

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

WRIT PETITION NO.1672 OF 2013

Smt.Sunanda Raosaheb Bhokare

(Mrs.Sunanda Bhimgonda Patil)

R/O. Khed, Taluka-Khed,

District : Ratnagiri

...Petitioner

V/s.

1. The State of Maharashtra

Through the Secretary

School Education Department

Mantralaya, Mumbai-400 032.

2. The Deputy Director of Education

Kolhapur Region, Kolhapur.

3. The Education Officer (Secondary),

Zilla Parishad, Ratnagiri.

4. Sanjivan Shikshan Sanstha

At Khed, Tal. Khed,

District Ratnagiri,

Through its Chairman/Secretary

5. Sreeman Chandulal Seth High School

Khed, Talkua Khed,

District-Ratnagiri,

Through its Head master.

...Respondents

Mr.Narendra V. Bandiwadekar for the Petitioner.

Mr.S.B. Kalel, AGP for Respondent-State.

**CORAM : S.C. DHARMADHIKARI &
SMT.BHARATI H. DANGRE, JJ.**

RESERVED ON : 03rd DECEMBER 2018

PRONOUNCED ON : 21st DECEMBER 2018

JUDGMENT : (Per Smt.Bharati H. Dangre,J)

1. Rule. Rule made returnable forthwith.

2. The petitioner in the present Writ Petition has approached this Court under Article 226 of the Constitution of India praying for quashing and setting aside the impugned order dated 29.10.2012 issued by the Education Officer refusing to grant approval to her appointment as Assistant Teacher and further seeking a direction to grant such an approval and also release to the grant-in-aid for payment of difference in salary to the petitioner in the pay-scale applicable to the post of the Assistant Teacher, after deducting honorarium received by her in the post of Shikshan Sevak from 17.08.2006.

The chronology of events leading to the filing of present petition as narrated in the body of the petition can be summarized in the following manner:-

It is the case of the petitioner that she is M.Sc. B.Ed. and belongs to Open Category. The petitioner came to be appointed as Assistant Teacher in the D.Ed. College Bharasne, Taluka-Khed, District-Ratnagiri by an order dated 06.09.1995. Her appointment was made on the post of Assistant Teacher for a period commencing

from 01.11.1995 to 30.04.1996. The order of appointment stipulated that it is purely temporary and the terms and conditions of the service would be governed by the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The said college where the appointment was made is a Government recognized D.Ed. College. The appointment was further continued in the pay-scale of Rs.1400-2600 with effect from 01.07.1996 to 30.04.1997 that is for one academic year. The said appointment was approved by the Deputy Director of Education. The petitioner completed two years continuous service and the proposal for approving the appointment on completion of probation came to be granted by the Deputy Director of Education, Kolhapur Division, and it was communicated to the Principal of the D.Ed. College by his communication dated 06.07.1998.

3. The petitioner tendered an application to the Principal of the D.Ed. college on 14.08.2006, which contained her resignation in the D.Ed. School, since, the petitioner came to know that there was vacancy available in the teaching cadre of the respondent No.5-high school an aided school which is run by Sahjivan Shikshan Sanstha at Khed, Taluka-Khed, District-Ratnagiri. The resignation tendered by the petitioner was accepted by the Management and on

16.08.2006 the petitioner came to be relieved from the D.Ed. school after rendering service from 16.06.1997 to 16.08.2006. Her erstwhile college also issued a discharge certificate dated 08.09.2007 which certified that she had worked in the said college from 16.06.1997 to 16.08.2006 and her salary till 16.08.2006 was drawn from the account of the Adhyapak Vidyalaya, Bharane, Taluka-Khed, District-Ratnagiri. The petitioner resumed the Sreeman Chandulal Seth High School, Khed, Taluka-Khed, District-Ratnagiri with effect from 17.08.2006. However, the said appointment was shown on the post of Shikshan Sevak and the Education Officer, Zilla Parishad, Ratnagiri approved the appointment of the petitioner as Shikshan Sevak with effect from 17.08.2006 on a consolidated payment of Rs.4,000/- per month. This action aggrieved the petitioner as she expected her appointment in respondent No.5-school to be in the post of Assistant Teacher and not as Shikshan Sevak, since, she had already rendered about 9 years of service in the D.Ed. School in the capacity of Assistant Teacher. The petitioner approached the Management with her grievance and the Management was considerate enough to redress her grievance and appointed her as Assistant Teacher in the scale of 5500-9000 with effect from 17.08.2006 on probation for period of two years. However, when Management forwarded the

said proposal of the petitioner, to the respondent No.3 an order came to be issued granting approval to her appointment as Assistant Teacher with effect from 17.08.2009. The grievance of the petitioner was therefore not completely redress as according to her she is entitled for the pay-scale of Assistant Teacher from 17.08.2006 itself and it has been wrongly conferred on her with effect from 17.08.2009.

4. With this grievance the petitioner approached this Court and in support of the petition we have heard Advocate Shri.Bandiwadekar. He would place reliance on the judgment delivered by this very same bench in *Writ Petition No.9407 of 2017 in case of Kiran Dhanpal Vanvade V/s. The State of Maharashtra, through the Secretary for Secondary Education and Ors.* He submit that in the said judgment this Court has spelt out the scheme of 'Shikshan Sevak' and examined the said scheme in the backdrop of Section-5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules, 1981 (for short 'MEPS Act') and after examining the said scheme, this Court has categorically held that the petitioner who is appointed as Assistant Teacher in an unaided division and subsequently transferred to another unaided division under the same

Management and whose appointment was approved on probation, cannot be deprived of said service rendered when he took up an assignment in a grant-in-aid school of respondent No.4 which is educational institution belonging to the same Management. This Court had categorically held that his appointment on the said post as Shikshan Sevak cannot be countenance in light of the fact that his initial appointment was an Assistant Teacher and he had successfully completed the period of probation. In the backdrop of the said facts the Court was pleased to set aside the impugned order refusing the benefit of the post service and he was held eligible for all consequential reliefs including fixation of pay on regular pay-scale of an Assistant Teacher with effect from 02.07.2007 to 02.07.2010 and his appointment made in the 4th respondent as Shikshan Sevak was found to be erroneous.

5. In the light of the aforesaid judgment the submission of Shri.Bandiwadekar is that the petitioners appointment from 06.09.1995 and 30.06.1996 was duly approved by the Deputy Director of Education. The subsequent appointment of the petitioner in the respondent No.5 school which is Government recognized and Aided Private Secondary School which the petitioner took up after tendering his resignation in his erstwhile school, could

not be effected as Shikshan Sevak since the petitioner was in permanent service in D.Ed. College from where she resigned and this appointment in the respondent No.5-school could be effected only as Assistant Teacher and not as Shikshan Sevak. Shri.Bandiwadekar, would place reliance on the Government Resolution dated 13.10.2000 and submit that though to some extent his grievance has been redressed by the Management issuing appointment order of the petitioner with effect from 17.08.2006 and making the pay-scale of the post of the Assistant Teacher being applicable to him, the approval is granted from 17.08.2009 that is on completion of three years in the capacity as Shikshan Sevak. It is this grievance which Shri.Bandiwadekar claims to be redressed through the present petition.

6. We have carefully perused the petition along with the annexures and also the affidavit filed by the respondent Nos.1 to 3. In the said affidavit the facts are not disputed but what is encashed is a resignation of the petitioner from the post of the Assistant Teacher in D.Ed. College, Bharane. It is then stated that she has resigned from the post joined as Assistant Teacher to take up is a fresh appointment in Sreeman Chandulal Seth High School which is aided institution and there is no lacuna in appointing her in a

Shikshan Sevak for the period of three years, in terms of the policy of the Government contained in Resolution dated 13.10.2000. In accordance with the said policy, it is stated that only on completion of three years service as Shikshan Sevak she is entitled to be absorbed as a Assistant Teacher in aided institution. It is further clarified in the affidavit that in terms of the policy of the Government as stipulated Government Resolution dated 13.10.2000, the first appointment in aided Secondary School is to be effected as Shikshan Sevak and she was rightly appointed in the said capacity. It is further stated that the service rendered by the petitioner in the D.Ed. College was an institution which was on permanent no grant basis and since the scheme of Shikshan Sevak is applicable to Aided Secondary School, and in light of the restriction imposed on the State Government for transfer of teacher from Unaided Secondary School Division to Aided Secondary School, the petitioner cannot be granted the benefit of Clause 16(2) of the Government Resolution dated 15.09.2011 and her service rendered in unaided Educational Institution cannot be countenanced by her subsequent appointment as Shikshan Sevak in the aided division.

7. The factual aspect being not disputed by the respondent-authorities, the short question that falls for

consideration is whether the petitioner is entitled for continuing of the service rendered by her in the D.Ed. College and whether the petitioner can seek benefit of Clause No.16(2) of the Government Resolution dated 13.10.2000 by which the State Government evolved a policy for effecting appointments of Shikshan Sevak in the Private Aided Secondary/Higher Secondary schools, Junior Colleges/D.Ed. Colleges.

The appointment order issued in favour of the petitioner by the school-committee of D.Ed. College, Bharane, Taluka-Khed, District-Ratnagiri which was effected from 01.07.1996 till she quit from the said post by tendering her resignation on 14.08.2006, was an appointment in the post of the Assistant Teacher in the pay-scale of Rs.1400-60-2000. The approval order issued by the Deputy Director of Education, Kolhapur Division, Kolhapur discloses that the said appointment was approved on a probation period in the prescribed pay-scale of 1400-2600. The petitioner continued to hold the said post till 16.08.2006 until she came to be discharged from the said D.Ed. College. She subsequently took up the post in the respondent No.5-school and the Government Recognized and Aided Private Secondary School run by respondent No.4-institution, since the vacancy in teaching cadre was available in the said school. The petitioner accepted the

said appointment in the capacity as Shikshan Sevak and the approval came to be granted by the Education Officer to the said appointment as Shikshan Sevak from 17.08.2006 on a fixed honorarium of Rs.4,000/- per month. The petitioner made grievance about the fact that she had already rendered 9 years of service in D.Ed. School as Assistant Teacher and she was already availing a regular prescribed pay-scale and therefore her appointment in the capacity as Shikshan Sevak on a fixed honorarium was unconvincing. The petitioner rely on the Clause 16(2) of the Government Resolution issued by the State of Maharashtra, formulating the Shikshan Sevak Scheme and this is one clause stipulates the contingencies when the Sikshan Scheme will not be made applicable. Clause No.16 of the Government Resolution clarifies that the Scheme of Shikshan Sevak will not be applicable to the teaching cadre of the following teachers:-

- (i) Contributory teachers appointed on clock hour basis.
- (ii) Teachers who have been rendered surplus and so also teachers who were earlier working on permanent basis and who have resigned from the said post and accepted a new assignment.
- (iii) On the reserved post if a non-reserved candidate

was appointed till the reserved category candidate was made available, then such a candidate would be entitled for salary as per the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules 1981.

8. The petitioner is entitled to seek benefit of Clause-16(2) of the Government Resolution dated 13.10.2000 since the said clause is intended to protect the services of the petitioner we do not hesitate in extending the benefit of the said Clause 16(2) of the Government Resolution dated 13.10.2000 to the petitioner. When the petitioner had already rendered her service as Assistant Teacher and that to for a considerable length of time and had completed her period of probation and was already availing the regular pay-scale of Assistant Teacher, we do not see any propriety nor we find any legal justification in action of recruiting the petitioner as Shikshan Sevak and making her appointment subject to the resolution dated 13.10.2000. The Government Resolution of 13.10.2000 contains a policy decision and Clause No.16 is the clause where it makes policy inapplicable to the teachers who have already been made permanent but have resigned from the services and sought fresh appointment.

9. The Division Bench (Justice Shri.S.C. Dharmadhikari and Justice Smt.Bharati H. Dangre) in the judgment in Writ Petition No.9407 of 2013, decision of which Shri.Bandiwadekar has placed reliance was dealing with somewhat situation when the petitioner had resigned from service and joined the respondent-school which was receiving grant-in-aid from the government. In the backdrop of the said facts the following observations were made:-

“13. The amended provision, namely, section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, “MEPS Act”) needs to be noticed and following subsection (1), this provision says that every person appointed to fill a permanent vacancy except “Shikshan Sevak” shall be on probation for a period of two years. Subject to the provisions of subsections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed. The proviso to subsection (2) says that every person appointed as Shikshan Sevak shall be on probation for a period of three years. Now, the words “Shikshan Sevak” were appearing throughout this enactment until the substitution of those words with “Assistant Teacher (Probationary)” in the statute. Even if one goes by the definition, “Shikshan Sevak” means a member of base teaching cadre appointed on honorarium and subject to such terms and conditions as specified in the Government Resolution published in the Maharashtra

Government Gazettee dated 15th February, 2007, for eventual appointment as a Teacher. The Shikshan Sevak policy came with effect from 13th October, 2000 vide the Government Resolution referred above. That itself stipulates that the same will not apply to certain category of teachers and the petitioner's case clearly falls therein. Therefore, in the petitioner's case, once the initial appointment in unaided school, and continued post completion of the probationary period, once the appointment is made against permanent vacancy, then, there was no justification for terming the appointment of the petitioner as a "Shikshan Sevak". The petitioner completed the probationary period of three years on appointment as Assistant Teacher. This substitution also appears in subsection(2) of Section 5. This substitution may be later in point of time, but once the Government Resolution dated 13th October, 2000 excludes certain category of teachers and the factual position not having been denied by the State and the Education Officer (Secondary), we do not see why it has taken such a hyper technical stand to refuse benefit in terms of the policy at Exhibit B."

10. The decision relied on the petitioner squarely covers the case of the petitioner and deserves same treatment. The decision of the Education Officer (Secondary) Zilla Parishad as contained in the impugned order dated 29.12.2012 wherein the request of the

petitioner of counting her service rendered in the College of Education has been declined on the touch stone of the Government Resolution dated 15.09.2011. We have also perused the Government Resolution dated 15.09.2011 which is rather issued to deal with the a contingency and a situation faced by the person like the petitioner. However, the learned AGP makes a feeble attempt to justify that the policy is applicable only to those teachers who have been appointed on the institution which is in respect of 100% grant of the State Government. We do not see any justification in restricting to the said policy only to those teachers who have been appointed as Shikshan Sevan in the institution receiving 100% grant. The object enunciated by the said policy decision is not to deprive a person who have already been appointed as Shikshan Sevak and completed three years and he takes a new appointment, an embargo is imposed in not appointing him as Shikshan Sevak again but he is held to be entitled to be recruited as regular teacher. In the present case the petitioner had already been appointed as Assistant Teacher and applying the underline principle as contained in the Government Resolution dated 15.09.2011, the petitioner who is already appointed as an Assistant Teacher on a regular basis against a permanent vacancy through in an unaided institution, we do not see any reason to deprive the petitioner all the benefits of

consideration of the previous service rendered her as Assistant Teacher and therefore we are of the explicit opinion that the impugned order cannot be sustained. Resultantly, the Writ Petition deserves to be allowed by quashing and setting aside the impugned order dated 29.10.2011. The respondent No.3 is directed to grant approval of the appointment to the petitioner as Assistant Teacher in respondent No.5-school with effect from 17.08.2006 and also directed to release the payment of difference in the salary payable to the petitioner in the pay-scale applicable to the post of the Assistant Teacher. While doing so it is permissible to deduct the amount of Rs.4,000/- which was paid as honorarium to the petitioner on being recruited to as Shikshan Sevak from 17.08.2006 till 17.08.2010. The amount so calculated in the form of difference in the salary should be disbursed in favour petitioner within a period of three months from today.

11. Rule is made absolute in the aforesaid terms.

(SMT.BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI,J.)