

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 9027 OF 2014

Ms. Prajakta Pandharinath Pawaskar ..Petitioner

v/s.

The State of Maharashtra,
through Secretary, School Education Dept.
& Ors. ..Respondents

Mr. N.V. Bandiwadekar for the Petitioner.
Mr.P.P. Sawant, AGP for the State.
Mr. Sagar Mane for the Respondent no.3

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI,JJ.
DATED : JUNE 15, 2016.**

P.C.

1. Rule. Rule made returnable forthwith. By consent of the parties petition is taken up for hearing.

2. By this petition, the petitioner is seeking to quash and set aside order dated 30.8.2014 issued by the respondent no.2 rejecting the proposal submitted by the respondent no.3 for grant of approval to the petitioner as Assistant Teacher in the prescribed pay scale w.e.f.

11.08.2014. In the alternatively, petitioner has also sought declaration that he may be declared surplus in the school of the respondent no.3 and direct the respondent no.2 to absorb her in any other Govt. recognized and aided private secondary school in Ratnagiri district.

3. Short facts which are not disputed are as follows:

The school run by the respondent no.3 namely G.M.Shetye High School, Basani, Taluka and District Ratnagiri, is government recognized and fully aided secondary school. In the academic year 2011-2012 there were vacancy of teaching post in the said school and therefore after following proper procedure the petitioner was appointed as Shikshan Sevak for a period of three years w.e.f. 8.8.2011. The appointment of the petitioner as Shikshan Sevak was approved by the respondent no.2. The petitioner accordingly worked for a period of three years i.e. upto 7.8.2014 and thereafter was entitled to be appointed as a Assistant Teacher in prescribed regular pay scale. The respondent no.3 accordingly sent proposal to the respondent no.2 for approval, and this approval as stated above is

rejected by the order impugned herein.

4. The approval is rejected on the ground that the respondent no.3 along with their proposal have not annexed

- i) Appointment order as Assistant Teacher dated 11.8.2014.
- ii) Joining report dated 11.8.2014
- iii) Caste Validity Certificate.

It was further stated that in the academic year 2013-2014 there was reduction of two posts in the said school run by the respondent no.3 and therefore the petitioner's post cannot be approved.

5. Mr. Bandiwadekar, learned Counsel for the petitioner submitted that all the three documents of which reference is made in the impugned orders are already been annexed with the respondent no.3's proposal. Even the copies of the said proposal are annexed with the petition. This fact is not disputed by the learned AGP. The AGP however submits that since in the academic year 2013-14 there was reduction of two posts, the impugned order was correctly passed.

6. Mr.Bandiwadekar, in this regard invited our attention to the letter of respondent no.2 dated 7.8.2014 which is annexed at Exhibit A under which two posts in the school run by the respondent no.3 are reduced. Mr.Bandiwadekar, however submits that the said letter was received by the School run by the respondent no.3 on 18.9.2014 and by that time the petitioner had not only completed three years as Shikshan Sevak but was also paid monthly honorarium for that period. This fact is also not disputed by the learned Counsel appearing for the respondent no.2.

7. The above facts unequivocally make it clear that the petitioner has rendered continuous service as Shikshan Sevak for the academic year 2011-2012, 2012-2013 and 2013-2014, and though there was reduction in the two posts for the academic year 2013-2014, fact remains that she has worked, as the said letter was received after expiry of the academic year. The petitioner cannot be made to suffer for the fault on the part of the respondent no.2.

8. In the peculiar facts the impugned order cannot be sustained. However, in the academic year 2015-2016 also in view of the reduction of the post there is no vacancy, therefore the petitioner after approval of service as Assistant Teacher is required to be declared surplus and thereafter absolved in some other aided school. The petition accordingly succeeds.

9. Secondly, the respondent no.2 is directed to grant approval to the petitioner as Assistant Teacher in prescribed payscale and thereafter declare her surplus and take action for absolving in some other aided secondary school. Rule made absolute in above terms. The above exercise shall be completed by the respondent no.2 within period of six weeks from the date of receipt of the order.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)