

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No. 1426/2022

Sau. Archana w/o Vijay Parchake

...Petitioner

Versus

The State of Maharashtra and ors.

...Respondents

Ms. Smita S. Dashputre, Advocate for the Petitioner

Ms. Kalyani R. Deshpande, Assistant Government Pleader for the
Respondent Nos. 1 and 2

CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.

DATED : 02 MAY 2022

P.C.:

Heard the learned Counsel for the parties. Taken up
for disposal.

2. In this writ petition, the Petitioner has been terminated from service by the Respondent No. 4 – School on the order passed by the Respondent No. 2 – Education Officer not granting the approval to the Petitioner’s appointment on compassionate basis. The peculiar aspect of the matter is that there is a debate whether there is such an order of the Respondent No. 2 – Education Officer or not.

3. The Petitioner’s husband was working as a Peon with the Respondent No. 4 – School run by the Respondent No. 3 – Management. The Petitioner’s husband expired on 10 February

2019. The Petitioner made an application to be appointed on compassionate basis on 05 March 2019 and the Petitioner was appointed with effect from 01 June 2019. On 18 July 2019, the Respondent No. 4 - School submitted the proposal for granting of approval to the Respondent No. 2- Education Officer. The Petitioner also made a representation on 06 January 2020 to the Respondent No. 2 – Education Officer. It is on this representation (photocopy is annexed) there is an endorsement that the approval cannot be granted because staffing pattern for the post of Peon is not approved . There is no outward number to this endorsement.

4. According to the learned Assistant Government Pleader, it was only internal note. But the said conclusion of the Respondent No. 2 - Education Officer forms basis of the order of the termination passed by the Respondent No. 4 - School and the Petitioner's services were terminated with effect from 17 November 2020.

5. Notices were issued and Mr. Atul Moghe, Sachiv, Gajanan Shikshan Sanstha Wadaki – Respondent No. 3 and Ms. Gita Mohan Pawar, Headmistress, Madhyamik Kanya Vidhayalaya Wadaki, Yavatmal – Respondent No. 4 appear on behalf of the Management/School. They states that the order of termination by the Respondent No 4 – School was issued only because the order/communication of the Respondent No. 2 - Education Officer that approval cannot be granted and if the order of the

Respondent No. 2 - Education Officer is withdrawn the Respondent No. 4 - School will withdraw the termination order of the Petitioner from the date the Petitioner was terminated. The Head Mistress of the School – Respondent No. 4 has tendered an affidavit reiterating the stand that they are ready to withdraw the proposal of termination of the Petitioner and there is no dispute within Management.

6. Since it is clarified by the Respondent – No. 2 - Education Officer that the endorsement was not an order and there is no such rejection of the approval of termination and the stand of the Respondent No. 4-School that they are ready to withdraw the termination order if the order of rejection of approval is withdrawn, there is no impediment in the reinstatement of the Petitioner.

7. It also needs to be noted that in the light of the law laid down by the Full Bench of this Court in the case of *St. Ulai High School Vs. Shri Devendraprasad Jagannath*¹ the Management also ought not to have terminated the services of the Petitioner on the ground that there was no approval.

8. In normal circumstances, to challenge to the order of termination by the Management the Petitioner would have to approach the School Tribunal, however, in the light of that facts, it would be unwarranted to send the Petitioner to School Tribunal

¹ 2007 (1) Mh.L.J. 597

for seeking reinstatement. Furthermore, in series of decisions of this Court, the ground of non-finalization of staffing pattern to reject the appointment on the compassionate basis has been set aside. Costs have been imposed and disciplinary inquiry is also initiated against the Education Officer.

9. The learned Assistant Government Pleader states that since the order of termination has been passed and communicated to the Respondent No. 2 - Education Officer, the proposal will have to be submitted after reinstatement of the Petitioner.

10. The Heads of the Management/School are present in the Court state that order granted reinstatement would be recalled and order granting reinstatement would be passed within a period of one week and proposal will be submitted within a period of two weeks.

11. We direct to the Respondent No. 2 – Education Officer to grant the proposal so submitted by the Respondents – Management/School within a period of two weeks from today.

12. The writ petition is accordingly disposed of in above terms. Since the Head of the School is present in the Court, the action be taken without waiting for the copy of this order.

[ANIL L. PANSARE, J.]

[NITIN JAMDAR, J.]

SMGate

SANDIP
MAHADEV
GATE

Digitally
signed by
SANDIP
MAHADEV
GATE
Date:
2022.05.06
15:29:37
+0530