

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4387 OF 2016

Shri Vinod Narayan Deore and anr. ..Petitioners
Versus
The State of Maharashtra,
Through the Secretary, School Education
Department, Mantralaya and anr. ..Respondents

Mr. N. V. Bandiwadekar i/b. Mr. Sagar A. Mane, advocate for the
petitioners.
Mr. A. I. Patel, AGP for the State.

CORAM : RANJIT MORE,
DR. SHALINI PHANSALKAR-
JOSHI, JJ.

DATE : 15th APRIL, 2016.

P. C. :

Heard Mr. Bandiwadekar, learned counsel appearing for
the petitioners and Mr. Patel, 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 30.1.2016 issued by the Respondent No.2 refusing to grant approval to the appointment of petitioner No.1 as Shikshan Sevak in the Secondary School of the Petitioner No.1 by name J. J. Gupta Hindi High School, Shastri Nagar, Kalyan Road, Bhiwandi, Dist.Thane.

(c) 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 10.7.2013 in the Secondary School of the Petitioner No.1 by name J. J. Gupta Hindi High School, Shastri Nagar, Kalyan Road, Bhiwandi, District.Thane and to to release the grand-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 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 10.7.2016 onwards.

3. Petitioner No.2 is a minority institution and has been recognised as such under Notification dated 28th March, 2007. 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 Navbharat and Hamara Mahanagar dated 2nd July, 2013, inviting applications from qualified persons for appointment to the post of "Shikshan Sevak" in J. J. Gupta Hindi High School, Shastri Nagar, Kalyan Road, Bhiwandi,

District.Thane. In pursuance of this advertisement, petitioner No.1 came to be appointed to the post of Shikshan Sevak by appointment order dated 8th July, 2013 for the period 10th July, 2013 to 9th July, 2016 on the honourarium of Rs.8,000/- per month.

5. Petitioner No.2-institution thereafter submitted a proposal dated 30th September, 2013 to respondent No.2 for approval of first petitioner's appointment. This proposal was rejected by respondent No.2 by his order dated 30th January, 2016. 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. Bandiwadekar, 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 2nd March, 2014 and thereby withdrawn

earlier resolution dated 2nd May, 2012. He submitted that under subsequent Government Resolution dated 20th June, 2014 new teachers cannot 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. Mr. Patel, learned AGP vehemently opposed the petition. He submitted that since the appointment of petitioner No.1 is subsequent to the ban imposed by Government Resolution dated 2nd May, 2012, the petition has no merit and the same requires to be dismissed.

8. Having considered the submissions of Mr. Bandiwadekar, 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 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 to minority institution fell for consideration before the Division Bench of this Court in Writ Petition No.3707 of 2013 and Writ Petition No.5547 of 2013. 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".

11. It appears that in the light of the decision of this Court as referred above, the State of Maharashtra issued fresh Government Resolution dated 20th June, 2014, a copy of which is annexed as Exhibit "O" to this petition. By this Government Resolution, the ban imposed on

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 its application.

12. 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.

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

O R D E R

- 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 upon a copy of this order duly authenticated by the Registry of this Court.

(DR. SHALINI PHANSALKAR-JOSHI)

[RANJIT MORE, J.]