

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

WRIT PETITION NO. 10160 OF 2016

Renuka Ramrao Giram .. Petitioner
Age. 35 years, Occ. Service
(at present nil),
R/o. Pimpalkautha (Magare),
Tq. Mukhed, Dist. Nanded.

Versus

1. The State of Maharashtra .. Respondents
Through its Secretary
School Education Department,
Mantralaya, Mumbai – 32.
2. The State Project Director
Maharashtra Primary Education Council,
Jawahar Bal Bhavan,
Netaji Subhash Marg, Chami Road,
Mumbai – 400 004.
3. The Chief Executive Officer,
Zilla Parishad, Nanded.
4. The Education Officer (Primary),
Zilla Parishad, Nanded.
5. Block Education Officer,
Panchayat Samiti, Mukhed,
Dist. Nanded.

Mr.V.S. Panpatte, Advocate for the petitioner.

Mr.P.N. Kutti, AGP for respondent No.1.

Mr.Nitin S. Kadam, Advocate for respondent Nos. 3 and 4.

**CORAM : S.S.SHINDE &
S.M.GAVHANE,JJ.
RESERVED ON : 30.01.2018
PRONOUNCED ON : 12.04.2018**

JUDGMENT [PER : S.M. GAVHANE,J.] :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned Counsels appearing for the parties.

2. By this petition under Article 226 of the Constitution of India, the petitioner has claimed following substantive relief :-

"B) By a writ of mandamus or any other appropriate writ or direction in the like nature, the respondent nos.3 and 4 may please be directed to absorb/appoint the petitioner as untrained primary teacher in primary school run by Zilla Parishad, Nanded, they may be further directed to allow the petitioner to acquire trained qualification and thereafter, to absorb the petitioner as permanent Assistant Teacher in primary school run by the Zilla Parishad, Nanded."

3. It is the case of the petitioner that by the Government Resolution dated 20.03.2001 respondent No.1

framed "Vasti Shala Scheme" under Sarva Shiksha Abhiyan from 2000-2001 for the students outside the schools and made provision for appointment of voluntary/para teachers on contract basis, in such Vasti Shala (school). As per said policy of the Government Vasti Shala came to be started at Pimpalkautha, Tq. Mukhed, Dist. Nanded from 22.03.2006. Respondent No.3-Chief Executive Officer appointed the petitioner as voluntary/para teacher at said Vasti Shala by order dated 10.08.2006. Accordingly, the petitioner joined on 11.08.2006 and since then she was in continuous service till 09.06.2008.

4. According to the petitioner from 10.06.2008 she went on maternity/medical leave with permission of the concerned Head Master till 16.07.2009. On 16.07.2009, she filed application requesting respondent No.5 – Block Education Officer to allow her to join duties through Head Master, Primary School, Pimpalkautha (Magare). The concerned Head Master endorsed on her application that she was on long leave with permission and she be allowed

to join duties. However, respondent No.5 did not allow her to join duties and lastly asked her to bring written permission from the Sarpanch, who has not given permission and therefore respondent No.5 did not take any action in the matter in allowing the petitioner to join her duties.

5. On 02.09.2010 the petitioner made representation to respondent No.4 – Education Officer (Primary), Zilla Parishad, Nanded and requested him to allow her to join duties. However, respondent No.4 did not consider her request. According to the petitioner, the Central Government has taken policy decision to close down and convert Vasti Shala run by the Zilla Parishad into primary schools and granted sanction for conversion of the same as per the Government Resolution dated 27.03.2008. Moreover, it is stated that as per the Government Resolution dated 31.07.2009 the State Government has granted approval for sanction of teaching staff and issued instructions for appointment of

voluntary teachers of closed down Vasti Shala in the primary school as para teacher on contract basis and provision has also been made for getting trained to such para teachers. Again by the Government Resolution dated 27.09.2011, the State Government has issued instructions for appointments of voluntary teachers of closed down Vasti Shala, who have completed two years services as para teacher in converted primary schools. So also by the Government Resolution dated 01.03.2014, the Government again issued instructions for absorption of voluntary teachers of Vasti Shala in primary schools as untrained teachers and allow them to acquire trained qualification and after completion of such qualification, absorb them as permanent assistant teacher in converted primary schools.

6. The petitioner claims that she discharged her duties from 11.08.2006 to 09.06.2008 as voluntary teacher at above said Vasti Shala and thereafter went on maternity/medical leave with due permission.

7. It is further case of the petitioner that on 22.04.2014 respondent No.4 sought guidance of respondent No.2 – the Chief Executive Officer as regards appointment of voluntary teachers of Vasti Shala in primary school, for their absorption as per Government Resolution dated 01.03.2014. The Joint Director (Administration) of Maharashtra Prathamik Shikshan Parishad, Mumbai vide letter dated 27.08.2014 clarified the policy of the Government as per above referred three Government Resolutions of the State Government and directed respondent No.4 to take action as per the said Government Resolutions.

8. By representations dated 12.01.2011, 22.07.2014 and 09.12.2014 made to respondent No.3, the petitioner clarified the said respondent in which manner she has not been allowed to join duties by Sarpanch and respondent No.5 in the year 2009 and requested to allow her to join her duties as para teacher in any Vasti Shala. Moreover,

on 06.09.2014 and 12.08.2015, the petitioner made detailed representations to respondent No.2 endorsing copy of representation dated 12.08.2015 to respondent No.1 requesting to absorb her as para teacher on vacant post in any primary school in the Zilla Parishad, Nanded, which came to be forwarded to respondent No.4-Education Officer. However, respondent No.4 again sought guidance of respondent No.2 in the matter. On 03.02.2016, the Dy. Chief Executive Officer (GAD), Zilla Parishad, Nanded directed respondent No.4 to submit proposal before respondent No.3 for appointment of the petitioner as para teacher on vacant post in the Zilla Parishad Primary School as per Government Resolution dated 27.09.2011 as per letter dated 27.08.2014. The petitioner by representations dated 27.06.2016 and 03.08.2016 requested respondent Nos.3 and 4 to absorb her on vacant post as para teacher in the primary school run by the Zilla Parishad. However, they have not taken any positive action for absorption of the petitioner as per above referred Government Resolutions. It is contended that the

petitioner is having qualification of HSC and has experience of voluntary teacher in Vasti Shala. Therefore, as per above referred Government Resolution, she is very much eligible and entitled to be absorbed/appointed as untrained teacher in primary school run by the Zilla Parishad, Nanded. However, respondent Nos.3 and 4 did not consider her claim. Therefore, she filed the petition.

9. On behalf of respondent Nos.3 and 4, affidavit-in-reply of Shivaji s/o. Marotirao Khude, Incharge Education Officer (Primary), Zilla Parishad, Nanded is filed. In the said affidavit the petitioner has claimed that she was working as para teacher from 11.08.2006 to 09.06.2008.

. Moreover, it is further stated in the affidavit that there appears another contradiction in the endorsement made by the Cluster Head that the petitioner was on leave with permission from 10.06.2008 to

15.07.2009. It is also signed by the Head Master. The earlier endorsement indicates about the period from 10.06.2008 to 16.07.2008 (36 days), however, the next endorsement mentions period from 10.06.2008 to 15.07.2009 (one year's period). Both the endorsements are contrary to each other and it seems to be made to suit theory of the petitioner to pretend that, she was in continuous service for two years. In fact, on calculation of the dates given by her, her period of service comes to 1 year, 9 months and 28 days as well as on perusal of her actual presence in the school, it is from March, 2007 to April, 2008 which comes only 13 months period. It is further stated that according to policy of the Government Resolution dated 27.09.2011, the para teachers, who have worked for two years period on the Vasti Schools which were closed down prior to 27.03.2008, were to be regularized according to Government Resolution dated 31.07.2009. The petitioner was not in service for two years period and according to the muster roll, she has only served for 13 months from March, 2007 to April, 2008

as well as even after assuming without admitting the dates given by her i.e. 11.08.2006 to 09.06.2008, her tenure of work does not complete two years period. Therefore, she is not eligible and entitled for the absorption and regularization in service. It is stated that the petitioner on her own left school in April, 2008 and after knowing the benefits of the Government Resolution dated 27.03.2008, came with theory of application dated 16.07.2009. The endorsement made by the In-charge Head Master and the Cluster Head is self-explanatory and requires scrutiny and therefore on consideration of record and the guidelines issued by the Government, it is found that the petitioner is not eligible and entitled to be absorbed in service. The relief claimed by the petitioner is not maintainable and the petition deserves to be dismissed with costs.

10. The petitioner has filed affidavit-in-rejoinder to aforesaid affidavit-in-reply filed by respondent Nos. 3 and 4, reiterating almost all the contentions which are

raised in the petition as referred earlier. The additional contentions raised by the petitioner in short are that without producing muster-roll on record, respondent Nos.3 and 4 are raising false and imaginary averments that there is her signature on muster roll from March, 2007 to April, 2008, only in order to deprive her from getting appointment as untrained teacher as per guidelines issued by the Government vide Government Resolution dated 31.07.2009, 22.09.2011 and 01.03.2014 in converted primary schools from Vasti Shala. She has denied the contentions of respondent Nos.3 and 4 that she left the school after April, 2008 without giving any information stating that said allegations are false and concocted. According to her, she was very much in service and regularly discharged duties as para teacher in the said Vasti Shala from 11.08.2006 to 09.06.2008. The endorsement as alleged by respondent Nos.3 and 4 of the In-charge Head master cannot be said to be contradictory and same cannot come in her way for getting legitimate benefit of the Government Resolution dated

31.07.2009 since she has continuously worked as voluntary teacher in the said Vasti Shala from 11.08.2006 to 09.06.2008 i.e. one year 10 months and after availing maternity leave and after her discharge from hospital by her application dated 16.07.2009 made to respondent no.5, she sought permission to join duties. Thereafter, by application dated 02.09.2010, she requested respondent No.4 to allow her to join duty on Vasti Shala, Pimpalkautha or any other school, respondent Nos. 4 and 5 never bothered to consider her genuine request to allow her to join on said Vasti Shala or any other primary school and therefore it is deemed that she completed service of more than two years in the said Vasti Shala and as such she is very much entitled to absorb in other primary school as per the Government guidelines.

11. The petitioner has further stated that the respondents were paying her honorarium of Rs.1000/- or Rs.1100/- per month by depositing the same in her bank account No.12090 with Dena Bank, Mukhed Branch from time

to time. The respondents have deposited Rs.4000/- on 06.03.2007, which may be honorarium for the month of August, September, October and November, 2006 and thereafter deposited an amount of Rs.1000/- on 30.07.2007 and Rs. 2000/- on 10.04.2007., which may be honorarium for the month of December, 2006, January, and February, 2007 and again deposited Rs.2000/- on 20.04.2007 and Rs. 1000/- on 30.04.2007, which may be for the month of March and April, 2007. Thereafter, lastly the respondents time to time deposited amounts on various dates and the respondents transferred the amount of Rs.4950/- on 06.08.2008. This fact shows that since August, 2006 till 09.06.2008, she (petitioner) was very much in service as voluntary teacher in Vasti Shala in Pimpalkautha. Moreover, the Head Master of Zilla Parishad Primary School, Pimpalkhute (M) issued experience certificate that she was working as Vasti Shala teacher from 11.08.2006 to 09.06.2008 as per Exh.P-1.

12. Moreover, the petitioner has further contended

that after putting up her proposal by respondent No.4 for considering her claim for getting appointment as para teacher and or untrained teacher in Zilla Parishad School, before respondent No.3, office note came to be recorded. Respondent No.3 directed the Head Master who made endorsement on her application dated 16.07.2009 regarding availing maternity leave by her with permission for hearing, but said Head master never called her for hearing, to arrive at conclusion that said endorsements are true or false. Therefore, unless genuineness of said endorsement is verified through the concerned Head Master, it cannot lie in the mouth of respondent Nos.3 and 4 to contend that said endorsements are made to suit the theory of the petitioner that she was in continuous service for 2 years. After getting guidance from respondent No.2, respondent No.3 has subjectively satisfied that the petitioner is required to be given appointment as para teacher on vacant post in primary school and therefore directed the Education Department to submit report whether any post of primary teacher is

vacant for giving appointment to her. However, thereafter, it seems that respondent No.4 did not submit any report as per said direction of respondent No.3. Therefore, resistance to the writ petition by respondent Nos.3 and 4 by filing reply is not at all permissible.

13. Respondent Nos.3 and 4 filed additional affidavit of Baliram s/o. Iranna Yerpulwar, who is working as a Superintendent, Class-II, Education Department, Zilla Parishad, Nanded to the rejoinder filed by the petitioner and on denying the contentions of the petitioner in her rejoinder affidavit, which are raised against them contended that if details of payment in para 2 of rejoinder affidavit of the petitioner are considered, the petitioner was paid honorarium from September, 2006 onwards to 03.05.2008, which indicates that the petitioner was not in service as Vasti Shala teacher for two years period either from 11.08.2006 or up to the endorsement made by the Head Master on 16.07.2009. During the course of hearing dated 06.04.2015, the

concerned Headmaster was present and endorsement No.25 dated 09.04.2015 and 34 dated 27.01.2016 record that the concern Headmaster and Head of Center Shri Magare was present and he has accepted that some mistake is occurred as well as though there is no provision of grant of leave, the endorsement is made on sympathetic ground. This itself indicates that the allegations made by the petitioner are not correct. All the questions raised by the petitioner are disputed question of facts. Therefore, same may not be entertained.

14. We have heard learned advocate appearing for the petitioner, learned AGP for respondent No.1 and learned advocate appearing for respondent Nos.3 and 4. We have perused the pleadings of the parties, documents produced on record including file maintained by the Zilla Parishad regarding service of the petitioner.

15. There is no dispute that as per the Government Resolution dated 20.03.2001 issued by respondent No.1

Vasti Shala came to be started at Pimpalkautha, Tal. Mukhed from 22.03.2006 and respondent no.3 – the Chief Executive Officer appointed the petitioner as voluntary/para teacher in the said Shala by order dated 10.08.2006. Accordingly, the petitioner joined on 11.08.2006 and since then she was in continuous service till 09.06.2008. The controversy is that according to petitioner on 10.06.2008 she went on maternity/medical leave with permission of the concerned Head Master till 16.07.2009. Denying the said contention of the petitioner the respondent Nos.3 and 4 have contended that the maternity/medical leave was not admissible to the petitioner and as such she was absent from duty as a voluntary teacher.

16. It appears from Exh. "C" Government Resolution dated 27.03.2008 that it is in respect of transferring/ converting Vasti Shala in the State into regular primary schools, which schools have completed two years and more and in which there are more than 20 students and population is 100 and the distance between said Vasti

Shala and the nearest primary school is more than 1 km etc. Exh. "D" Government Resolution dated 31.07.2009 is in respect of giving appointment to the voluntary teachers in Vasti Shala as para teachers depending upon monthly attendance in the said Shala. It appears from Exh. "E" Government Resolution dated 27.09.2011 that it is in respect of giving appointment as para teachers to the voluntary teachers in Vasti Shala. In-case, Vasti Shala is closed and said voluntary teacher has worked minimum for two years as voluntary teacher, said teacher would be entitled to be appointed as per Government Resolution dated 31.07.2009 on three conditions. First condition is that there should be vacant post of regular teacher in the primary school and only then on contract basis on honorarium temporary appointment would be given. Second condition is that in-case of voluntary teacher is terminated if his work is not satisfactory or for other reason, he would not get benefit of Government Resolution dated 31.07.2009. The third condition is that in-case voluntary teacher has resigned or left the service, said

teacher would not get benefit of the Government Resolution dated 31.07.2009. The Government Resolution dated 01.03.2014 (Exh. "G") shows that para teachers in Vasti Shala would be accommodated in primary schools of Zilla Parishad as a primary teacher, if they have obtained required qualification for primary teacher. They would be given pay-scale of Rs.5200/- - Rs.20,200/-, grade pay Rs.2000/-. Their pay-scale would be fixed on the basis of pay-scale of primary teacher and they would not get financial benefits or previous arrears.

17. Exh."F"-letter dated 27.01.2010 of the Education Officer (Primary), Zilla Parishad, Nanded addressed to the State Project Director, Maharashtra Primary Education Council, Mumbai shows that Vasti Shala at Pimpalkautha (Magare) in Mudkhed Taluka was closed from 16.07.2008 and request was made by the voluntary teachers to absorb from December, 2010 as para teacher. Thus, it is obvious that Vasti Shala, in which the petitioner was serving was closed down from 16.07.2008.

18. Now coming to the reliefs claimed by the petitioner, first relief claimed by her is that respondent Nos.3 and 4 be directed to absorb her as untrained primary teacher in primary school run by the Zilla Parishad, Nanded. As observed earlier as per the Government Resolution dated 27.09.2011 voluntary/para teachers who have worked for two years period at Vasti Shala, which were closed down prior to 27.03.2008 were to be regularized. According to the Government Resolution dated 31.07.2009 said voluntary/para teachers will have to fulfill three conditions referred earlier including the condition that in-case there is vacancy of regular teacher in the primary school, only then said voluntary/para teachers would be appointed. So also as per the Government Resolution dated 01.03.2014, to absorb voluntary teachers of Vasti Shala in primary schools as untrained teachers and to allow them to acquire trained qualification, voluntary/para teachers have to obtain qualification required for primary teacher.

19. It is case of the petitioner that she has worked as voluntary teacher in respondent No.5-School from 11.08.2006 to 09.06.2008 and she is having HSC qualification. As observed said Vasti Shala was closed on 16.07.2008. So also considering the date of appointment of the petitioner i.e. 11.08.2006 in Vasti Shala at Pimpalkautha (Magare), Tal. Mudkhed, which Shala was closed on 16.07.2008, it cannot be said that the petitioner has worked as voluntary/para teacher in Vasti Shala for two years prior to closing of Vasti Shala on 27.03.2008 as per the Government Resolution dated 27.09.2011. Therefore, the petitioner is not entitled to seek directions to respondent Nos.3 and 4 to absorb her as untrained teacher in primary school run by the Zilla Parishad, Nanded. So also the petitioner is not entitled to directions to respondents to allow her to acquire trained qualification, in the light of the Government Resolution dated 01.03.2014, and then to absorb her as permanent Assistant Teacher in Primary School run by

Zilla Parishad, Nanded, as the petitioner has not served for two years as voluntary teacher in Vasti Shala. Thus the petitioner is not entitled to second relief claimed in this respect.

20. For the reasons discussed here-in-above, we are of the considered view that the petitioner is not entitled to substantive relief (B) as claimed and the petition is liable to be dismissed. Accordingly, same is dismissed. No costs. Rule discharged.

[S.M.GAVHANE, J.]

[S.S.SHINDE, J.]