

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Writ Petition No.5618 of 2024

Mr Vijay Mohanrao Ghatge ... Petitioner.
V/s.
The State of Maharashtra & Ors. ... Respondents

Dr. Uday P. Warunjikar a/w. Mr. Siddhesh Pilankar for the Petitioner.

Mr. S.B. Kalel, AGP for Respondent Nos. 1 & 2.
Mr. Rahul S. Kadam for Respondent No.5.
Mr. Murlidhar Kale i/b. S.M. Suryawanshi for Respondent Nos.3 &
4 (through V.C.).

**CORAM : NITIN JAMDAR, AND
M.M. SATHAYE, JJ.**

DATE : 10 June 2024.

P.C. :

The Petitioner has challenged the order passed by Respondent Nos.3 & 4 dated 15 March 2022 terminating the services of the Petitioner and has further prayed for a direction to reinstate the Petitioner.

2. Petitioner was working as a teacher in Respondent No.4 – School. It is the case of the Petitioner that his services were terminated by the impugned order by the Respondent - Management without any enquiry. The Petitioner contending that the order of termination is high handed and without any enquiry

even though the Petitioner was duly approved employee, by order dated 4 April, has invoked writ jurisdiction of this Court.

3. The Division Bench of this Court, while issuing notice to the Respondent on 20 April 2022 *prima facie* recorded that the termination of the Petitioner who has attained the status of confirmed employee is without following the due procedure and in these peculiar facts notice is being issued. Thereafter, appearance is entered by the Respondent – Management and reply affidavit is filed contending that the Petitioner has a remedy of challenging the order of termination before the concerned School Tribunal. The Respondent – Management has also alleged suppression of facts by the Petitioner in not placing on record the order dated 31 December 2018 granting approval to the Petitioner as Shikshan Sevak which would indicate that the appointment of Petitioner and the approval was based on certain conditions.

4. The order dated 4 April 2019 granting approval to the Petitioner as Assistant Teacher is annexed to the Petition. The earlier order dated 31 December 2018 granting approval to the appointment of Petitioner as Shikshan Sevak, is not annexed to the Petition. Copy of the same is placed on record with affidavit-in-reply.

5. The case of the Petitioner is based on the approval order dated 4 April 2019. It is contended by the Petitioner that order dated 4 April 2019 is without any conditions and it is a clear approval

granted in favour of the Petitioner. The learned counsel for Respondents argue that the order dated 4 April 2019 makes a specific reference to the order of approval dated 31 December 2018 and also to the conditions stated therein.

6. The order of 31 December 2018 has specified that the appointment of the Petitioner would be subject to outcome of the appeal filed by Respondent No.5 - Mr. Sachin Uttam Kadam. The Respondents contend that since the appeal filed by Respondent No.5 - Mr. Kadam was allowed, the Petitioner was removed from service. These facts were not before the Division Bench when notice was issued in spite of availability of remedy to the Petitioner.

7. According to us, it is not necessary for us to finally conclude the issue as the Petitioner has two options. First, that the Petitioner can challenge the impugned order of termination in appeal. Second, Petitioner can apply for re-call of the order of the School Tribunal passed in the case of Respondent No.5 - Mr Kadam, on the ground that he was a necessary party. Since both these options are available, we are not inclined to entertain the Writ Petition any further.

8. The Writ Petition is disposed of keeping the above two options open to the Petitioner to pursue.

9. If the Petitioner applies for either of these options within a period of six weeks from today, then the Tribunal will consider the

same for expeditious hearing and decide the same preferably within a period of six months. In case question of delay arises, the Tribunal to consider the fact that this Court had initially issued notice.

10. We clarify that we have not finally concluded the issue and have noted the rival contentions to demonstrate that the adjudication in this case will have to be done by the School Tribunal as above.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)

L.S. Panjwani, P.S.