

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

WRIT PETITION NO.3714 OF 2015

Ku.Tai d/o Uddhavrao Tonge
(Maiden Name),
Sau.Mrunal w/o Ashok Nanaji
Peché, aged about 41 years,
R/o c/o Shri Ashok Nanaji Peché,
Rangari Pura, Ganeshpur Road,
Wani, Tahsil Wani, district Yavatmal. **Petitioner.**

:: VERSUS ::

1. Panchsheel Shikshan Prasarak
Samiti Nandepera, Tahsil Wani,
District Yavatmal, regd. No.F-282,
Through its President.
2. Panchsheel High School Nandepera,
Tahsil Wani, district Yavatmal,
Through its Headmaster.
3. The Education Officer (Secondary),
Zilla Parishad, Yavatmal.
4. Ramkrishna Jagannath Peché,
R/o Warora, tahsil Warora,
District Chandrapur.
5. Presiding Officer,
School Tribunal, Amravati.

..... **Respondents.**

Shri P.B.Patil, Counsel with Shri N.A.Waghmare, Adv. for the Petitioner.
Shri D.B.Abhyankar, Counsel for the Respondent Nos.1 and 2.
Shri D.M.Surjuse, Counsel for the Respondent No.4.
Mrs.N.P.Mehta, Assistant Government Pleader for the Respondent Nos.3 & 5.

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CORAM : A.S.CHANDURKAR & URMILA JOSHI PHALKE, JJ.
DATE : JUNE 14, 2022

ORAL JUDGMENT (Per : A.S.Chandurkar, J.)

1. The petitioner pursuant to the advertisement dated 17.4.2010 came to be appointed on the post of Shikshan Sewak on probation for a period of three years. The date of appointment was 29.4.2010. On 28.12.2011, her services were terminated and hence she challenged the order of termination by filing an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 before the School Tribunal. The School Tribunal on 1.1.2012 passed an *interim* order and stayed the effect and operation of the order of termination. This order was thereafter confirmed on 25.10.2012. The Management challenged the aforesaid order by filing Writ Petition No.6033 of 2012 and the learned Single Judge on 2.5.2013 admitted the said writ petition and stayed the order passed by the School Tribunal.

2. In the meanwhile, the School Tribunal on 13.11.2013 allowed the appeal preferred by the petitioner and set aside the order of termination dated 28.12.2011. It directed reinstatement of the petitioner

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on the post of Shikshan Sewak within a period of forty days from the date of the order. The claim for back wages however was rejected. The Management challenged the order of reinstatement passed by the School Tribunal in Writ Petition No.6704 of 2013. While the writ petition was admitted on 28.7.2014, the prayer for *interim* relief was rejected. In that writ petition, on 19.12.2014, this Court directed the Management to pay arrears of salary to the petitioner from the year May 2013 to the year December 2014. The petitioner has received the salary for the aforesaid period but for the post of Shikshan Sewak. This writ petition was ultimately dismissed on 29.8.2017.

3. By the present writ petition, the petitioner seeks difference in salary as admissible for the post of Assistant Teacher from 13.11.2013 to 22.12.2014 in the light of adjudication by the School Tribunal. This is for the reason that the petitioner has been paid salary as admissible for the post of Shikshan Sewak.

4. The learned counsel for the petitioner submitted that the School Tribunal by its judgment dated 13.11.2013 had directed reinstatement of the petitioner on the post of Shikshan Sewak along with continuity in service but without back wages. Though the writ petition

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preferred by the Management was admitted, there was no stay granted to the order of reinstatement. The petitioner was always willing to join her services but she was prevented from doing so by the Management. Though the direction to pay arrears of salary from the year May 2013 to the year December 2014 as issued in Civil Application No.3363 of 2014 was complied with, that salary has been paid as admissible for the post of Shikshan Sewak. Since reinstatement along with continuity was directed, the petitioner would be entitled to receive the salary as admissible for the post of Assistant Teacher. There was no justification on the part of the Management to deny the salary to the petitioner as admissible for the post of Assistant Teacher. The learned counsel, therefore, prayed for issuance of the aforesaid directions.

5. On 10.6.2022, when the writ petition was heard, there was no appearance on behalf of the respondent Nos.1 and 2 and hence the matter was kept today.

6. Today, the learned counsel for the respondent nos.1 and 2 appeared and submitted that while granting approval to the appointment of the petitioner on 28.05.2018, the Education Officer (Secondary) had noted that no grants would be admissible for the period from 24.04.2013

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to 21.12.2014 on account of absence of the petitioner. Hence, the petitioner was not entitled to receive the difference in the arrears of salary as prayed for in the writ petition.

Ms N. P. Mehta, the learned Assistant Government Pleader for the respondent nos. 3 and 5 submitted that in view of the order passed by this Court on 19.12.2014 in Civil Application (W) No.3363 of 2014, the liability to pay the difference in the arrears of salary was on the Management and not on the Education Officer (Secondary).

7. We have heard the learned counsel for the parties and we have perused the documents placed on record. It is an undisputed fact that the order of termination dated 28.11.2011 was set aside by the School Tribunal by its judgment dated 13.11.2013. There was no interim order granted in the writ petition preferred by the Management challenging the order of termination. On the contrary the order dated 19.12.2014 in Civil Application (W) No.3363 of 2014 specifically directs the Management to pay the petitioner the arrears of salary from May 2013 to December 2014. The direction contained in paragraph 3 of the order passed by the School Tribunal as regards reinstatement of the petitioner has attained finality with

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the dismissal of Writ Petition No.6704/2013 on 29.08.2017. Hence there is no legal justification for denying relief to the petitioner and especially since the fact that the initial order of appointment was for probation for a period of three years which period ended on 29.04.2013. Since the petitioner's appeal was allowed by the School Tribunal on 13.11.2013 and it was directed that the petitioner would be entitled for reinstatement within a period of forty days, the petitioner would be entitled to the difference in the arrears of salary from what is paid as 'Shikshan Sevak' and what is admissible on the post of 'Assistant Teacher' on the expiry of the period of forty days from 13.11.2013. Though the petitioner has sought such difference in the arrears of salary from 13.11.2013, we find that her entitlement would come into effect on the expiry of forty days from the date of the judgment of the School Tribunal.

8. Accordingly, it is held that the petitioner is entitled to receive the difference in the arrears of salary from 01.01.2014 to 22.12.2014 from the Management. It is accordingly directed that the respondent nos. 1 and 2 shall pay the petitioner difference in the arrears of salary as admissible for the post of Assistant Teacher for the period from 01.01.2014 to 22.12.2014 within a period of three months. On failure to make the aforesaid payment

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within a period of three months, the amounts shall carry interest @5% per annum from the date of the order till the realization.

Rule is made absolute in aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

!! BrWankhede !! / Andurkar