

Bhogale

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

WRIT PETITION NO. 4261 OF 2019

The Chairman, Promoad Madhukar Gorhe
Maharshi Karve Stree Shikshan Sanstha & ors. .. Petitioners
vs.

Aditi Ajay Shelar Alias
Shubhangi Digambar Jadhav & ors. .. Respondents

Mr. K.S. Bapat I/b. Mr. Sandeep Waghmare for the Petitioners.

Mr. S.C. Naidu a/w Dr. Ramesh Asawa I/b. C.R. Naidu & Co. for
Respondent No.1.

Mrs. M.S. Bane, AGP for the State/Respondent Nos.2 and 3.

CORAM : M.S.KARNIK, J.

DATE : FEBRUARY 16, 2021

P.C.:-

Heard learned counsel for the parties.

2. The Petitioner-Institution is challenging the order passed by the School Tribunal dated 18.01.2019 partly allowing the Appeal filed by the Respondent No.1-Teacher who was working in one school run by them.

3. It is the case of the Respondent No.1 before the Tribunal that she was appointed as a part time Shikshan Sevak for the

period from 27.06.2008 to 26.06.2011 and the said appointment was approved by the Education Officer. Thereafter for the period from 27.06.2011 to 26.06.2014 the Respondent No.1 was again appointed as part time Assistant Teacher (Probationary) Shikshan Sevak. The Respondent No.1 completed six years as a part time Teacher. The post was a permanent sanctioned post of Assistant Teacher. The Respondent No.1 was continued even thereafter.

4. The Education Officer instead of granting approval to the appointment of Respondent No.1 for a period of three years from 27.06.2011 to 26.06.2014 granted approval only for a period of one year though Respondent No.1's appointment on the same post was initially approved for three years for period from 2008-2011.

5. The Management terminated the services of the Respondent No.1 w.e.f. 02.02.2015 as there was no order of approval for the period 2012 onwards as the School was on grant-in-aid.

6. In the Appeal filed challenging the order of termination, the School Tribunal declared the order of termination dated 02.02.2015 as illegal and directed the Petitioner to reinstate the

Respondent No.1 to the original post with consequential benefits, seniority, increment and continuity of service. The prayer in respect of full backwages was rejected.

7. Assailing the order passed by the School Tribunal learned counsel for the Petitioners submits that as the Petitioner-School is receiving grant-in-aid, it is not possible to reinstate the Respondent No.1 as there is no approval granted by the Education Officer.

8. Learned counsel appearing for the Respondent No.1 invited my attention to the order passed by this Court in Writ Petition No. 10574 of 2017 in an earlier round of litigation between the Petitioners and the Respondent No.1. This Court then had remanded the matter to the Tribunal for reasons recorded therein whereafter the impugned order is passed by the Tribunal. This Court had then directed the Education Officer to remain present at the time of hearing of the Appeal before the School Tribunal. Perusal of the impugned order passed by the School Tribunal would indicate that despite the directions of this Court the Education Officer did not remain present but sent adjournment application by post. The Tribunal recorded that even thereafter the Education Officer did not remain present before the Tribunal.

9. In paragraph 28 of the impugned order it is recorded that there are as many as 33 vacant posts in the open category. Even today when the Petition was heard learned counsel for the Petitioners on instructions submits that there is one vacant post of the Assistant Teacher in the open category on which Respondent No.1 can be reinstated in compliance with Tribunal's order.

10. As this Court had directed the Education Officer to remain present before the Tribunal it was expected that the Education Officer abide by the orders of this Court. Considering the observations made in the order passed by this Court in Writ Petition No.10574 of 2017 it is obvious that the presence of the Education Officer before the School Tribunal would have assisted the School Tribunal in passing an effective order on the issue of approval to the Respondent No.1's appointment also. Instead of remanding the matter to the Tribunal and directing the Education Officer to remain present before the Tribunal in compliance with the earlier order passed, in my opinion, in the peculiar facts of the present case the issue of approval can be put at rest in this Petition. Considering the order that I propose to pass now, this Court refrains from going into the question as regards the breach committed by the Education Officer of the order passed by this

Court. In these peculiar facts instead of directing the Education Officer to consider the proposal, in the interest of justice, I feel it appropriate to direct the Education Officer to approve the proposal submitted by the Petitioner regarding appointment of Respondent No.1. The approval was initially granted by the Education Officer for the period from 27.06.2008 to 26.06.2011. Thereafter when the Respondent No.1 was appointed for three years as Assistant Teacher (Probationary) and all along she was working on a permanent vacant post, there was no reason why the Education Officer should have granted approval for one year only. The Respondent No.1 worked for almost seven years on the permanent vacant post.

11. I have gone through the order passed by the School Tribunal. The Tribunal has referred to the copy of the advertisement issued on 19.05.2008 pursuant to which Respondent No.1 was appointed. Not only the appointment of the Respondent No.1 as a part time teacher was approved initially for three years but even for the later period the approval was granted for one year. The Education Officer did not remain present before the School Tribunal despite specific directions of this Court. In any case the Tribunal has set aside the order of termination for the reasons recorded in the impugned order, I see

no reason to interfere with the well reasoned order passed by the School Tribunal in the exercise of the writ jurisdiction under Article 227 of the Constitution of India as I do not see any perversity in the findings recorded. Even learned counsel for the Petitioners is not averse to comply with Tribunal's order but expresses concern that the post on which the Respondent No.1 has to be reinstated is a permanent vacant post in the open category getting grant-in-aid.

12. Considering that there is one post vacant of Assistant Teacher on which the Respondent No.1 will be reinstated according to the Petitioners, as the said post is sanctioned permanent vacant post, in the interest of justice and in the peculiar facts of the present case it is directed that the Education Officer grant approval in terms of the proposal submitted by the Petitioners which is at Page 23. Needless to mention that the Tribunal has already rejected the relief of backwages and even today the Respondent No.1 gives up the claim of backwages.

13. The learned counsel for the Petitioners on instructions says that Respondent No.1 will be reinstated on or before 28.02.2021. Learned counsel says that it has been mutually decided between the Petitioners and the Respondent No.1 that so far as the claim of wages for the period from the date of the order passed by the

School Tribunal till reinstatement is concerned, the Petitioners would pay a lump sum amount of Rs.5 lakhs to the Respondent No.1 within a period of ten weeks from today which Respondent No.1 has agreed to accept and no liability of wages till reinstatement will be foisted on the Government. Statement accepted.

14. So far as the salary bills for the period the Respondent No.1 actually worked till termination and pursuant to reinstatement is concerned, the bills obviously should be raised to the Education Officer. Needless to mention that if the Education Officer points out any deficiency in the proposal submitted or there is any need to submit further proposal for approval/salary bill, learned counsel for the Petitioners submits that the Management would comply with the said directions. The appointment of the Respondent No.1 shall be approved as per the proposal submitted at page 23 of this Petition.

15. The Writ Petition is disposed of in the above terms.

(M.S.KARNIK, J.)