



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7582 OF 2022

DWARKADAS BHIMRAO GARUD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for the Petitioner : Mr. D. R. Irale Patil
AGP for Respondent No.1 : Mr. Dnyaneshwar R. Korade
Advocate for Respondents No.2 : Mr. Prashant R. Nagare
...

**CORAM : S. G. MEHARE &
SHAILESH P. BRAHME, JJ.**

DATE : 10-01-2025

PER COURT:-

1. Heard the learned counsel for the respective parties.
2. The dispute has a checkered history. The petitioner was initially appointed as Shikshan Sevak in a School run by the Zilla Parishad, on 28.02.2009. He had completed three years. The proposal for regularization of his services was sent to the Education Officer, Zilla Parishad, Aurangabad, on 14.05.2012. However, no decision was taken by the competent authority. Thereafter, he went on leave from 21.06.2012 without pay till 26.11.2015. Then he went to the School. However, the School did not allow him to join. Thereafter, the issue of his jointing was sent to the Education Officer for taking decision. On 28.08.2017, a show cause notice was served upon him. He had submitted explanation. However, by the impugned order dated 07.12.2017,

the authorities have cancelled his appointment. He had impugned the said order before the learned Additional Commissioner, Aurangabad. The learned Additional Commissioner has allowed his petition by order dated 20.07.2018 and he was directed to be reinstated. The Zilla Parishad moved the reference to the Government. However, the Government did not entertain its representation, because the Zilla Parishad cannot file review application. After rejection of the representation by the Government, they did not allow him to join. Therefore, he moved writ petition before this Court.

3. Respondent No.2 / the Chief Executive Officer issued a conditional order dated 30.03.2020 subject to result of review petition and writ petition No.10258 of 2019. By order dated 09.01.2020, the respondent / Education Officer, Zilla Parishad posted him at School at Hanumantkheda. On the next day, he joined the duties. Finally, respondent No.2 passed an elaborate order on 19.05.2022, whereby condition was imposed that after satisfactory services of petitioner for three years from 10.09.2023, he would be given the respective pay-scale.

4. The learned counsel for the petitioner has raised a question that since he has been reinstated in the services, he is not required to undergo three years service again as Shikshan Sevak. His services were continued. Therefore, particularly clause (8) of

the impugned order is illegal and against the law. Since the date of his re-instatement, he is entitled to get regular pay scale of Assistant Teacher. He submits that there were no complaints against his performance and his proposal was never rejected on the count that his services were not satisfactory. On the contrary, no decision was taken. Hence, the petitioner went on long leave for indefinite period. He also contested the Maharashtra Assembly Elections - 2014. In sum and substance, he states that he has satisfactorily completed his three years service from the date of appointment till he went on leave. As he has been reinstated, the effect has to be given from the date of his reinstatement and the pay scale should be applied from the date of joining the duties.

5. The learned contesting respondent no. 2 submits that the impugned order is correct. He has tried to argue that his proposal was defective. He pointed out the defects in the proposal. It reveals that his proposal was defective only for the absence of signature of the petitioner. In the mean time, the petitioner went to the school unauthorizedly. Hence, he is not entitled to claim that his period of Shikshan Sevak was satisfactorily completed. We are not satisfied with his explanation. He submits that as the petitioner was on leave for such a long period and there were no services rendered by him, he cannot claim that he has completed his services as Shikshan Sevak satisfactorily. He prayed to dismiss the petition.

6. A small question in the present petition, “Can a person reinstated as per order of the Court, again be directed to serve three years as Shikshan Sevak for continuity in service and regular pay?”

7. What is meant by ‘reinstatement’, has been considered by the Hon’ble Supreme Court in paragraph No. 21 in ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, (Civil Appeal No.6767 of 2013); (2013) 10 SCC 324,***

“21. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol. 2, 3rd Edn., the word "reinstatement" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edition, the word "reinstatement" means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word "reinstatement" means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam Webster Dictionary, the word "reinstatement" means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black's Law Dictionary, 6th Edition, "reinstatement" means

“To reinstall, to re-establish, to place again in a former state, condition, or office; to restore to a state or position from which the object or person had been removed.”

8. Further, relevant paragraph No.22 of judgment in **Deepali** (*supra*) is reproduced as under;

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

9. It is not in dispute that the petitioner has been reinstated in service. He has rendered the services till 21.06.2012 i.e. more than three years as Shikshan Sevak. For whatsoever reason, he did not attend the school and remained absent. In such situation, the employee who has not been rendered services, will not be entitled to back wages under the doctrine of 'no work no pay'. However, nothing is placed before us that his proposal was ever rejected for his unsatisfactory services.

10. The Government has issued a resolution dated 14.10.2010 about regular pay to the Shikshan Sevak after completion of three years tenure. Clause (4) was very specific, which provides that "after rendering satisfactory services as Shikshan Sevak, they should be absorbed in regular services within a month and if they are not absorbed within a month, the services of such Shikshan Sevaks are automatically regularized and they are entitled to regular service benefits".

11. At the cost of repetition, once again we observe that the employer of the petitioner never rejected the proposal of the petitioner on the ground that he did not complete his three years satisfactory service as Shikshan Sevak.

12. Considering the meaning of the word 'reinstatement', we are of the view that the impugned order is illegal, incorrect and against the provisions of law. Once the petitioner was reinstated,

he should be given effect from the date of his joining. In this case, the petitioner is entitled the benefit of clause (4) of the Government Resolution dated 14.10.2010. The effect of having no signature on the proposal is immaterial, that may be cured at any time. Therefore, we allow the writ petition and pass the following order:-

ORDER

- (i) The writ petition is allowed partly.
- (ii) The clause (8) of the impugned order passed by respondent No.2/ the Chief Executive Officer, Zilla Parishad, Aurangabad, dated 19.05.2022 stands quashed and set aside.
- (iii) The petitioner should not again undergo three years service as Shikshan Sevak. Respondent No.2 should approve his proposal within three weeks from the date of receipt of this order.
- (iv) The petitioner deserves pay scale of the regular Assistant Teacher from the date of joining. However, he would not be entitled to the back wages for the period which he was absent from 21.06.2012 up to the date of joining i.e. 25.11.2015.

**[SHAILESH P. BRAHME]
JUDGE**

**[S. G. MEHARE]
JUDGE**