



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

(11) WRIT PETITION NO. 4158 OF 2022

Kishor Sitaram Dongardive
Address: At Post tamasi,
Tal & District Washim,
Maharashtra – 444 505

..Petitioner

Versus

1. Brihanmumbai Municipal Corporation
5, Mahapalika Marg, Dhobitalao,
Chatrapati Shivaji Terminus Area, Fort,
Mumbai – 400 001
2. Education Department of Brihanmumbai
Municipal Corporation,
Triveni Sangam, BMC School Building,
Mahadev Palav Marg, Currey Road (East),
Mumbai – 400012
3. Municipal Commissioner,
Brihanmumbai Mahanagar Palika,
CST, Mumbai
4. Education Officer,
Education Department of Brihanmumbai
Municipal Corporation,
having office at, Triveni Sangam, BMC
School Building, Mahadev Palav Marg,
Currey Road (East), Mumbai – 400012
5. Assistant Commissioner,
Brihanmumbai Mahanagar Palika,
CST, Mumbai

...Respondents

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AND
(12) WRIT PETITION NO. 4547 OF 2022

Shrikant Govindrao Vaidya
Address: At Khirda, Post. Dawha,
Taluka Malegaon, District Washim
Maharashtra – 444 503

..Petitioner

Versus

1. Brihanmumbai Municipal Corporation
5, Mahapalika Marg, Dhobitalao,
Chatrapati Shivaji Terminus Area, Fort,
Mumbai – 400001
2. Education Department of Brihanmumbai
Municipal Corporation,
Triveni Sangam, BMC School Building,
Mahadev Palav Marg, Currey Road (East),
Mumbai – 400012
3. Municipal Commissioner,
Brihanmumbai Mahanagar Palika,
CST, Mumbai
4. Education Officer,
Education Department of Brihanmumbai
Municipal Corporation,
having office at Triveni Sangam, BMC
School Building, Mahadev Palav Marg,
Currey Road (East), Mumbai – 400012
5. Assistant Commissioner,
Brihanmumbai Mahanagar Palika,
CST, Mumbai

...Respondents

Mr. B. Gopalakrishnan a/w Mr. Nilesh S. Ghadge for Petitioners in both
the Writ Petitions
Mrs. Shilpa Redkar a/w. Mr. Shivprasad Borade for the Respondent-
MCGM.

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

DATE : 8th OCTOBER, 2024

ORAL JUDGMENT (PER : Ravindra V. Ghuge, J.)

(A). WP/4158/2022

1. Rule. Rule is 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. 4.

(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
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of Shikshan Sevak, vide an application dated 29/05/2019. By an order dated 01/02/2020, the Petitioner was selected and he joined employment on the said date. The Petitioner tendered certain documents which were required under the verification exercise, on 16/03/2021, with the office of the Respondent No. 4. Since Respondent No. 4, received a police character certificate, the Petitioner was terminated on 17/12/2021 without issuing 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.

5. The learned Advocate for the Petitioner hastens to add that the Court of Additional Sessions Judge, Washim in Sessions Case No. 101 of 2010, has acquitted the Petitioner vide judgment and order dated 08/07/2016. In another Sessions Trial No. 100 of 2010, the Petitioner was acquitted by the Court of Additional Sessions Judge, Washim vide judgment and order, dated 20/04/2013.

6. 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

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given an opportunity of hearing, before issuing the impugned order of termination. It cannot be ignored that the Petitioner was in employment since 01/02/2020 until his termination after around 22 months, on 17/12/2021.

7. In the above facts and circumstances, and keeping in view the judgment of the Sessions Court referred to hereinabove, 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.

8. 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.

9. **Rule is made partly absolute in the above terms.**

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(B) WP/4547/2022

10. **Rule.** Rule is made returnable forthwith and heard finally, by the consent of the parties.

11. Even this Petitioner had applied for the post of Shikshan Sevak, pursuant to the same advertisement as above. He was selected and appointed on 16/09/2019 and he joined duty as Shikshan Sevak on 18/09/2019. In this case also, after Respondent No. 4 received the character certificate, an order was passed on 17/12/2021, which was practically after 25 months of the joining of duty by the Petitioner, vide which, he was terminated from service.

12. The learned Advocate for the Petitioner makes a solemn statement on instructions from the Petitioner that an NC registered against him has been closed and today, not a single criminal case or trial is pending against him regarding any offence registered in any police station.

13. As like the reason cited in the foregoing order, in this case also the Petitioner was not given an opportunity of hearing before the impugned order of termination was passed.

14. In view of the above and for the reasons recorded in the

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aforesaid order, this **Writ Petition is also partly allowed**. The impugned termination order dated 17/12/2021, is quashed and set aside with liberty to the Municipal Corporation to issue notice of hearing to the Petitioner. Reasonable opportunity of hearing shall be granted and a final reasoned order be passed by the Corporation, within the period of 60 days from the date of service of 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.

15. **Rule is made partly absolute in above terms.**

16. It is clarified, that both these orders are restricted only to the cases of these Petitioners and all contentions of the parties are kept open after the Petitioners receive the show cause notices from the Municipal Corporation.

(M. M. SATHAYE, J.)

(RAVINDRA V. GHUGE, J.)

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