

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6427 OF 2016

Swati Suresh Lohar

..Petitioner

Vs.

State of Maharashtra and Others

..Respondents

Mr. Dhairyasheel Sutar, for the Petitioner.

Mr. A. P. Vanarase, AGP, for Respondent Nos. 1 to 4.

Mr. N. V. Bandiwadekar I/b Mr. S. A. Mane, for Respondent Nos. 5 and 6.

CORAM:-**B.R.GAVAI & B. P. COLABAWALLA, JJ.**

DATE :- **DECEMBER 13, 2017.**

P. C.:

Rule. Rule made returnable forthwith. Heard by consent.

2 The Petitioner impugns the Communications dated 28th January, 2016 and 3rd February, 2016 vide which Respondent No.3 has rejected the proposal for grant of approval to the appointment of the Petitioner.

3 The facts in brief giving rise to the present Petition are as under:-

The Petitioner who is possessing the requisite

qualification came to be appointed at Respondent No.6 school by Respondent No.5 on 16th June, 2008. Initially, the appointment was on probation for the period of two years. Respondent No.4 had granted approval to the appointment of the Petitioner on probation vide order dated 17th February, 2009. After completion of probation, Respondent Nos.5 and 6 confirmed the services of the Petitioner. The Respondent Management, therefore, submitted a proposal to Respondent Nos. 3 and 4 for grant of approval as permanent teacher to the Petitioner's service. However, since the same was not being done, various representations were addressed to the authorities. Respondent No.3, by the impugned order, rejected the said proposal. Hence the present Petition.

4 Heard Mr. Sutar, the learned counsel for the Petitioner, Mr. Vanarase, the learned AGP for Respondent Nos.1 to 4 and Mr. Bandiwadekar, the learned counsel for Respondent Nos. 5 and 6. Perusal of the impugned order would reveal that the approval is rejected on the ground that the Petitioner was appointed in-spite of there being no teacher in the said school belonging to Scheduled Tribe category. The perusal of the affidavit in reply filed on behalf of Respondent Nos.5 and 6 would reveal that the said school is having five sanctioned teachers post. Out of five posts, one teacher

belongs to Scheduled Caste, one to Special Backward Class and the other one to the Other Backward Class. It is the specific contention of the management that the services of three teachers from the aforesaid three categories are already approved by the Respondent Authority. It is further the specific averment of the management that the Petitioner was appointed against the vacancy which arose on account of discontinuation of services of the teacher who belongs to the Open Category.

5 Be that as it may, in view of the judgment of the Constitution Bench of the Apex Court in the case of **Indra Sawhney v/s Union of India** reported in **AIR 1993 SC.477**, the reservation would not be normally permissible beyond 50%. In any case, the reservation as provided by the State Government also limits it to 52%. If out of five posts, three posts are already held by the persons belonging to the Reserved Category, the further reservation would not be warranted. If the candidate from Scheduled Tribe category is to be appointed, in view of the fact that the reservation provided for Scheduled Tribe is 7% and total number of posts are only five, the reservation for the said category would have to be provided by rotation in the seats which are earmarked for the reserved category. We therefore, are of the

considered view that refusal of the approval on the ground that the teacher from the Scheduled Tribe Category is not available, is not sustainable. Respondent No.6-school is already having 60% of the teachers belonging to reserved category. The rest of the seats will have to be appointed of the candidates belonging to Open Category.

6 In that view of the matter, the following order is passed:-

- (i) The orders dated 28th January, 2016 and 3rd February, 2016 are hereby quashed and set aside.
- (ii) It is held and declared that the Petitioner is entitled to approve as a permanent teacher upon completion of her two years tenure on probation basis.
- (iii) The Petitioner be paid salary on the basis of the aforesaid, from the month of January, 2016. All arrears to be worked out on the basis of the aforesaid order and shall be cleared within a period of six months from today.

7 The Petition is disposed of in the aforesaid terms.

(B. P. COLABAWALLA, J.)

(B. R. GAVAI, J.)