27th FEBRUARY, 2020

PER COURT:

1. The proposal seeking approval to the appointment of the petitioner is not considered by the respondent on the contrary sent respondent no. 6 for absorption in respondents no. 4 and 5 institution under order dated 01.12.2018. The petitioner is assailing the same.

2. Mr. Nimbalkar, the learned counsel submits that earlier the approval of the petitioner was rejected, pursuant thereto the petitioner was terminated on 01.03.2014. The petitioner challenged the said order of termination before the school tribunal by filing Appeal No. 79 of 2014. The appeal of the petitioner is allowed under judgment and order dated 02.07.2015. In spite of the same, for the proposal forwarded subsequently the order of the school tribunal is not considered by the Education Officer.

3. Mr. Nimbalkar, the learned counsel further submits that respondent no. 6 now is absorbed / repatriated to his parent institution and is working with the parent institution.

4. Mr. Nimbalkar, the learned counsel has placed on record the communication and the certificate issued by the Vidya Vikas Madhyamik Vs Uccha Madhyamik Vidyalaya, Achler, the same is marked "X" for identification.

5. The learned A.G.P. submits that the post was meant for the reserved category. The petitioner is from Open category. The candidate from reserved category was sent for absorption to the respondent institution. In view of that, the approval could not have been granted to the petitioner.

6. We have also heard learned counsel for respondents no. 4 and 5.

7. Mr. Kakade, learned counsel for the intervenor submits that the petitioner is an employee of respondents no. 4 and 5. The petitioner was illegally terminated. The petitioner has challenged the said termination by filing appeal before the school tribunal, the same is pending. According to the learned counsel, in fact the petitioner is appointed in place of the intervenor.

8. The appeal filed by the petitioner before the school tribunal against the order of termination and rejection of approval is allowed. The tribunal has passed the following order-

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ORDER

1. *The appeal is allowed with costs.*
2. *The termination order dtd. 01/03/2014 is declared illegal and hence, quashed and set aside.*
3. *Appellant is reinstated with continuity of service as Assistant Teacher from the date of her termination and entitled for full back wages.*
4. *Respondent Management shall comply the order within 30 days from the date of the order.”*

9. The tribunal has held that the rejection of approval by respondent no. 3 on the ground of backlog is illegal and the post for open category candidate was available.

10. In view of the judicial finding by the school tribunal it is not open for the Education Officer now to contend otherwise.

11. As respondent no. 6 is already repatriated to the parent institution the prayer challenging his absorption in respondents no. 4 and 5 does not survive.

12. In light of the above, the Education Officer will have to consider the judgment delivered by the school tribunal in the appeal filed by the

petitioner and grant approval to the appointment of the petitioner.

13. In case the present petitioner is appointed on the post which was held by the intervenor then the approval granted to the petitioner by the Education Officer would also be subject to the decision of the school tribunal in the appeal filed by the intervenor. Depending upon the judgment delivered by the tribunal, the further course will have to be adopted.

14. With the aforesaid observations, writ petition stands disposed of. No costs.

15. In view of disposal of the writ petition, civil application is also disposed of.

[SHRIKANT D. KULKARNI, J.]

[S. V. GANGAPURWALA, J.]

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