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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2015 OF 2019**

Anil Kumar Jivabhai Jethwa ..Petitioner

vs.

Union of India through the  
Adminstrator & ors. ..Respondents

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Mr. Rahul Walia a/w. Mr. Brijesh Nittekar for petitioner.  
Mr. Shrishailya S. Deshmukh for respondents.

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**CORAM : NITIN JAMDAR &  
M.S.KARNIK, JJ.**

**DATE : 3 FEBRUARY 2020**

**P.C.:-**

Heard learned counsel for the parties.

2. After having heard learned counsel for the parties, we are of the opinion that the proceedings need to be remanded to the Central Administrative Tribunal and in view of this position bare facts necessary for this order are stated herein below.

3. The Petitioner filed O.A. No.171 of 2015 in the Central Administrative Tribunal, Mumbai. It is the case of the Petitioner that after one drawing teacher was working in the Government

High School, Ghoghla, who passed away sometime in the year 2004, Labour Inspector was contacted for recommending the names of the eligible candidates for appointment to the post of drawing teacher on 14 October 2004 and list of eligible candidates was forwarded by the Labour Inspector. It is the case of the Petitioner that the Selection Committee, after conducting due selection process selected the Petitioner and engagement letter was issued on 20 October 2004. It is further case of the Petitioner that similar letters have been issued from time to time. On this basis, the Petitioner sought regularisation of his services as drawing teacher with effect from October 2004

4. A reply was filed on behalf of the Respondents before the Tribunal wherein it was stated that one post of drawing teacher was kept vacant due to interim orders passed by the Tribunal. It was the stand of the Respondents that the Petitioner is not appointed through regular channel and appointment is not against sanctioned post.

5. Before the Tribunal, as the impugned order would show, there were 10 applications wherein 10 different persons had sought relief of regularisation. The Tribunal by common order dated 21 December 2018 dismissed the O.A. holding that the applicants therein are not entitled for regularisation.

6. Petitioner's contention thus is that the Petitioner is entitled to be regularized as the appointment of the Petitioner cannot be termed as back-door entry and there was a regular selection process conducted while it is the contention of the Respondents that the Petitioner's entry is a back-door entry and there is no sanctioned post.

7. Perusal of the impugned order shows that though the relief for regularisation was claimed by all 10 applicants, the facts of each case and the basis of the claim was different. Some had claimed that they had participated in the process pursuant to an advertisement and there was dispute regarding marks allotted in the said advertisement. However, the Petitioner's case was not of an entry pursuant to an advertisement but the Petitioner's case was that he was appointed in place of a drawing teacher which had fallen vacant on his demise. Therefore, the Petitioner's case deserves a separate treatment to consider his claim.

8. Learned counsel for the Petitioner has drawn our attention to the discussion in respect of the Petitioner's claim which is found in paragraph 83 of the impugned order. It is clear that the Tribunal has mixed up the case of the petitioner with the cases of other applicants wherein there is a repeated reference to he advertisement. The Tribunal has focused on the facts which are not arising from the petitioner's case. In these circumstances, it

will be appropriate that the Tribunal considers the petitioner's case independently and decide the same as per the law and facts applicable to the petitioner's case.

9. The Petitioner has apprehended termination of services and by order dated 13 February 2019, he was protected. We are inclined to continue this protection further. It is not in dispute before us that the Petitioner continues to work even as on today. Since the proceedings are being remanded to the Tribunal, it would be appropriate that the Petitioner's services be protected till its disposal. Till the disposal of the proceedings before the Tribunal the services of the Petitioner shall not be terminated.

10. The impugned order passed in O.A. No.171 of 2015 dated 21 December 2018 is quashed and set aside. The O.A. stands restored to file of the Central Administrative Tribunal to be decided as per law and facts. If any of the parties make an application of early hearing of the proceedings, the Tribunal may consider the same for expeditious hearing as per its time schedule. All contentions of the parties are kept open and reference to the arguments is only for the purpose of stressing on the need to remand.

(M.S.KARNIK, J.)

(NITIN JAMDAR, J.)