

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3851 OF 2022

Ajit Dattatray Pawar
Age – 31, Years, Occ. - Service,
Residing at Karkamb,
Taluka : Pandharpur,
District : Solapur.

...Petitioner

Versus

1. Municipal Commissioner,
Brihanmumbai, Mahanagar Palika,
CST, Mumbai.
2. Education Officer,
Education Department,
Having office at Triveni Sangam,
BMC School Building,
Mahadev Palav Marg,
Curry Road (East),
Mumbai – 400 012

...Respondents

...

Mr. Sarang S. Aradhye a/w Ms. Gauri Velankar, Mr. Shantanu Gurav
and Mr. Saarth Chordia, Advocate for the Petitioner.

Mr Dhruvad Patil a/w Mr. Ravindra Sirsikar and Ms. Neelima
Kharde, for Respondent – MCGM.

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CORAM : RAVINDRA V. GHUGE
&
M.M. SATHAYE, JJ.

DATE :- 23rd OCTOBER, 2024

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.) :-

1. **Rule.** Rule made returnable forthwith and heard finally

by the consent of the parties.

2. The Petitioner has put forth prayer clauses (a) & (b), as under:

(a) The Hon'ble Court may be pleased to issue writ of mandamus and/or certiorari and/or any other writ of the like nature and any other writ and/or directions to quash and set-aside the impugned Termination Order dated 17.12.2021 issued by the Respondent No.2.

(b) The Hon'ble Court may be pleased to issue an appropriate order or direction, directing the Respondents to reinstate the Petitioner with continuation of service along with back wages."

3. We have heard the learned Advocates for the respective sides and have perused the Petition paper book, with their assistance.

4. The Corporation had published an advertisement on 08/03/2019, for carrying out recruitment of the teachers in the primary school through the 'Pavitra Pranali Shikshan Bharti'. The Petitioner applied for the post of Shikshan Sevak, vide an application dated 27/06/2019. By an order dated 23/01/2020, the Petitioner was selected and he joined employment on the said date.

5. The Petitioner tendered certain documents which were required under the verification exercise, with the office of Respondent No.2, on 23/12/2020. Since Respondent No.2, received an adverse police character certificate concerning the Petitioner, he was terminated on 17/12/2021, without issuance of a show cause notice, much less, granting an opportunity of hearing. This is borne out from the record, in as much as, this is an admitted position.

6. The learned Advocate for the Petitioner hastens to add that the Court of Judicial Magistrate, First Class, Pandharpur in Regular Criminal Case No.231 of 2019, has acquitted the Petitioner vide judgment and order dated 13/02/2024.

7. Though the learned Advocate for the Municipal Corporation has vehemently opposed this Petition and has prayed that the Petition be dismissed with costs, she cannot point out from the record as to whether the Petitioner was issued with any show cause notice and whether he was given an opportunity of hearing, before issuing the impugned order of termination. It cannot be ignored that the Petitioner was in employment since 23/01/2020, until his termination after around 23 months, on 17/12/2021.

8. In the above facts and circumstances, and keeping in view the judgment of the Sessions Court referred to herein-above, we deem it appropriate to quash the impugned order and at the same time, permit the Municipal Corporation to issue a fresh show cause notice of hearing to the Petitioner, within 15 days from today.

9. As such, this **Writ Petition is partly allowed**. The impugned termination order dated 17/12/2021, is quashed and set aside with liberty to the Municipal Corporation to issue a fresh notice of hearing to the Petitioner. Reasonable opportunity of hearing shall be granted and a final reasoned order would be passed by the Corporation, within a period of 60 days from the date of service of the notice on the Petitioner. The Petitioner shall render co-operation in the said hearing and would not make an attempt to avoid service of the show cause notice. The Corporation shall bear in mind that the Petitioner has been acquitted by the Court of Criminal Jurisdiction, which is a decisive factor.

10. Rule is made partly absolute in the above terms.

(M.M. SATHAYE, J.)

(RAVINDRA V. GHUGE, J.)