

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

WRIT PETITION NO. 1481 OF 2014

(Ku. Nirmala D/o Shivramji Meghare vs. The Education Officer (Primary), ZP, Wardha & Ors.)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

**CORAM : B.P. DHARMADHIKARI &
A.S. CHANDURKAR, JJ.
JANUARY 30, 2015.**

Heard Shri Shende, learned counsel for the petitioner, Shri Thakare, learned counsel for respondent No. 1 and Shri Khamborkar, learned counsel for respondent Nos. 2 & 3.

Perused the impugned order dated 05.10.2013. By said order because the petitioner is not recruited in accordance with law, the proposal submitted by the management seeking approval after his reinstatement has been rejected.

The facts show that services of the petitioner were terminated on 31.03.2001 and the petitioner questioned it by filing Appeal STC No. 30 of 2001 before the School Tribunal at Chandrapur. Respondent No. 1 - Education Officer was party Respondent No. 3 before the School Tribunal. The School Tribunal decided preliminary issue in terms of the judgment of the Division Bench of this Court in the case of Anna Pethe vs. Presiding Officer, School Tribunal, Amravati, reported at

1997 (3) Mh.L.J. 697. That finding had attained finality. The School Tribunal thereafter has decided appeal on 02.03.2013. It found termination of the petitioner illegal. Hence, while setting aside the said order of termination, it granted him relief of reinstatement with continuity and back wages for the period from 18.04.2001 to 04.03.2009.

This order was not challenged by the Education Officer. Writ Petition was filed by the management and the learned Single Judge of this Court on 02.09.2013 has remanded the matter to the School Tribunal to find out correctness of grant of full back wages. Thus, that issue is now only pending with the School Tribunal.

In this situation, the management has permitted the petitioner to join back and the proposal seeking approval was submitted to the office of the Education Officer.

In the impugned communication rejecting that proposal on 05.10.2013, the Education Officer has observed that when the petitioner was initially recruited, no permission of department was obtained and proposal for her approval prior to termination was never sent, as such, the approval has been denied.

Shri Thakare, learned counsel in addition has invited our attention to the facts pleaded in writ petition. He points out that the petitioner herself has come up with a case that when she was initially appointed, as

School was not receiving grant-in-aid, no prior approval to fill in that vacancy was obtained from the Education Department. Similarly, for the very same reason, the appointment was never sent to the department for its approval. He also submits that as per his instructions all sanctioned posts are already occupied and as such there is no vacant post against which the petitioner could have been reinstated. However, we find that the absence of vacancy is not the reason given in the impugned order.

In this situation, we find the impugned order dated 05.10.2013 unsustainable. We accordingly quash and set aside the same. We direct the petitioner as also Respondent Nos. 2 & 3 to appear before Respondent No. 1 to point out the position prevailing at the time of reinstatement about vacant post and Respondent No. 1 shall accordingly take suitable decision afresh as per law within a period of four weeks. He shall keep in mind the findings recorded by the School Tribunal while applying mind in this respect.

Writ Petition is thus partly allowed and disposed of. No order as to costs.

JUDGE

JUDGE