

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6754 OF 2016

Smt. Chetana Subhash Patil
Age 29 years, occ. service
r/o Shri Guru Colony
Plot No. 32, Behind A.S.R. Patil
High School, Valvadi-Shivar
Deopur, Dhule
Dist. Dhule

Petitioner

Versus

1. The State of Maharashtra
through its Secretary
School Education Department
Mantralaya, Mumbai
2. The Education Officer
(Secondary)
Zilla Parishad,
Dhule.
3. Dwarkamai Sarvangin Vikas Sanstha
Vishwanath,
Tq. & Dist. Dhule
Through its President
4. Jai Yogeshwar Madhyamik Vidyalaya
Vishwanath, Tq. & Dist. Dhule
Through its Headmaster
5. Arun s/o Shriram Deore
age major, occ. service
r/o at post Biladi, Tq. & Dist. Dhule

Respondents

Mr. S.R. Barlinge, advocate for petitioner.
Mr. P.K. Lakhotiya, A.G.P. for respondents 1 and 2.
Mr. Ajay Deshpande, advocate for respondents 3 and 4.
Mr. S.S. Deshmukh, advocate for respondent no. 5.

**CORAM : R.M.BORDE &
K.K. SONAWANE, JJ.
RESERVED ON : 4th APRIL, 2018.
PRONOUNCED ON : 14th JUNE, 2018.**

JUDGMENT : (Per R.M. Borde, J.)

1. Rule. Rule made returnable forthwith.
2. Heard finally at admission stage with the consent of learned counsel for the respective parties.
3. Petitioner, who claims to have been appointed as an Assistant Teacher in respondent no. 4 - school operated by respondent no. 3 - institution, is objecting to the order passed by the Education Officer (Secondary) on 28.03.2016 directing cancellation of the order of individual approval allegedly accorded on 21.12.2009.
4. Petitioner claims that she is duly qualified and trained teacher within meaning of rule 2(k) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. She applied for appointment to the post of Assistant Teacher in response to the advertisement dated 08.07.2016 and was appointed as an Assistant Teacher by order dated 12.07.2006. Petitioner states that she holds qualification as H.S.C. C.T.C. which is a qualification essential for the post of Arts Teacher. Resolution appointing petitioner as Assistant Teacher was adopted by the education society on 12.07.2006. Petitioner states that proposal was

tendered seeking approval to the appointment of petitioner on 08.08.2007 and, the Education Officer vide order dated 21.12.2009 accorded approval to the appointment of petitioner. Petitioner contends that subsequently, another proposal seeking approval for appointment of trained graduate teacher was submitted by the Headmaster on 29.10.2014. The Headmaster tendered request to the Education Officer to accord approval to the appointment of petitioner as trained graduate teacher. Petitioner claims that respondent no. 5 was appointed at later point of time on 01.07.2007 and he does not have any concern with the post held by petitioner. Petitioner further contends that since the appointment of respondent no. 5 was not approved by the Education Officer, the management terminated his services. He preferred appeal to the School Tribunal to which petitioner was not party. The School Tribunal allowed the appeal and directed re-instatement of respondent no. 5. Respondent no. 5 also preferred Regular Civil Suit No. 13/2009 which also came to be decreed directing the Education Officer to accord approval to the appointment of respondent no. 5. Since the Education Officer did not grant approval to the appointment of respondent no. 5, he tendered complaint to the Honourable Lokayukta, Mumbai. The Honourable Lokayukta directed the Education Officer to remain personally present and submit his report as regards grant of individual approval in favour of respondent no. 5. The Honourable Lokayukta passed order on 05.02.2016 issuing certain directions to the Education Officer. Petitioner contends that the Education Officer has issued an order on 28.03.2016 cancelling the approval accorded in favour of petitioner on 21.12.2009 without extending an opportunity of hearing to the petitioner. Petitioner contends

that she tendered representation on 05.09.2014 and the management has also tendered a detailed representation recording the correct facts to the Education Officer on 06.09.2014. Petitioner contends that respondent no. 5 has not been appointed on the post which is occupied by petitioner and the litigation initiated by respondent no. 5 shall not have any impact on the appointment of petitioner. Lastly, petitioner contends that the order passed by the Education Officer is erroneous and deserves to be quashed and set aside.

5. In the order passed by the Education Officer on 28.03.2016, directing withdrawal of approval accorded in favour of petitioner, it is recorded that so far as appointment of respondent no. 5 Mr. Arun Deore is concerned, he was re-instated in employment after parties i.e. the education institution and Mr. Deore arrived at compromise. Proposal for according approval to the appointment was submitted to the Education Officer on 20.03.2008 however, the Education Officer rejected the proposal and thereafter the institution passed an order of termination of services of respondent no. 5. Respondent no. 5 tendered appeal to the School Tribunal. The School Tribunal allowed the appeal on 13.08.2009 and directed the management to re-instate respondent no. 5 on the same post alongwith backwages and continuity in service. The order passed by the School Tribunal was a matter of challenge before this Court at the instance of the education institution. The institution did not succeed as such, the appeal was carried to the Honourable Supreme Court. The Honourable Supreme Court also dismissed the appeal tendered by the institution on 26.04.2013. The Education Officer issued directions on 05.07.2013 and

26.08.2013 directing the institution to allow respondent no. 5 to join services and to pay him salary. It is further recorded in the order that since 2006 there were three posts of non-graduate teachers vacant in the school. The education institution tendered proposal seeking approval to the appointment of petitioner during the camp held by the Education Officer on 19.12.2009 and, the same was got approved. It is further recorded in the order that one Mr Bacchaw was appointed from VJNT category on 01.01.2010 and Smt. Jyoti Badwe was appointed from SC category on 11.10.2010. These appointments are made after the decision in the matter of respondent no. 5. There was backlog in respect of reserved category and this aspect has not been denied. It is further recorded that there is no post of untrained non-graduate teacher available with the institution. It is further recorded that since there was no post available and since the appointment of petitioner has been made in contravention of the reservation policy, the appointment cannot be approved and the appointment accorded on the basis of incorrect facts on 21.12.2009 deserves to be withdrawn.

6. It is necessary to refer to certain factual aspects disclosed by respondent no. 5 as well as the Education Officer in the affidavit in reply. It is contended that infact the institution has indulged in manipulating record and has relied upon the forged letter of approval. Our attention is invited to a proposal tendered by the institution on 08.08.2007 allongwith communication dated 08.08.2007. Name of petitioner has been scored off and the proposal of Mr. Pravin Patil whose date of appointment was 07.08.2004 was only pressed. The Statement B

signed by the Headmaster also records name of Mr. Patil. The order dated 01.11.2007 signed by the Education Officer granting approval to the appointment also records name of Mr. Patil alone. On perusal of office notes submitted to the Education Officer for approval by the Superintendent, it appears that recommendation is made for according approval to the appointment of Mr. Patil. Curiously enough, annexure annexed to the petition, which is signed by the Headmaster of the institution, records name of petitioner also at serial no. 2 alongwith Mr. Pravin Patil whose name is recorded at serial number 1. It is surprising as to how the Education Officer could accord approval to the appointment of petitioner when name of petitioner was scored off in the proposal tendered by the Headmaster of the school. It is alleged by respondent no. 5 that the document relied upon by petitioner i.e. letter dated 21.12.2009 according approval to the appointment is forged and fabricated. The Honourable Lokayukta in the order dated 09.08.2016 has observed as below :-

"..... During the course of further enquiry, it was found that Ms. Chetana Subhash Patil, daughter of Chairman of the Trust, was appointed. A Clerk from the office of the Education Officer had produced a document, which is a part of Exhibit - 'A', under which Education Officer had approved one appointment of Mr. Pravin Patil. At the same time, Headmaster of the school had produced document, which is a part of Exhibit - 'A', which contained name of Mr. Pravin Patil as well as Ms. Chetana Subhash Patil. Both the documents has same outward number of the Education Officer. The Education Officer denied to have issued any order, a copy of which was produced by the Headmaster. It is also

noted that there was one more approval in the name of Ms. Chetana Subhash Patil, which is for the academic year 2009-2010. The earlier approval, which contained two names i.e. Mr.Pravin Patil and Ms Chetana Subhash Patil, was for the academic year 2007-2008. As already stated, that document is not part of record of Education Officer. It was suspected to be a forged document. The Education officer was directed to conduct thorough enquiry into the genuineness of the document and take necessary steps. It was also directed that if necessary, FIR may also be lodged. As such at present the position is that the Education Officer has revoked the approval granted to the name of Ms. Chetana Subhash Patil because the complainant was to be reinstated as per the judgment issued by the School Tribunal and approved upto Supreme Court. This office also had opined that in view of the manipulation done by the Headmaster in one of the documents, it was just and proper that the approval granted to Ms. Chetana Subhash Patil was revoked. Accordingly, the Education Officer has acted upon and has taken all necessary steps to see that the complainant is reinstated in his original post.

7. The Education Officer in his affidavit-in-reply tendered on 25.04.2017 has observed in paragraphs 3 and 4 as below :

"3. The answering Respondent say and submit that, petitioner holds qualification of craft teachers certificate Course which is for the craft subject for standard 1st to VIIIth only. Respondent no. 4 school has standard of V to Xth, and has only one division of each class. Therefore petitioner has not full workload of her subject i.e. (Art

Teachers Diploma) qualification teacher who can teach the Drawing as well as craft subject in the school and has full workload of the subjects.

4. The answering Respondent say and submit that, Petitioner is claiming that her appointment was approved vide order dated 21/12/2009. But Respondent No. 4 school has claimed her salary & showing that her appointment was approved vide order dated 1/11/2007. Actually one Shri Patil Praveen Babhutrao was approved vide order dated 1/11/2007. But it seems that this order was manipulated and petitioners name was in scripted on it. This fact petitioners approval order dated 21/12/2009 was only after through approval to regulrize the fraudulent approval dated 1/11/2007. (Copy of order dated 21.12.2009 is annexed herewith and marked as EXHIBIT-R-1.

8. Petitioner claims that she has been appointed in furtherance of the advertisement by the management on 08.07.2016. There was one post advertised for Assistant Teacher holding qualification H.S.C. A.T.D. C.T.C. Petitioner was holding qualification as H.S.C. C.T.C. The post was stated to be prescribed for open category. It is not controverted that respondent no. 5 also holds H.S.C. A.T.D. qualification and infact, was appointed prior in time than that of the petitioner. Respondent no. 5 was appointed in furtherance of the advertisement dated 19.06.2005 and his date of appointment is 24.06.2006. It is claimed by petitioner that she has been appointed against a post reserved for women category however, the advertisement does not disclose that the post has been earmarked for women category candidate. It is further claimed by petitioner that there was another proposal tendered by Headmaster on

29.10.2014 seeking approval to the appointment of petitioner as a Trained Graduate Teacher. The proposal tendered by the Headmaster does not appear to have been granted by the Education Officer. It has also not been demonstrated that the post of Trained Graduate Teacher was available for accommodating the petitioner. Even if, it is assumed that the petitioner was appointed as an Assistant Teacher in furtherance of the advertisement issued in July 2006, she could not have been accommodated since there was a backlog of reservation and the post against which petitioner was sought to be appointed was already occupied by respondent no. 5 whose services were terminated and who has succeeded before the School Tribunal and the order of termination was set aside. On perusal of the record there appears to be prima facie substance in the contention of respondent as well as Education Officer that the order of approval relied upon by petitioner appears to have been manipulated. We have also perused the original record tendered by the Education Officer. It does appear that name of petitioner was scored off by the Headmaster of the school while tendering the proposal. Annexure B of the proposal does not record name of petitioner since the name has been scored off. Apart from this, the Information Officer from the office of the Education Officer has communicated to respondent no. 5 on 13.07.2008 in response to RTI query that since the appointment of petitioner has not been approved, the copy of letter of approval cannot be issued. The Education Officer in his affidavit has also expressed doubt in respect of letter of approval dated 21.12.2009 which has been signed by the Headmaster of the institution. These facts coupled with the allegation of respondent that since the petitioner is

daughter of the Chairman of the institution, the record has been manipulated with a view to accommodate petitioner, deserve to be considered. It has not been denied that petitioner is a daughter of the Chairman of the institution and the Headmaster of the school is also allegedly closely related to petitioner.

9. Petitioner contends that while directing withdrawal of the letter of approval, no opportunity of hearing has been extended and as such the order is bad in law. The contention appears to be devoid of substance for more than one reasons. Firstly, one cannot overlook the fact that there is a serious doubt expressed by the Education Officer as regards the authenticity of the letter of approval relied upon by petitioner. As has been stated above, the proposal tendered by the Headmaster at the relevant time does not relate to approval to the appointment of petitioner and the name of petitioner was scored off from the list Annexure B tendered to the Education Officer. The noting of the Superintendent of the Education Office, which is part of the file maintained by the Education Officer, refers to approval of Mr. Patil alone and does not make any reference in respect of request for according approval to the appointment of petitioner. Since there was no approval at all in existence, there was no question of setting it aside or extending an opportunity of hearing to petitioner. Petitioner was issued notice prior to taking the proposed action of cancellation of approval by the Education Officer on 16.08.2014 which has been relied by the petitioner on 05.09.2014. The institution also tendered its reply to the notice and thereupon the Education Officer has passed the order. Even otherwise, the contention of petitioner as regards non-observance of the principles of natural justice does not deserve to

be considered for the reasons that petitioner is guilty of deriving benefit out of the apparently forged and fabricated orders.

10. The record prima facie appears to have been manipulated so as to extend benefit to the petitioner. The fact that petitioner is the daughter of the Chairman of the institution for whose benefit all efforts are made by the institution cannot be lost sight of. The respondent - institution is guilty of disobedience of the order of the School Tribunal which order has been confirmed upto the Supreme Court in denying to permit respondent no. 5 to join services. Respondent no. 5 was not allowed to join, apparently only with a view to accommodate the petitioner. The contention of petitioner that there is no casual connection between the appointment of respondent no. 5 or issuance of order of termination of respondent no. 5 by the institution and the appointment of petitioner is not acceptable. Petitioner has been unduly favoured by the institution and apparently the institution at the instance of the Chairman who is father of the petitioner has travelled to the extent of manipulating the record. It is informed that a criminal case is registered in respect of manipulation of record and as such we refrain to make any comment in respect of the documents which are allegedly forged.

11. In the result, petition stands rejected. Rule discharged. No costs.

12. At this stage, learned counsel for petitioner seeks continuation of interim relief, which was operative during the pendency of the petition, for further period of two weeks to

facilitate the petitioner to avail of appropriate remedies.

13. We have recorded finding that the appointment of petitioner itself is fraudulent and the petitioner has relied upon manipulated record for securing the benefits. The report of the Education Officer also reveals that the petitioner, in connivance with the office bearers of the institution has secured the benefits illegally. It also must be recorded at this stage that the father of the petitioner, who has facilitated entry of the petitioner in the institution on the basis of fraudulent record, at the relevant time, was the President of the institution and is also continued as President as on today.

14. The request made by petitioner does not deserve favourable consideration and as such the same is rejected.

K. K. SONAWANE
JUDGE

R.M.BORDE
JUDGE