

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8067 OF 2016

Jaiprakash Kailashnath Upadhyay ... Petitioner.
V/s.

The Secretary, Adishakti Hindi Prachar
Samiti & Others ... Respondents.

Mr. Mayuresh S. Lagu, for the Petitioner.
Mr. Anand S. Kulkarni, for Respondent No. 3.
Mr. Vikas Mali, AGP, for the Respondent No. 4-State.

**CORAM : NITIN JAMDAR AND
AMIT BORKAR, JJ.**

**DATE : 10 JANUARY 2022.
(Through Video Conferencing)**

P.C. :

By an order passed on 29 September 2021, the petition is directed to be taken up for disposal.

2. The Petitioner has sought a direction to the Respondent Nos. 1 and 2 to continue the Petitioner as a Assistant Teacher and pay the pay-scales as admissible under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules framed thereunder.

3. The Petitioner was appointed as Shikshan Sevak by appointment order dated 13 June 2001 till 30 April 2004. The Respondent Nos. 1 and 2 discontinued the services of the Petitioner on 16 August 2003. The Petitioner filed Appeal No. 21-A of 2009 under Section 9 of the Act of 1977 in the School Tribunal, Navi Mumbai challenging the Otherwise Termination of the Petitioner's services by Respondent Nos. 1 and 2. The Petitioner had sought reinstatement. The School Tribunal allowed the Appeal by order dated 9 February 2010 and set aside the order of termination and directed Respondent Nos. 1 and 2 to reinstate the Petitioner. The Respondent Nos. 1 and 2 challenged the order of the School Tribunal by filing Writ Petition No. 3735 of 2010 which was dismissed by this Court on 13 August 2010. The Petitioner was not reinstated and the Petitioner filed Contempt Petition No. 292 of 2011, wherein Respondent Nos. 1 and 2 made a statement that the Petitioner would be taken in services. The Respondent Nos. 1 and 2 took the Petitioner back in service. However, continued the petitioner only for the period of completion of probation and thereafter did not continue the Petitioner further. The learned Counsel for the Petitioner contended that the non-continuation of the Petitioner's services in spite of the statutory right accrued to the Petitioner under the provisions of the Act of 1977 is illegal and, therefore, the Respondent Nos. 1 and 2 should be directed to continue the Petitioner in service.

4. Therefore, in essence the Petitioner in this Writ Petition, is challenging the Otherwise Termination of the Petitioner and seeks reinstatement in the services of Respondent Nos. 1 and 2. The Petitioner has a right to file an Appeal under Section 9 of the Act of 1977 and this remedy being available to the Petitioner, it is not necessary for us to entertain the Writ Petition. The Petitioner can raise all the contentions as regard the action of Respondent Nos. 1 and 2 in the said Appeal.

5. We note that it is the third time that the Petitioner has approached this Court in respect of his services. The Petitioner is currently not in service with Respondent Nos. 1 and 2. Therefore, if the Petitioner files an Appeal within 30 days from today, the School Tribunal will consider these facts and take a sympathetic approach as regard the condonation of delay.

6. With these observations and keeping the contentions of the Petitioner and Respondent Nos. 1 and 2 on merits open, the Writ Petition is disposed of.

(AMIT BORKAR, J.)

(NITIN JAMDAR, J.)