

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**910 REVIEW APPLICATION (CIVIL) NO.23 OF 2021
IN WP/3116/2019**

MOHAMMED HANIFUDDIN KHAN AMINUDDIN KHAN
VERSUS
ALL SISTERS EDUCATIONAL AND WELFARE SOCIETY
AURANGABAD THROUGH PRESIDENT AND OTHERS

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Dr. R.J. Godbole, Advocate for the petitioner.
Mr. Sanjay Kolhare, Advocate for respondent Nos.1 to 3.
Mr. C.D. Biradar, Advocate for respondent No.4.
Smt. M.A. Deshpande, A.G.P. for respondent No.5.

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CORAM : **RAVINDRA V. GHUGE AND
SANDIPKUMAR C. MORE, JJ.**

DATED : 07-06-2022.

P.C. :

1. By this petition, the Review Petitioner, who is the original petitioner in Writ Petition No. 3116 of 2019, prays for review of the order dated 19th March, 2019 vide which his writ petition, challenging the refusal of the Education Officer to accord approval to his appointment with retrospective effect, has been dismissed.

2. We have considered the extensive submissions of the learned Advocates for the respective sides and the learned

A.G.P. The State Government has a little role to play in this matter, keeping in view that the Education Officer (Primary), Zilla Parishad, Aurangabad is one of the contesting respondents.

3. The following factors have nexus with the Review Petition preferred by the petitioner;-

(a) The petitioner was appointed as an Assistant Teacher in the respondent School on 05.12.1995, against a sanctioned and aided post.

(b) On 19.03.1999, the respondent Management terminated the petitioner.

(c) The petitioner preferred Appeal No. 116 of 1999 under Section 9 of the The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 before the School Tribunal.

(d) By judgment dated 26.08.2003, the School Tribunal allowed the appeal preferred by the petitioner and concluded that his termination was illegal, thereby granting him reinstatement with continuation in service and back wages.

- (e) The Management preferred Writ Petition No.4177 of 2003 which was dismissed by a reasoned order passed by the learned Single Judge of this Court on 07.10.2003.
- (f) The Management preferred a Letters Patent Appeal No.232 of 2003 before the Appeal Bench of this Court.
- (g) By an interim order dated 11.03.2004, the Appeal Bench allowed Civil Application No. 9587 of 2003 and directed the Management to reinstate respondent No.2 on the vacant 14th post of an Assistant Teacher which was a sanctioned vacancy.
- (h) The Appeal Bench ruled at an interim stage that the petitioner can be accommodated against the said vacancy till decision in Appeal No. 94/2003 filed by one, Smt. Salma Begum who had challenged her termination before the School Tribunal in the same Appeal. Smt. Tahniyat Afroj Javed Ahmed was appointed in her place on 27.03.2003 as a Shikshan Sevak. The proposal of Smt. Tahniyat Afroj Javed Ahmed

was not submitted for approval as she was purely temporary.

(i) The Management entered into a compromise with the present petitioner vide compromise purshis dated 03.10.2017. The Management agreed to continue the petitioner in continuous service w.e.f. 05.02.1995 and forward his proposal for approval from the date of his joining. It was also agreed that his salary bills w.e.f. 01.12.2004 would be forwarded for grant of salary through salary grants.

(j) By virtue of the compromise terms, the Letters Patent Appeal No. 232 of 2003 filed by the Management was disposed off as withdrawn by the Management in the light of the compromise terms which were taken on record and marked as 'X' for identification.

4. The Management appears to have resorted to a fresh recruitment of Assistant Teachers by suppressing the proposal of the petitioner for approval considering the facts and circumstances recorded as above. The newly appointed Assistant Teachers were granted approval by the then

Education Officer since the Management forwarded their proposals by keeping the Education Officer in the dark about the above factors and the crystallized right of the petitioner for grant of approval as a permanent Assistant Teacher. Consequentially, the salary grants available to the Management were consumed in payment of salaries of such newly appointed Assistant Teachers, who were granted approval by the Education Officer. As the petitioner agitated on his rights, the Management forwarded his proposal for approval and the same was turned down by the Education Officer by an order dated 01.10.2018 on the ground that the sanctioned posts were already filled in by new appointments and they were granted approval prior to the proposal of the petitioner being forwarded by the Management. It was in this backdrop that the petitioner preferred Writ Petition No. 3116 of 2019, which has been dismissed by the order dated 19/03/2019, which is sought to be reviewed.

5. The above factors are undisputed.

6. We find from the order passed by us on 19th March, 2019 that the above factors were not brought to our notice in such details as have been recorded by us herein-above. We

were therefore of the impression that when the sanctioned posts of Assistant Teachers were filled in and approval was granted, the petitioner's claim could not be approved. It was not brought to our notice that the claim of the petitioner had a right of precedence before the newly appointed teachers' proposals could be forwarded for approval. Having not been appraised of this aspect, we dismissed the petition by the order dated 19th March, 2019 which is sought to be reviewed.

7. It calls for no debate that considering the above factors, the claim of the petitioner for approval as well as payment of salary from the salary grants was a crystallized right, inasmuch as, if by the mischief of the Management the salary grants were consumed in making salary payments to those Assistant Teachers who were subsequently appointed, ignoring the claim of the petitioner, the State Government cannot be foisted with the financial burden of making double payment, in the sense, making payment of salary to the petitioner when salaries of the other teachers were already made. In this backdrop, it would be the Management which would have to shoulder the burden of unpaid salary of the petitioner as he has an undefeasible right.

8. Considering the above and in view of the law laid down by the Hon'ble Apex Court in *Lily Thomas vs. Union of India, AIR 2000 SC 1650*, we find that the error appearing on the face of the order dated 19th March, 2019 has been pointed out by the petitioner.

9. In view of the above, this Review Petition is allowed. The order dated 19th March, 2019 stands recalled and Writ Petition No. 3116 of 2019 stands restored to the stage at which it was dismissed.

10. The learned Advocate for the Management submits that recently, the Education Officer has granted approval to the appointment of the petitioner, albeit w.e.f. 01.01.2021 as against the approval which should have been granted to his appointment from 1995.

11. Be that as it may, the petitioner would naturally continue in service in view of his approval and would be entitled for salary as per the approved scales through the salary grants until the writ petition is decided or until he attains age of superannuation which is around 13 years hence.

12. List Writ Petition No. 3116 of 2019 on 16th June, 2022, to be called out after the urgent admissions board is over. We make it clear that a request for adjournment would not be entertained.

13. Needless to state, since all the parties are before us, we are not reissuing notices of hearing to the respondents.

(SANDIPKUMAR C. MORE, J.)

(RAVINDRA V. GHUGE, J.)