

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

WRIT PETITION NO. 7577 OF 2022

Chandrashekhar Shamrao Rahangdale,
Aged 50 years, Occ. In-charge
Headmaster, Nisha Vidyalaya,
Bhandara R/o Pragati Colony,
Bhandara

...Petitioner

// VERSUS //

1. Presiding Officer, School Tribunal,
Nagpur
2. Adarsha Bahhuddeshiya Mandal,
Bhandara, through its President,
Ambedkar Ward, Bhandara
3. Nisha Vidyalaya, through its
Headmaster, Ambedkar Ward,
Bhandara
4. The State of Maharashtra, through its
Secretary, Department of Education
and Sports, Mantralaya, Mumbai-400
032
5. Education Officer (Secondary), Zilla
Parishad, Bhandara, District Bhandara

... Respondents

Shri R.S.Parsodkar, Advocate for the petitioner.
Ms. H.N.Jaipurkar, AGP for the respondent no. 1.
Ms. Ritu Jog, Advocate for the respondent no.2.

CORAM : ANIL S. KILOR, J.

DATED : 13th MARCH, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith heard finally by
consent of the parties.

2. In this writ petition, the challenge is raised to the order dated 21st November, 2022 passed by the School Tribunal, Nagpur in STN No. 25 of 2022, rejecting the application of the petitioner for stay to his termination, is under challenge.

3. After going through the record, it is evident that the petitioner was appointed on 9th October, 1996 as Assistant Teacher in pursuance to the advertisement issued by the Management. The order of appointment specifically observed that his appointment will be with effect from 9th October, 1996 till the decision of the Court. The appointment of the petitioner was made subject to the decision of the Court in a matter filed by one Shri Kukde who was terminated by the Management. There is a specific mention in the application made by the petitioner in pursuance of the advertisement, that, he is ready to accept the appointment subject to result of the proceeding filed by the earlier employee. Even the approval order speaks about the approval granted to the petitioner subject to result of the Court proceeding. Accordingly, the petitioner was continued in service and at the same time the proceeding filed by Shri Kukde against his termination was going on.

4. On 3rd October, 2022, the petitioner was served with an order stating that Shri Mulchand Manikchand Kukde succeeded in the Court proceeding and order of re-instatement was passed in his favour on 30th September, 2022 as such to re-instate him in the service, the services of the petitioner are terminated with effect from 3rd October, 2022 which gave cause to the petitioner to file an appeal before the School Tribunal

along with application for stay which came to be rejected by the Tribunal vide impugned order dated 21st November, 2022. Hence, this petition.

5. Shri Parsodkar, learned counsel for the petitioner submits that petitioner continued in service from 1996 i.e. for more than 26 years before his terminated. It is submitted that reinstatement is subject to the outcome of the inquiry permitted to be held against Shri Kukde by putting him under suspension. He, therefore, submits that unless on merit Shri Kukde gets some order of reinstatement, it cannot be said in clear terms that he is re-instated.

6. He further submits that petitioner undertakes not to claim any salary till the decision by the School Tribunal on the appeal filed by the petitioner, if he is allowed to continue to work. It is further submitted that he is ready to file an affidavit giving undertaking not to claim salary from 3rd October, 2022 for further period if he fails before the School Tribunal.

7. Ms. Jog, the learned counsel for the Management strongly opposed the present petition and submits that once the appointment order and approval order clarify that an appointment was subject to happening of certain thing and once the said thing is happened, the petitioner cannot claim any right on the post even after workings for 26 years. It is submitted that the petitioner had accepted the appointment with the condition that his appointment would come to an end on reinstatement of Shri Kukde and once there is a judicial order of

reinstatement of Shri Kukde, now the petitioner cannot claim any right over the said post.

8. Learned Additional Government Pleader supports the case of the School Tribunal, rejecting the application for stay and prays for dismissal of the present petition.

9. In the light of rival contentions of the parties, I have perused the petition along with documents and impugned order.

10. Considering the facts referred herein above there is no doubt that the appointment of the petitioner was subject to result of the case filed by Shri Kukde, who has been now re-instated by the Court. It is pertinent to note that after reinstatement, Shri Kukde is put under suspension and inquiry is going on as directed by this Court vide judgment dated 30th September, 2022. At the same time, it cannot be ignored that the petitioner continued in service for 26 years which is quite long period and now the petitioner has not in a position to apply for fresh appointment elsewhere because he has crossed the age bar.

11. In this case, the question about the salary would arise, if the petitioner is also permitted to continue to service. To take care of it, the petitioner is ready to give an undertaking not to claim any salary with effect from 3rd October, 2022 till the decision on his appeal filed before the School Tribunal, challenging the order of termination dated 3rd October, 2022. The petitioner has further undertaken not to claim any

salary from 3rd October, 2022 either from the Education Officer or from the Management if he fails before the School Tribunal.

12. In the circumstances, I am of the opinion that to strike down the balance, it is necessary to permit the petitioner to continue in service in view of his undertaking that he will not claim any salary from 3rd October, 2022 either from the Education Officer or from the Management unless he succeeds before the School Tribunal. Accordingly, I pass the following order.

- i. Writ petition is partly allowed;
- ii. Order dated 21st November, 2022 passed by the School Tribunal, Nagpur in STN No. 25 of 2022 is hereby quashed and set aside;
- iii. In view of the undertaking recorded hereinabove, petitioner is permitted to continue in service.
- iv. Considering the nature of dispute, the School Tribunal is directed to expedite the appeal and decide the same in any case not beyond **31st July, 2023**.
- v. All points raised in this petition by the petitioner as well as respondent-Management and Education Officer are kept open to be decided by the School Tribunal. Needless to state that the School Tribunal shall not get influence by the observations made hereinabove, while deciding the appeal.

SACHINDANAND
K NAIR

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by
SACHINDANAND
K NAIR
Date: 2023.03.23
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[ANIL S. KILOR, J.]