

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10510 OF 2014

Shri Kalbhairav Shikshan Sanstha and anr. Petitioners
vs
The State of Maharashtra and anr Respondents

Mr. N. V. Bandiwadekar with Mr. Sagar A. Mane for the
petitioner.
Mr. V.N. Sagare, AGP for respondents 1 and 2.

**CORAM: ANOOP V. MOHTA AND
K. R. SHRIRAM, JJ.**

DATE : April 21, 2015

P.C.:

Rule. Rule is made returnable forthwith. Heard finally
by consent of parties.

2 The learned counsel appearing for the Petitioner has
pointed out a Division Bench judgment of this Court dated 19
December 2011 in Writ Petition No. 6907 of 2011-Chhagan Natha
Rajapure v. The State of Maharashtra & ors., whereby in a similarly
situated matter, this Court directed the concerned Respondents to

appoint the Petitioner as shikshan sevak in the vacancy available and to grant approval apart from the requisite salary. The same was confirmed by dismissing the Special Leave Petition by the Supreme Court. In another writ petition, this Court on 1.2.2013 in Writ Petition No.9398 of 2012-Uddhav s/o Trimbak Umbare v. The State of Maharashtra and ors, again referring to the Government Circular dated 31.01.2001, considered and observed that a part time teacher required to be absorbed in the event of a vacancy of full time teacher being available in the said institution. This judgment also confirmed as SLP against the same was dismissed. The Supreme Court, on the contrary, directed the concerned Authority to implement order with immediate effect.

3 In the present case also, Petitioner No.2 initially worked as part time teacher on duly sanctioned post as the same was vacant in the school. Petitioner No.2 was selected in selection process also. He was working part time teacher with effect from 18.7.1999. The proposal was accordingly submitted which was granted by Respondent No.2 as a part time teacher. The Petitioner, as stated and averred, even in pursuance to the resolution passed by the managing committee worked as part time teacher upto 16

June 2013. The Petitioner has been appointed as full time teacher with effect from 17.6.2013. The appointment was on probation for two years. In spite of this, Respondent No.2-Education Officer, refused to grant approval which, in our view, is impermissible and contrary to the judgment so referred above. The rights and the entitlement of the Petitioner, therefore, cannot be taken away in such fashion by overlooking the provisions of law and the judgments. Therefore, as the Petitioner's case is also covered, we are inclined to allow this Petition in terms of prayer (b). Order accordingly.

4 Rule is made absolute accordingly.

5 No costs.

(K. R. SHRIRAM, J.)

(ANOOP V. MOHTA, J.)