

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

WRIT PETITION NO. 3676 OF 2018

Meraj Farhat Hashmath Khan
Age-Adult, Occ.-Teacher,
R/at 2nd Sankli Street, Namakwala Chawl,
Room No.11, Byculla, Mumbai-400 008.

... Petitioner

Versus

1. Yateemkhana and Madrasa Anjuman Khairul Islam
Baitul Aman Co-op. Housing Society Ltd.,
First Floor, 2, Maulana Azad Road, Nagpada,
Mumbai-400 008.
2. Anjuman Khairul Islam Urdu Primary School (Boys)
Through its Head Teacher,
2nd Ghelabai Street, Madanpura, Mumbai-400 008.
3. Education Department, School
Through its Secretary,
4th Floor, Mantralaya, Mumbai.
4. The Dy. Director of Education,
Private Primary School Department (BMC),
1st Floor, 112 Municipal School Building,
L N Road, Opposite King George School,
Hindu Colony, Dadar (E), Mumbai – 400 014.
5. The Commissioner,
Municipal Corporation of Greater Mumbai
Municipal Corporation Building,
Mahapalika Marg, Mumbai-01.
6. The Education Officer (BMC) Education Department
Bhaantewadi Municipal School Building,
Near Portuguese Church,
Prabhadevi Mahanagar Telephone Nigam Ltd Marg,
Dadar (W), Mumbai – 400 028.

7. The Superintendent

The Municipal Corporation of Greater Mumbai
'E' Ward, Municipal Office, 3rd Floor, Byculla,
Mumbai – 400 008.

... Respondents

Mr. Amit Singh a/w. Ms. Anasamah Sayed and Ms. Ashlesha Suryawanshi
i/b Nazish Sayed for the Petitioner.

Mr. Manish Upadhye, AGP for the Respondent-State.

Ms. Rishika Agarwal i/b Mr. Swaraj Jadhav for Respondent Nos.1 & 2.

Mr. Anupkumar Khaitan (through VC) a/w. Mr. Pratik Garde for the
Respondents-BMC.

CORAM : **M. S. KARNIK AND**
S. M. MODAK, JJ.

DATED : **17th FEBRUARY, 2026.**

ORAL JUDGMENT (PER M. S. KARNIK, J.)

1. By this Petition under Article 226 of the Constitution of India, the petitioner prays for a direction to the respondent-Municipal Corporation and the management to absorb the petitioner who is working on part-time basis as a full time teacher with consequential benefits from the original date of appointment i.e. from 16th September, 1995. The petitioner prays for quashing and setting aside the Grievance Redressal Committee's Order dated 23rd March, 2021, rejecting the petitioner's request for absorption as a full time teacher.

2. The brief facts of the case are that, the petitioner was appointed as part-time craft teacher in respondent No.2-School against a clear vacancy on 20th September, 1995. The petitioner possesses requisite qualifications

of S.S.C. with a diploma in Craft Teacher Course. In 2011, the petitioner completed her graduation (B.A.). The petitioner was appointed on probation basis from 16th September, 1995 till 31st April, 1996, subject to approval from Education Department. The respondent No.7-Superintendent, Municipal Corporation of Greater Mumbai, granted approval to the appointment of the petitioner by an Order dated 13th November, 1995. Education Department of the Corporation issued a circular dated 4th September, 1996 for discontinuation of appointments of Special Teachers in private primary schools in Greater Mumbai from June, 1993. Between 2000 to 2018, the petitioner made representations for absorbing her as full time teacher. Despite these letters, no action was taken by the respondents.

3. During 2016-2017, respondent No.3-Education Department recommended to respondent No.1 that the petitioner be made full time teacher. Respondent No.4-The Dy. Director of Education rejected the proposal of the petitioner as full time teacher by the Order passed in February, 2018. The present Petition was filed in December, 2018.

4. During the pendency of the Petition, the petitioner filed a complaint before the Grievance Redressal Committee on 23rd September, 2019. The Grievance Committee rejected the complaint of the petitioner on 23rd March, 2021 on the ground that as per Circular dated 4th September, 1996,

after June, 1993 there cannot be any appointment of Special Teachers.

5. Learned counsel for the petitioner submitted that the Circular dated 4th September, 1996 is not applicable as the petitioner was appointed much prior to the issuance of the circular. It is further submitted that administrative Order/Circular cannot apply retrospectively. It is further submitted that the petitioner's services were not terminated at the time of issuance of circular and she continued in services. Learned counsel for the petitioner relied upon the decision of this Court in **Swati Satish Nazare Vs. State of Maharashtra & Ors.**¹.

6. Mr. Khaitan, learned counsel appearing for the respondent-Corporation, on the other hand, supported the impugned Order. It is submitted that the Committee's Order dated 23rd March, 2021 is a complete answer to the petitioner's contentions inasmuch as the Circular clearly provided that after June, 1993 there cannot be any appointment made of Special Teacher. It is submitted that the case of the petitioner is in the teeth of the GR dated 4th September, 1996. In any case, it is submitted that the petitioner is working on part-time basis in one of the schools and therefore cannot claim appointment on full time basis.

7. Heard learned counsel for the petitioner.

8. It is not in dispute that the petitioner was appointed against the clear vacancy. The petitioner had the necessary qualifications for

¹ 2019 (2) AIR Bom R 803

appointment to the said post as per Clause 2 of Schedule 'B' of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 as it existed prior to the 2017 amendment. The petitioner is, for the last 31 years, continuously working as a part-time teacher in respondent-school. There is no dispute as regards this fact and even the learned counsel for the management supports the stand of the petitioner that the petitioner is continuously working as a part-time teacher for the last 31 years. It is the stand of the management that the same was done after following due procedure. There is really no dispute about the fact that the petitioner was appointed on a clear vacancy and after following the due procedure.

9. Learned counsel for the petitioner relied upon the decision of this Court in **Swati Satish Nazare** (supra). It would be pertinent to refer to the relevant observations, which in our opinion squarely cover the case of the present petitioner.

“19. Let us now deal with the objection of the learned Counsel for the Corporation that as the appointment of the petitioner was after June 1993, her appointment being not in conformity with the G.R. dated 04/09/1996, approval is rightly rejected. A plain reading of G.R. dated 04/09/1996 would reveal that Special Teachers are not allowed with effect from June 1993 as of policy in accordance with the State Government's new education policy. The School Management was therefore informed not to appoint a Special

teacher either a full time or part time basis in their Schools. The G.R is dated 04/09/1996. Admittedly, the information is passed on to the Schools regarding the policy only after 04/09/1996. It is not even the case of respondent Corporation that the Schools were aware about the applicability of the State Government policy. It is only after 04/09/1996 that Schools were informed about the State Government's new educational policy not to appoint Special Teacher from June 1993. The respondent No.2 is not justified in giving retrospective effect to the G.R.dated 04/09/1996.

20. We find that after following the prescribed procedure and upon issuance of advertisement, the petitioner was duly selected as a Drawing Teacher. The petitioner was appointed as a Drawing Teacher on permanent basis prior to the issuance of circular dated 04/09/1996. The regular salary as per pay-scale prescribed under the Rules for Drawing Teacher was paid to the petitioner by respondent No.3-School. Respondent No.3-School started receiving grant-in-aid from 2010 and was in receipt of 100% grant-in-aid from the academic year 2014.”

10. The petitioner was admittedly appointed on 20th September, 1995 and the said Circular was issued on 4th September, 1996. As held in **Swati Satish Nazare** (supra), the Circular dated 4th September, 1996 cannot apply retrospectively. The impugned Order passed by the Grievance Redressal Committee dated 23rd March, 2021 as well as that of the Dy. Director are therefore quashed and set aside.

11. The petitioner's services as a part-time teacher have been approved all throughout. It is submitted by the learned counsel for the petitioner as

well as the learned counsel for the management that there are two schools in the same premises where the petitioner is presently working as a part-time teacher. Learned counsel for the petitioner submitted that the petitioner's case for appointment as a full time teacher could be considered by clubbing these two posts of part-time teachers. It is submitted that the boys school is running during the morning shift whereas the girls school is running during the afternoon shift. Both the schools are run by the respondent No.1-Trust in the same premises.

12. In such view of the matter, in the facts of the case, in our view there should be no difficulty in clubbing these part-time teachers' posts for giving the benefits of a full time teacher's post to the petitioner. The petitioner has been working on part-time basis for the last 31 years. Even the management is ready to appoint the petitioner on a full time basis by clubbing these two posts. There is substance in the contention of the learned counsel for the petitioner and the fact that the petitioner has been working for the past 31 years on part-time basis needs to be considered favourably, more so when there is another post of part-time teacher available in the same premises where two schools are functioning in two different shifts. Accordingly, we direct that, so far as the petitioner's part-time services are concerned and which has been approved, the same are now protected and the petitioner is thus entitled to all the benefits arising

from such part-time services, as we have held that the petitioner's services cannot be covered by GR dated 4th September, 1996. Now that we have held that the Circular dated 4th September, 1996 is not applicable to the petitioner, the management to forward the proposal for absorption of the petitioner on a full time basis by clubbing the two part time teachers posts in the aforesaid terms to the Education Officer of the Mumbai Municipal Corporation, within a period of four weeks from the date of communication of this Order. Within a period of four weeks from the receipt of the proposal, the Education Officer, Mumbai Municipal Corporation to consider the proposal for absorbing the petitioner as a full time teacher by clubbing the two posts and communicate the decision to all concerned.

13. The Petition is, accordingly, disposed of.

(S. M. MODAK, J.)

(M. S. KARNIK, J.)