



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2436 OF 2006

Smt. Anita w/o Ajay Jagtap,
Aged about 43 years, Occu. : Service,
Residing c/o N. B. Bhangе,
143, Telecom Colony,
Nagpur – 440 022.

.... **PETITIONER**

// VERSUS //

- 1) **Director of Education,**
Maharashtra State,
Administrative Building,
Pune- 411 001.
- 2) **Education Officer, (Secondary),**
Zilla Parishad, Amravati.
- 3) **Krushak Sudhar Mandal,**
Talegaon (Dashastra),
Tahsil Dhamangaon Railway,
District Amravati,
Through its Secretary.
- 4) **Madhyamik Kanya Vidyalaya,**
Talegaon (Dashasar),
Taluka Dhamangaon,
District Amravati,
Through its Head Mistress
Smt. Vijaya Dhoble.

.... **RESPONDENTS**

Mr. A. D. Mohgaonkar, Advocate for Petitioner.
Ms. H. N. Jaipurkar, Assistant Government Pleader for
Respondent Nos.1 and 2.
Mr. B. J. Lonare, Advocate for Respondent No.3.

**CORAM : MRS. M. S. JAWALKAR AND
NANDESH S. DESHPANDE, JJ.**

DATE ON RESERVING THE JUDGMENT : 22/01/2026
DATE ON PRONOUNCING THE JUDGMENT : 12/02/2026

JUDGMENT : (Per – M. S. JAWALKAR, J.)

1. Heard learned Counsel for the Petitioner, learned Assistant Government Pleader for Respondent Nos.1 and 2 and learned Counsel for Respondent No.3.

2. The Petitioner by this petition was earlier seeking suitable order or direction to restore the Petitioner to the post of 'Assistant Teacher' in the Respondent No. 4 school pursuant to the order of Repatriation dated 12/01/2006 issued by the State Government, and further declaration that the Petitioner has a lien over the post of Assistant Teacher and is entitled to join the Respondent No. 4 school pursuant to the order of this Court passed in Writ Petition No. 3321 of 2000, dated 04.10.2000. Whereas, pursuant to the superannuation of the Petitioner on 30/06/2020, the Petitioner, by way of amendment in this Petition, is also seeking back wages from March, 2006 till 30/06/2020 i.e, till her superannuation, and further directions to the Respondents to finalize the pension case of the Petitioner at the earliest.

3. It is submitted that the Petitioner is a duly qualified Assistant Teacher who was initially appointed in the Respondent No. 4 Grant-in-aid School, registered under Respondent No. 3 Society, on 26/07/1986. Pursuant to the order dated 09/01/1996 and 19/01/1996 passed by the State Government, the Petitioner was deputed as Lecturer in the District Institute of Education and Training, Amravati, (for short the “DIET Amravati”) on a vacant post.

4. On 31/03/2000, the Respondent No.1 issued an order putting an end to the deputation of the Petitioner along with other similarly situated Senior Lecturers and Lecturers, which was challenged before this Court by the Petitioner in Writ Petition No. 3321/2000, wherein this Court, vide its order dated 04/10/2000, directed the Respondents to retain the Petitioner on the post occupied on deputation till duly selected candidates were sent by the concerned authority. It is pertinent to note here that, pursuant to the order dated 31/03/2000, the Petitioner was relieved from the post held by her on deputation and she re-joined her services as Assistant Teacher in the Respondent No. 4 School.

5. As per the directions of this Court, the State Government, by its order dated 14/11/2000, continued deputation of the Petitioner and consequently, the Petitioner was relieved by the Respondent No.4 School by its order dated 01/12/2000 and the Respondent No. 3 Society also issued a No Objection Certificate dated 02/12/2000, addressed to the DIET Amravati.

6. It is further submitted that, the Respondent No. 3 issued a Communication dated 11/09/2004 to the Petitioner informing her that in the meeting of Society held on 31/07/2004, the Respondent No. 3 has revoked the consent that has been given to the deputation of the Petitioner and she was called upon to join the duties within 7 days from the date of its communication, failing which it would be deemed that the Petitioner has given up her post.

7. The Petitioner further submits that the Desk officer, State of Maharashtra, Department of School Education and Sports, issued a letter dated 24/11/2004 to the Petitioner and without putting an end of the deputation, directed the Petitioner to join the Respondent No. 4 School, if she so desired. The

Petitioner sent her reply to the said letter stating that she would join the Respondent No. 4 School as soon as the candidate from Maharashtra Public Services Commission (MPSC) would be available in view of order passed in Writ Petition No. 3321/2000. Ultimately, on 12/01/2006 the Department of School Education, Mantralaya issued an order putting the Petitioner's deputation to an end along with other Teachers working on deputation. Thereafter, the Petitioner sought to join the Respondent No. 4 School, however, on 08/03/2006 the Respondent No. 4 School informed the Petitioner that her services were terminated with effect from 01/10/2004 pursuant as per the resolution dated 31/07/2004.

8. The Petitioner, by way of Amendment, submits that she attained the age of superannuation on 30/06/2020, and she being a permanent employee, is entitled to all the pensionary benefits arising from her service and she also claimed back wages from 08/03/2006 i.e., the date when she submitted her joining report till 30/06/2020 i.e., the date she attained superannuation.

9. The Learned Council for Petitioner has relied on following citations in support of his contentions :

- (i) ***M/s. Somani Steels Ltd. & Anr vs. Collector of Central Excise & Ors., 2001 AIR SCW 5069,***
- (ii) ***Satwati Deswal vs. State of Haryana & Ors., (2010) 1 SCC 126,***
- (iii) ***Civil Appeal No.5673 of 2008 (Arising out of SLP (C) No.21077/2006), Mariamma Roy Vs. Indian Bank & Ors., dated 16/09/2008 and***
- (iv) ***Writ Petition No. 6141 of 2013, Sarika Digambar Lokare Vs. Chief Executive Officer, dated 28/05/2015 (Aurangabad Bench)***

10. Per Contra, the Respondent No.2 in its reply, submitted that, it was obligatory on the part of the Respondent Management to rejoin the Petitioner on completion of her deputation period. It is further submitted that, as per the record of the Respondent No. 4 School, there is a vacant post of Assistant Teacher, which ought to have been filled in by allowing the Petitioner to join her duties.

11. The Respondent No. 3 and 4, in their submissions contended that the repatriation to the Petitioner could not be granted especially when the Petitioner has defied orders of the

respondent Nos. 3 and 4, when she was asked to rejoin the services as per Communication dated 11/09/2004. The Respondent No. 3 and 4 further contended that the Petitioner was duly issued the communication dated 08/03/2006 wherein it was clarified that she has been terminated with effect from 01/10/2004, therefore the issue of termination is apparent on the face of record and the claim for back wages and pension is not sustainable.

12. It is further submitted that, the Respondent No. 4 is a 100% grant-in-aid school and is completely dependent upon the Government Exchequer for its expenses for running the school. The Audit reports from the years 2019 to 2022 were also submitted by the Respondent No. 3 and 4 claiming that they do not have an independent source of income to provide back wages to the Petitioner.

13. It is further submitted by the Respondent No. 3 and 4 that, the Petitioner has deliberately did not disclose the fact that she has been gainfully employed since March 2006 in the Bhangre Coaching Classes, which is the family business of the

Petitioner. Therefore, the claim of the Petitioner is frivolous and needs to be rejected.

14. The Learned Counsel for the Respondent No. 3 relied on the following citations:

- (i) ***Writ Petition No. 2243 of 2023, Sunanda Wakhare vs. Jaiwant Bhaguji Gadekar & Ors.***, dated 30/07/2024 (Principal Seat at Bombay) and
- (ii) ***Educational Society, Tumsar & Ors. vs. State of Maharashtra & Ors., (2016) 3 SCC 512.***

15. Heard the submissions of respective parties at length, examined the documents filed on record and considered the authorities relied upon by both the parties.

16. It appears that the Petitioner came to be appointed as Assistant Teacher on 26/07/1986 at Respondent No.4 School, which is being run by the Respondent No.3 Society. She was duly confirmed as permanent teacher. The State Government has issued the order appointing the Petitioner as lecturer on deputation in the DIET Amravati vide Government Resolution dated 09/01/1996. As the post on which the Petitioner was transferred on deputation were required to be filled in by the MPSC, therefore, the Petitioner alongwith others deputed on

various posts i.e. Senior Lecturer and Lecturer on temporary basis. Accordingly, the Petitioner came to be deputed vide order dated 19/01/1996 as lecturer in the DIET Amravati for one year as per terms and conditions. As per the order of the Director of Education, Maharashtra State, Pune, it was directed to the Institution wherein the Petitioner was working that they immediately relieved the Petitioner to join her post on deputation.

17. As per Clause 4 of the Terms and Conditions, the seniority of the concerned employee of the Institution is kept intact and it was directed to treat the deputation period as teaching experience for all the purposes. The Respondent Nos.3 and 4 relieved the Petitioner and permitted to join her duty as lecturer at the DIET Amravati vide Government Resolution dated 05/08/1999 continued up to 18/01/2000. The Director of Education issued a letter dated 31/03/2000, by which, the Petitioner's deputation was put to an end. The Petitioner was relieved from the post of lecturer from the DIET Amravati and she resumed her duty as Assistant Teacher at the Respondent No.4 School. The said order was challenged by the Petitioner

before this Court in Writ Petition No.3321/2000, wherein this Court directed in view of similar orders passed in other matters, the Petitioner should be retained on the post on which they have occupying on deputation till duly selected candidates are sent by the concerned Authority. The State Government, therefore, took a decision to continue the Petitioner's deputation in view of the order passed by this Court. Accordingly, the Petitioner came to be relieved on 01/12/2000 and joined at the DIET Amravati on 02/12/2000.

18. The Management also issued a No Objection Certificate dated 02/12/2000. By this no objection certificate, it is informed to the said DIET Amravati that the Management and School have no objection to allow her to rejoin at school whenever the Petitioner would be relieved from deputation. It appears that suddenly on 11/09/2004, the Respondent No.4 – School issued a letter to the Petitioner recalling the permission granted for her deputation and passed a resolution to that effect. The Petitioner was also directed to get her deputation cancelled immediately and join her service within a period of seven days, failing which it is presumed that she has left her job voluntarily.

The Petitioner has duly submitted her reply to this letter on 27/09/2004 and pointed out that she has filed the Writ Petition No.3321/2000, wherein there was directions issued by this Court and if she applied for cancellation of deputation, it would be contempt of the order of this Court as there is no regular candidate selected by the MPSC is available.

19. The Section Officer, School Education and Sports Department, Mantralaya informed to the Petitioner that if the respondent No.3 Society asked the Petitioner to join her original post if at all she is willing to do so, she should inform to the State of Maharashtra. After deputation is over, if the Management would not allow the Petitioner, she would be solely responsible for that. It appears that thereafter by Government Resolution dated 12/01/2006, the Petitioner came to be relieved from deputation. It also appears that before joining the duty, the Petitioner suffered with hepatitis and applied on 01/02/2006 and 07/03/2006 for medical leave. However, vide a Letter dated 08/03/2006, the Headmistress had informed to the Petitioner that her services came to be terminated on 01/10/2004 on the basis of letter issued on 11/09/2004, asking the Petitioner to

join her original post within a period of one week. She made a grievance to the Education Officer, Zilla Parishad, Amravati.

20. It appears that after deputation was over and after applying for medical leave, it was informed that her services were terminated in the year 2004 itself, as there was a resolution to that effect. However, it was duly replied by the Petitioner and pointed out that there is an order passed by this Court and in view thereof, her deputation would be continued till regularly selected MPSC candidates would join the post. To this reply, nothing was intimated to her about her termination nor any termination order was served on her. Accordingly, she was relieved in the year 2006. There is no response to the reply filed by the Petitioner when it was informed to her that such resolution is passed by the Management. As stated above, there were directions issued by this Court in Writ Petition No.3321/2000. In view of no objection extended by the Management, it was specifically mentioned therein that after completion of deputation, if the Petitioner would be relieved, she would be allowed to join in Respondent No.4 School and there would not be any objection to the Management.

21. So far as before completion of deputation whatever resolution was passed, which is contrary to the order passed by this Court, which was duly pointed out by the Petitioner in her reply dated 27/09/2004. As there was no response nor any termination order served on the Petitioner, she was continued on deputation till 2006. Her deputation was over on 12/01/2006 and she was relieved from the deputational post. When she applied for joining alongwith Medical Certificate, it was informed to her that as she has not joined within seven days as per letter dated 11/09/2004, her services were came to be terminated on 01/10/2004. It appears that there was no automatic termination after seven days, in fact, after receipt of reply dated 27/09/2004, the Petitioner was terminated, however there is no termination order on the record nor any communication to that effect.

22. In view of the order dated 23/04/2007, passed by this Court in the present Petition, the Respondent No.2 and 4 were directed to submit the vacancy position and further directed if there is any vacancy available, such vacancy shall not be filled in until further orders. As per directions, the vacancy

position was submitted by the Education Officer as well as the school. Accordingly, the Education Officer informed on affidavit that there are nine sanctioned posts including Headmaster and on the date of affidavit dated 07/06/2007, there are seven Assistant Teacher and one Headmaster are working. Thus, one post of Assistant Teacher is still vacant. Similar affidavit is filed by Respondent Nos.3 and 4.

23. In the present petition, Civil Application No.141/2012 came to be filed by the Petitioner, however, there was no reply filed since 11/11/2011 to 06/02/2012. In view thereof, Respondent Nos.3 and 4 were directed to deposit 50% of the salary payable to the Petitioner from 01/12/2011 till 06/02/2012. Though the Petitioner applied vide Civil Application No.141/2012 for the direction to Respondent No.3 and 4 to accommodate the Petitioner on the post of Assistant Teacher as there was one post vacant. This Court vide order dated 27/07/2012 directed to hear the matter finally, unfortunately, it was not finally heard.

24. The learned Counsel for the Petitioner relied on *M/s. Somani Steels Ltd.* (supra) in support of his contention that after

a period of 20 years, the petition cannot be dismissed on the ground that there is an alternative remedy available. The Hon'ble Apex Court in para 2 held as under :

“2. In 1983 the writ petition out of which this appeal arose, was filed by the appellants, claiming certain reliefs which we need not advert to here; the High Court dismissed the same on the ground that the appellants had alternative remedy of appeal. In our view, the ground of alternative remedy does not oust the jurisdiction of the High Court under Article 226 of the Constitution. It is a factor which has to be taken into consideration while exercising the jurisdiction under Article 226 of the Constitution by the High Court and, therefore, dismissing the writ petition after 8 years on the ground of alternative remedy would not be a proper exercise of jurisdiction”.

25. Learned Counsel for the Petitioner also placed reliance on ***Satwati Deswal*** (supra), wherein the Hon'ble Apex Court laid down some principles, where the Court should not insist to exhaust alternative remedy. The Hon'ble Supreme Court in para 7 held as under :

“7. Such being the position and in view of the admitted fact in this case that before termination of the services of the appellant, no disciplinary proceeding was initiated nor was any opportunity of hearing given to the appellant. It is clear from the record that the order of termination was passed without initiating any disciplinary proceedings and without affording any opportunity of hearing to the

appellant. In that view of the matter, we are of the view that the writ petition was maintainable in law and the High Court was in error in holding that in view of availability of alternative remedy to challenge the order of termination, the writ petition was not maintainable in law.”.

26. The learned Counsel for the Petitioner also placed reliance on ***Mariamamma Roy*** (supra) and ***Sarika Digambar Lokare*** (supra) wherein the similar view is taken.

27. The learned Counsel for the Respondent 3 relied on ***Sunanda Wakhare*** (supra), in support of his contention that the Management is not liable to pay back wages. This Court in para 24 held as under :

“24. It is held by the Supreme Court that whenever the terminated employee of the aided school challenges termination and the said termination is held to be illegal by the competent judicial forum / Court and order is passed for payment of backwages, etc., the Government is supposed to bear the said burden. It is clarified by the Supreme Court that such backwages or any other payment are in the nature of salary for the intervening period or other compensation in lieu thereof which is to be paid to the employee who would have earned these benefits had he remained in service. Thus, it is clear that had Respondent No. 1 continued in service, he would have got his salary from the State Government and not from the management considering that Respondent No. 2 Institution is a fully aided Institution.”

28. The learned Counsel for the Respondent No.3 also placed reliance on ***Educational Society, Tumsar*** (supra), wherein the Hon'ble Apex Court held as under :

“An aided school is bound to follow the diktat of the relevant provisions of applicable rules, etc. for conduct of departmental enquiries and termination of services of an employee present thereto. In the instant case, the rules concerned are the Maharashtra Employees Private School Rules, 1981 (Rules) and the provisions concerned applicable were the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (which came into force from 20-3-1978). The Tribunal while holding the termination to be illegal gave a specific finding to the effect that school authority of appellant Society, who initiated the enquiry, was not lawfully empowered to do so without the decision of the Enquiry Committee being supported by the Managing Committee. Issues 1 and 2 framed in this behalf were specifically decided against the appellants. It was further found that no Enquiry Committee as per Rules was constituted. The findings of the Tribunal are also to the effect that the mandatory provisions of law were not followed. It is, therefore, a case where the appellants acted without jurisdiction and without adhering to the provisions of the Act and the Rules. Had the provisions of Rules been followed, that would have initiated participation of the representatives of the Government in the decision-making process right from decision to initiate the enquiry to the dismissal of Respondent 4. This would have led to a situation where the State Government/Education Officer would have given its imprimatur to the entire

proceedings including order of termination of Respondent No.4. Had the termination order been set aside under such circumstances, it would have amounted to setting aside the order of the Government making the Government responsible for payment of back wages, as the act of termination, found ultimately illegal, would have been with the blessings of the Government/Education Officer.”

29. In view of the observations and discussion made in the foregoing paras, we have already considered that the impugned order is illegal and bad in law, in fact, there was no termination order issued to the Petitioner. It also revealed that there was one vacant post available with the Respondent Nos.3 and 4, however, the Petitioner was not allowed to join the said post. It is a matter of record that the Petitioner's deputation came to an end vide order dated 12/01/2006, issued by the State Government therefore, at any rate, she ought to have been allowed to rejoin her duties specifically in view of “no objection” extended by the Respondent No.3. On the said no objection itself, the Respondent No.3 intimated the Government that after deputation is over, the Petitioner would be allowed to join her original post. There was no fault on the part of the Petitioner. As there was one vacancy kept vacant, the Petitioner is entitled for arrears of salary since 08/03/2006 to 30/06/2020.

30. It is a matter of record that during the pendency of this Petition, the Petitioner would have been retired on 30/06/2020 on her completion of 58 years, if she would have been in service. In view of the fact that the Petitioner is a permanent employee, she is entitled for continuity in service and pensionary benefits also. In view thereof, we are inclined to allow the Petition and proceed to pass the following order :

- (i) The Writ Petition is allowed.
- (ii) It is held and declared that the action of the Respondent Nos.3 and 4 showing the services of the Petitioner as terminated on 01/10/2004 as per Resolution dated 31/07/2004, is illegal and contrary to the provisions of law as well as in view of order passed by this Court in Writ Petition No.3321/2000, hence the Petitioner is entitled for continuity in service and all the benefits arising out of it.
- (iii) The impugned Communication dated 08/03/2006 and the Resolution dated 31/07/2004 are hereby quashed and set aside.
- (iv) The respondent Nos.1 and 2 are hereby directed to pay the arrears of salary of the Petitioner from 08/06/2006 till 30/06/2020 within four weeks from submission of pay bills by Respondent Nos.3 and 4.

- (v) The Respondent Nos.3 and 4 are hereby directed to forward the pay bills in respect of the above referred arrears of salary of the Petitioner within a period of four weeks.
- (vi) The Respondent Nos.3 and 4 are further directed to prepare the pension papers in respect of the Petitioner and forward the same to the Competent Authority within eight weeks.

The Rule is made absolute in the above terms. No order as to costs. Pending application(s), if any, stand(s) disposed of.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)