

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

WRIT PETITION NO.3242 OF 2021

Subhash Fakira Chaudhari

... Petitioner

Vs.

The Education Officer (Secondary)

& Ors.

... Respondents

**WITH
INTERIM APPLICATION NO.1909 OF 2021
IN
WRIT PETITION NO.3242 OF 2021**

Subhash Fakira Chaudhari

... Applicant

In the matter of :-

Subhash Fakira Chaudhari

... Petitioner

Vs.

The Education Officer (Secondary)

& Ors.

... Respondents

Mr.S.G. Kudle for the Petitioner/Applicant.

Mrs.P.J. Gavhane, AGP for Respondent-State.

Mr.M.V. Limaye a/w Ms. Kettaki Karale for the Respondent-Management.

**CORAM : R.D. DHANUKA &
ABHAY AHUJA, JJ.**

DATE : 22ND SEPTEMBER 2021

(THROUGH VIDEO CONFERENCING)

P.C. :

1. Rule. Respondents waive service. Returnable forthwith.

2. By this Writ Petition filed under Article 226 of the Constitution of India, the Petitioner has impugned the order dated 7th/ 9th April, 2021 passed by Respondent No.1 rejecting the Petitioner's claim for grant of approval for the post of Assistant Teacher with effect from 13th June, 2007 and for other reliefs.

3. In the Interim Application, the Applicant has prayed for setting aside the impugned order dated 28th July, 2021 passed by Respondent No.3 thereby terminating the services of the Petitioner and for other interim reliefs.

4. A perusal of the impugned order, which is the subject matter of the Interim Application, indicates that the services of the Petitioner are terminated on the ground that the Petitioner was working in the primary school, which was started without any permission obtained from the Education Department by the Management of the said school.

5. With the assistance of the learned counsel for the parties, we have perused some of the documents annexed to the Writ Petition and also the Interim Application filed by the Petitioner and the affidavit-in-reply and

sur-rejoinder filed by the Respondents.

6. It is the case of the Petitioner that all throughout the Petitioner was appointed in the secondary school and was teaching in 8th and 9th Standard in the school owned by the said Management and not in the primary section. It is also the case of the Petitioner that the Petitioner was also given the assignment of an examiner by the S.S.C. Board for Secondary School Examination and thus, it is totally incorrect on the part of the Respondents to inculcate that the Petitioner was appointed in the primary school, which was unauthorised.

7. Mr. Limaye, learned counsel for the Respondent-Management vehemently urged before this Court that the Headmaster of the said school had colluded with the Petitioner and had taken contrary stand against the management in the correspondence and in the proposal for approval of the Petitioner in the said post. According to the learned counsel the said Headmaster has been colluding with the Petitioner for last more than 10 years. Learned counsel does not dispute that no action has been taken by the Management against the said Headmaster in respect of such alleged collusion between the Headmaster and the Petitioner.

8. Though, our attention is invited to various documents by Mr. Kudle, learned counsel for the Petitioner in support of his submission that the documents would clearly indicate that his appointment was in the secondary school and not in the primary school, since the case of Respondent-Management is that the Education Officer has not conducted any inquiry on this aspect whether the Petitioner was appointed in primary or secondary school, it would be appropriate to direct the Deputy Director of Education, Mumbai to conduct an inquiry on this factual aspect, after hearing the Petitioner as well as the Management and to pass an order whether the Petitioner was appointed in the secondary school of the Management or in the primary school and if he was appointed in the primary school then whether the said school was started by the Management without obtaining any prior sanction from the Education Department or not. If the Deputy Director of Education, Mumbai renders a finding that the Petitioner was appointed in the secondary school and not in the primary school, the Management shall implement such decision as would be taken by the Deputy Director of Education, Mumbai.

9. We accordingly pass the following order :-

(i) The impugned letter of termination dated 28th July, 2021

is hereby quashed and set aside.

- (ii) The impugned order dated 7th / 9th April, 2021 is hereby quashed and set aside.
- (iii) We direct that the Management shall send a proposal for seeking an appointment of the Petitioner, after such finding is rendered by the Deputy Director of Education, Mumbai and till such time the Petitioner shall be paid salary at the rate which was being paid currently by the Management, which shall be accepted by the Petitioner without prejudice to the rights and contentions of the Petitioner.
- (iv) The Deputy Director of Education, Mumbai shall decide the matter fresh without being influenced by the findings in the impugned order dated 7th / 9th April, 2021 and the letter of termination dated 28th July, 2021 and in accordance with law after considering the oral and written submissions as may be filed by the parties.

- (v) The Deputy Director of Education, Mumbai shall decide the issue within a period of eight weeks from the date of communication of this order. The Deputy Director of Education, Mumbai shall issue seven days advance notice to the Petitioner as well as the Management to remain present.
- (vi) The Petitioner as well as the Management would be at liberty to file their written arguments alongwith supporting documents before the Deputy Director of Education, Mumbai.
- (vii) The order which would be passed by the Deputy Director of Education, Mumbai shall be conveyed to the Petitioner as well as the Management within a period of one week from the date of passing such order. The party aggrieved would be at liberty to file appropriate proceedings. If any adverse order is passed by the Deputy Director of Education, Mumbai against the Petitioner, such order shall not be enforced for a period

of two weeks from the date of communication of the order.

- (viii) Writ Petition as well as Interim Application are allowed in the aforesaid terms. No order as to costs.
- (ix) Parties as well as the Deputy Director of Education, Mumbai to act on the authenticated copy of this order.
- (x) The learned AGP has agreed to convey this order to the concerned Deputy Director of Education, Mumbai for information and compliance.
- (xi) Petitioner would be entitled to seek consequential relief depending upon the outcome of the findings of the Deputy Director of Education.

10. Rule is made absolute in aforesaid terms. Writ petition is disposed of. No order as to costs.

(ABHAY AHUJA, J.)

(R.D. DHANUKA, J.)