

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2207 OF 2016

Vinod Laxman Shelkar and anr	..Petitioners
Versus	
The State of Maharashtra and anr	..Respondents

Mr. N. V. Bandiwadkar, Mr. Sagar Mane and Mr. M.G. Bagkar, for
Petitioners.
Mrs. M. P. Thakur, AGP for the Respondent State.

**CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR JOSHI, JJ.**

DATE : 31st MARCH, 2016.

P. C. :

1. Heard Mr. Bandiwadkar, learned counsel appearing for
the petitioner and Mr. V. M. Mali, learned AGP for the State.

2. The petition is filed for the following reliefs :-

(b) By a suitable writ, order or direction, this Hon'ble Court
be pleased to quash and set aside the impugned order
dated 21.11.2015 issued by the Respondent No.2 refusing
to grant approval to the appointment of petitioner No.1 as
a Shikshan Sevak in the Government recognized and aided
School by name "Gurunanak English High School",
Rambaug Lane No.4 Kalyan West, District Thane 421 301,
which is conducted by the petitioner No.2 Institution.

(b) By a suitable writ, order or direction, this Hon'ble Court
be pleased to direct the Respondent No.2 to grant approval

to the appointment of Petitioner No.1, as Shikshan Sevak with effect from 09.01.2013 in the school by name "Gurunanak English High School" Rambaug Lane No.4, Kalyan West, District Thane 420 301, which is run by the Petitioner No.2 Institution and to release the grant-in-aid for payment of honorarium from the said date of appointment including arrears, with further direction to grant approval to the Petitioner No.1 as a regular Assistant Teacher in the prescribed pay scale after completing service of three years in the post of Shikshan Sevak with release of grant-in-aid for payment of salary from 09.01.2016 onwards.

3. Petitioner No.2 is a minority institution and has been recognised as such under Notification dated 11.8.2003. Thus, petitioner No.2 is entitled to all the privileges and rights guaranteed to it, based on its minority status, under Articles 29 and 30 of the Constitution of India, including inter alia choice of making appointments to posts in the schools run and conducted by petitioner No.2-institution.

4. Petitioner No.2 issued an advertisement in Mumbai Mirror and in daily Janmat dated 19th and 20th December 2013, respectively, inviting applications from qualified persons for appointment to the post of "Shikshan Sevak" in Gurunanak English High School. In pursuant of this advertisement, the petitioner No.1 came to be appointed to the post of Shikshan Sevak by appointment order dated 9.1.2013 for the period 9.1.2013 to 8.1.2016 on the honourarium of Rs.6,000/- per month.

5. Petitioner No.2-institution thereafter submitted a proposal dated 15.1.2013 to respondent No.2 for approval of to first petitioner's appointment. This proposal was rejected by respondent No.2 by his order dated 21.11.2015. The rejection of the proposal was on the sole ground that the first petitioner's appointment is subsequent to the Government Resolution dated 2nd May 2012. This order is impugned in this petition.

6. Mr. Bandivadekar, learned counsel for the petitioners submitted that the rejection of first petitioner's approval is based on the Government Resolution dated 2nd May, 2012 especially clause 1.8 thereof, under which the new teachers cannot be appointed unless and until 100% absorption of surplus teachers in other schools. Mr. Bandiwadekar, relying upon the decision of this Court in W. P. No.5547 of 2013, dated 30th September, 2013, submitted that the Government Resolution dated 2nd May, 2012 is not applicable to petitioner No.2-institution. He submitted that the Government ultimately has issued Government Resolution dated 2.3.2014 and thereby withdrawn earlier resolution dated 2nd May, 2012. He submitted that under subsequent Government Resolution dated 20th June, 2014 new teachers can not be appointed unless surplus teachers in the other schools are absorbed totally. However, application of this G.R. is excluded in cases of the minority institution.

7. Learned AGP expressed her inability to assist the Court.

She submitted that despite several letters and telephonic calls, she has not received any instructions. She, therefore, submits that appropriate orders may be passed.

8. Having considered the submissions of Mr. Bandivadekar, learned counsel for the petitioners and having gone through the petition and relevant annexures annexed to the petition, we find merit in the petition.

9. Petitioner No.1 is appointed in school run by petitioner No.2 which is evident from the appointment letter. The claim of the petitioner No.1 is that he is qualified and after adopting proper procedure, he has been appointed. As stated above approval to the appointment of petitioner No.1 is rejected solely on the ground that the same is after the cut off date i.e. 2nd May, 2012. It is obvious that ban of cut off date was imposed as per Government Resolution dated 2nd May, 2012. Under clause No.1.8 of this resolution, fresh appointment in the aided school cannot be made unless surplus teachers in other schools are fully absorbed.

10. The question whether G.R. dated 2nd May, 2012 is applicable or not was for consideration before the Division Bench of this Court while deciding Writ Petition No.3707 of 2013 and Writ Petition No.5547 of 2013.

11. The Division Bench while deciding WP No.3707 of 2013, in paragraph Nos.14 has observed thus :-

“14. Position clearly emerges that petitioner institution is indisputably a minority institution and, in various rulings cited on behalf of the petitioner, it is held that the appointments by minority institutions would not be able to be withheld till the time surplus teachers are accommodated/absorbed. In view of the aforesaid prevailing position, as exemplified under the decisions of the Apex Court and the High Courts, particularly of this Court as depicted in judgment dated 16th July, 2012 which could not be effectively countered by the respondents, save that impugned order being tried to be supported by Government Resolution dated 02.05.2012, the impugned order is incompatible with emerging legal position and as such is unsustainable”.

12. It appears that in the light of the decision of this Court as referred above, the State of Maharashtra issued fresh Government Resolution dated 20.6.2014 copy of which is annexed as Exhibit “J” to this petition. By this Government Resolution the ban imposed on the new appointments of teachers has been withdrawn and fresh ban is imposed. The provisions of this Government Resolution are similar to the Government Resolution dated 2nd May, 2012. However, under clause 2 of this G.R. minority institutions are excluded from the above.

13. In above circumstances, the impugned order rejecting approval to the appointment of petitioner No.1 especially when petitioner No.2 is minority institution cannot be sustained. We are, therefore, inclined to allow this petition.

14. In the light above discussion, petition is disposed of in following terms :-

Order

- i) The impugned order is quashed and set aside;
- ii) Respondent No.2 is directed to consider afresh the proposal submitted by petitioner No.2 institution, for approval of the appointment of petitioner No.1, in the light of observations made hereinabove.
- iii) Respondent No.2 shall take decision as expeditiously as possible and in any case within a period of four weeks from the date of receipt of a copy of this order.
- iv) The parties shall act on the authenticated copy of this order.

[DR. SHALINI PHANSALKAR JOSHI, J.]

[RANJIT MORE, J.]