

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.5968 OF 2004

Jyoti d/o Krushnarao Choudhari
Age 43 years, Occ. Service,
R/o C/o Shri N.P. Bhole, Flat No.4,
Swamini Apartment, Sharda Nagar,
Bhusawal, Taluka Bhusawal,
District Jalgaon

... PETITIONER

VERSUS

1. The Chairman,
Co-Ordination Committee/
School Committee, Secondary &
Higher Secondary Education,
Municipal Council, Bhusawal,
District Jalgaon.
2. The Head Master,
Dayaram Shivdas Secondary &
Higher Secondary Vidhayalaya,
Bhusawal, Taluka Bhusawal,
District Jalgaon.
3. The Municipal Council,
Bhusawal, District Jalgaon,
through its Chief Officer,
4. The Education Officer (Secondary)
Zilla Parishad, Jalgaon
5. The Deputy Director of Education,
Nashik Division, Nashik

... RESPONDENTS

.....
Shri Swapnil S. Patil, Advocate for petitioner
Shri G.V. Wani, Advocate for respondent No.1
Respondent No.2 served
Shri S.B. Joshi, A.G.P. for respondents No.4 & 5
Shri Sandip Gorde Patil, Advocate for respondents No.3
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CORAM: R.D. DHANUKA AND
 SUNIL K. KOTWAL, JJ.

DATED: 16th August, 2017.

ORAL JUDGMENT (PER R.D. DHANUKA, J.) :

1. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the letter dated 5/7/2004, addressed by the respondent No.1 informing the petitioner that her appointment on the basis of clock hour basis is terminated in view of the approval not granted by the Education Department. Some of the relevant facts for the purpose of deciding this petition are as under :

2. The petitioner acquired qualification of M.Com. and B.Ed. in the year 1983 and 1988 respectively. On 2/8/1988, the petitioner was appointed as an Assistant Teacher in the respondent No.2 school, which is run by the respondent No.3 Council on temporary basis. It is the case of the petitioner that her services were continued as Assistant Teacher by subsequent appointment orders dated 28/2/1989, 17/7/1989, 13/7/1990, 16/2/1991 and 1/8/1991. It is the case of the petitioner that, on 6/8/1993, the petitioner was appointed as Part Time Teacher to teach 12th Standard students in the Subject Economics. The

appointment of the petitioner was issued on the basis of clock hour basis in the subject Economics for Higher Secondary Class on 13/6/1995 by the respondent No.1 and 2.

3. The Municipal Council, by its resolution dated 31/1/1997, resolved that, as the petitioner had worked as Assistant Teacher since the year 1988 onwards till 1992, she should be appointed on permanent basis in the pay scale w.e.f. 1/2/1997. It is the case of the petitioner that the respondents No.1 and 2 accordingly issued permanent appointment order to the petitioner in the respondent No.2 school in the pay scale of Rs.2000-2500 w.e.f. 1/2/1997.

4. It is the case of the petitioner that, the respondent No.3 Council passed a resolution on 31/3/1998 to the effect that payment of salary of the petitioner should have been paid in the regular pay scale from the funds of Municipal Council, Bhusawal.

5. It is the case of the petitioner that the respondent No.3 School forwarded various proposals from time to time to the respondent No.5 Deputy Director of Education for approval of the petitioner's appointment. The payment of salary of the petitioner has been released by the authorities from 1988 till 1992 as Assistant Teacher. It is the case of the petitioner that, however,

since 1993, the petitioner has not been paid any salary. On 5/7/2004, the respondent No.1 issued a letter of termination, thereby terminating the services of the petitioner on the ground that the Education Department has not approved her services. The petitioner accordingly filed this petition for a writ of certiorari, interalia praying for quashing and setting aside of the order passed by respondent No.1, dated 5/7/2004, thereby terminating the services of the petitioner.

6. Learned counsel for the petitioner invited our attention to various correspondence annexed to the petition and would submit that, though the appointment of the petitioner was made on temporary basis, i.e. clock hour basis during the period between 1988 and 1997, on 31/1/1997, the services of the petitioner were regularised. The Municipal Council has passed resolution that till the approval of the petitioner was made, the salary of the petitioner would be made from the Municipal funds.

7. Learned counsel for the respondent No.3, on the other hand, invited our attention to the letter dated 3/2/1990, addressed by the petitioner to the respondent No.1, informing that, since some of the teachers of the school had retired, she was teaching to the students of 11th Standard and expressed her willingness for her free services to the school for the remaining

period of the academic year. She also recorded that, even in the past, i.e. for the months of March 1989 and April 1989, she had offered her services free. By the said letter, the petitioner requested the respondent No.1 to continue her services for the academic year 1990-91 sympathetically. He submits that, the petitioner thus cannot claim any permanency in service and cannot challenge the order of termination issued by the respondent No.1.

8. Learned counsel submits that, admittedly the petitioner was appointed on temporary basis as Assistant Teacher to teach 11th and 12th Standard students in Arts and Commerce faculty. The petitioner was teaching two subjects namely Secretarial Practice and Organization of Commerce and Economics subject in Arts faculty. The Deputy Director of Education had sanctioned the total workload available for those subjects at 10 periods on clock hour basis. The petitioner had taken Business Environment and Entranceship and Indian Economy as subjects in B.Com. He submits that, thus, the petitioner was not qualified to teach the subjects taught by the petitioner on the ground that those were not the subjects which she had studied up to her graduation level. It is submitted that, the Deputy Director of Education, vide his letter dated 13/12/1995, has thus rightly refused to grant approval to

petitioner to teach Economics subject as the petitioner is not having requisite qualification. He submits that, vide letter dated 11/9/1998 and 7/11/1998, the authority had rightly refused to grant approval to the services of the petitioner on similar grounds. Vide letter dated 3/4/1999, the respondent No.5, the Deputy Director of Education had informed the respondent No.2 that the approval was not granted in favour of the petitioner on the ground that she did not possess the requisite qualification to teach Economics as she was M.Com. B.Ed. Graduate.

9. It is submitted by the learned counsel that, by letter dated 18/8/1999, the Divisional Deputy Director of Education had granted approval to appoint the petitioner on clock hour basis since the workload available to the petitioner in the said subjects i.e. Commerce faculty was only 10 periods. Similarly, for the academic years 2000-2001, 2001-2002 and 2002-2003 also, the approval was granted on clock hour basis to teach Commerce faculty.

10. Learned counsel for the Council relies on Rule 17.1 and also Annexure 63 of the Secondary School Code and would submit that, the management was directed to ensure that the subjects which were taken for basic degree obtained by the petitioner were keeping in view the subjects taught in the classes

in secondary school for which the teacher is appointed. He submits that, since the petitioner was M.Com. B.Ed., she was not qualified to teach Economics subject in the secondary school.

11. Learned counsel for the respondent No.1 submits that, since there was no workload available in the school, the management had appointed the petitioner purely on clock hour basis for temporary period subject to the approval being granted by the authority. He submits that, since the Council has refused to grant approval to the appointment of the petitioner, his client has rightly terminated the services of the petitioner.

12. It is not in dispute that the petitioner was appointed on clock hour basis by the respondent No.1. The petitioner has been already paid the salary for the work done by the petitioner on the said post to which the petitioner was appointed on clock hour basis. Perusal of the record indicates that the respondent No.3 Council had, from time to time, conveyed the decision to the management rejecting approval of the services of the petitioner on the ground that petitioner was not having requisite qualification to teach the subjects being taught by her. The learned counsel for the petitioner does not dispute that petitioner was M.Com. B.Ed. In our view, since the petitioner was not possessing the qualification of M.Com. B.Ed., she was not

qualified to be appointed as Assistant Teacher to teach Economics subject in Arts faculty.

13. The appointment of the petitioner made on clock hour basis appears to have been made since there was no other teacher available in the school for the purpose of teaching the subject of Economics in secondary school on clock hour basis. The appointment of the petitioner made on clock hour basis, in these circumstances, would not vest any right in the petitioner to continue her appointment on permanent basis. The perusal of the initial letter of appointment, annexed to the petition, clearly indicates that the appointment was made subject to the approval of the authorities and was made on temporary basis. Since the Council has refused to grant permission on the ground that petitioner was not having requisite qualification to teach the Economics subject to secondary school, the respondent No.1 had no other alternative than to terminate the services of the petitioner.

14. A perusal of the prayers in the petition indicates that, the petitioner has not impugned the orders passed by the Council from time to time refusing to grant approval to the appointment of the petitioner on the ground that petitioner was not qualified and did not possess requisite qualification to be appointed in the

subject of Economics in the secondary school. The impugned letter of termination, dated 3/7/2000, passed by the respondent No.1 is based on the letter of the Deputy Director of Education, rejecting approval of the petitioner's post of Assistant Teacher. In these circumstances, in our opinion, the petitioner has not made out any case for interference with the order passed by the respondent No.1. The petition is devoid of merit. We, therefore, pass the following order :

ORDER

Writ Petition No.5968/2004 is dismissed. Rule is discharged. There shall be no order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE

fmp/