

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5478 OF 2018**

Sanjay Dhondiram Patil

...Petitioner

V/s.

The Secretary, Karmveer Shikshan

Sanstha and Ors.

....Respondents

Mr. C.G. Gavnekar a/w. Mr. Ashutosh Gavnekar, Mr. Rohit Parab, for the Petitioner.

Mr. C.D. Mali, AGP for State.

Mr. Aditya Raktade for Respondents No.1 and 2.

CORAM : SANDEEP V. MARNE, J.

Dated : 9 October 2023.

P.C. :

1. The challenge in this petition is to the Judgment and Order passed by the School Tribunal on 17 July 2017 in Appeal No.9/2017. The Tribunal has partly allowed the Appeal and has set aside the termination letter dated 12 January 2017 by which services of the Petitioner were terminated from 1 January 2017. The Management has been directed to reinstate the Petitioner on the post of part-time permanent Assistant Teacher with seniority, increment and continuity of service. The prayer for backwages has been rejected.

So far as Petitioner's right to secure full time appointment is concerned, the Tribunal has directed that the Petitioner would have preferential right to the post of full time permanent teacher if vacancy existed for Open Category. It is further directed that if no vacancy existed in the Open Category as on that day, he shall have preferential right to the full time post as soon as permanent post arises in future. For such purpose, direction is given for verification of the Roster by Backward Caste Cell, Pune. The Petitioner has practically succeeded before the Tribunal but has filed the present petition essentially in respect of his grievance for rejection of backwages. Grievance is also made with regard to non-grant of relief of reinstatement on the post of full time Teacher.

2. I have heard the learned counsels appearing for the parties. So far as the issue of backwages is concerned, Petitioner was terminated on 1 January 2017 and direction for his reinstatement is issued by the Tribunal on 17 July 2017. Thus the period of interruption in service is only about 7 ½ months from 1 January 2017 to 17 July 2017. On the principle of "No Work No Pay", Petitioner cannot claim backwages as a matter of right. Petitioner's entitlement for appointment on the post of full time Teacher is also under question. In such circumstances, the Tribunal has rightly not granted the relief of backwages.

3. So far as Petitioner's entitlement to reinstatement on the post of full time Teacher is concerned, the Tribunal has arrived at a

finding that no vacancy existed for Petitioner's full time appointment. It is on this count that the Petitioner is directed to be reinstated to the post of part-time permanent Assistant Teacher. The Tribunal has however secured the interest of the Petitioner by directing that he would have preferential right of appointment against the existing vacancy of full time teacher, either against the vacancy existing on 17 July 2017 or against any vacancy which may arise in future.

4. It appears that in pursuance of the directions issued by the Tribunal for verification of the Roster and as per the orders passed by this Court on 13 March 2023 and 16 March 2023, the exercise of verification of the Roster has been carried out. The Deputy Director of Education, Kolhapur, after granting opportunity of hearing to all the parties, has passed order dated 28 June 2023. In his order, the Deputy Director of Education has recorded a finding that after verification of the Roster through Backward Caste Cell Pune, no post of Assistant Teacher in Open Category is vacant for appointment of Petitioner. So far as his continuation on the post of part time Assistant Teacher is concerned, it is found that even part time post has not been sanctioned for the School. The Deputy Director of Education has therefore rejected the proposal for disbursement of salary to the Petitioner on part time post. But the Management has been directed to send a proposal for grant of approval for sanction for the post of part time Teacher.

5. It thus appears that in pursuance of the order passed by the School Tribunal, the Deputy Director of Education, Kolhapur has taken a decision that no vacant post of full time Teacher in Open Category is available for Petitioner's appointment. If Petitioner is aggrieved by that decision, he will have to take out appropriate proceedings in that regard. Reserving such remedy in favour of the Petitioner and keeping all the questions with regard to the right of the Petitioner for appointment as a full time Teacher open, the present petition can be disposed of.

6. Petitioner is already reinstated in service, in pursuance of Tribunal's order. He may have to adopt appropriate proceedings for grant of approval to his part time appointment and/or to challenge the decision of Deputy Director of Education about non-existence of vacancy of full time teacher in Open Category. In present petition, those issues cannot be decided.

7. Accordingly the Petition is **disposed of** by granting liberty to Petitioner to agitate the issues of grant of approval to post of part-time teacher and/or rejection of proposal for appointment as full-time Assistant Teacher.

SANDEEP V. MARNE, J.