

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6143 of 2013

Mrs.Deepali Deepak Kolekar

... Petitioner

Vs

The State of Maharashtra through Secretary,
School Education Department and Ors.

... Respondents

Mr.G.N. Salunke for the Petitioner.

Mr.S.B. Kalel, AGP for the State/Respondent Nos.1 and 2.

Mr.M.S. Topkar for Respondent Nos.3 and 4.

Ms.Charushila Chaudhari, Deputy Secretary, School Education
Department present.

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

TUESDAY, 18TH DECEMBER, 2018

P.C. :

1 By this Writ Petition under Article 226 of the Constitution
of India, the petitioner claims the following reliefs :-

(b) After going through the legality, propriety and validity of the impugned order dated 20.9.2012 passed by learned Respondent No.2, this Hon'ble Court be pleased to declare that the said orders are in violation of the principles of natural justice and also in violation of the directions of this Hon'ble Court and the said order be quashed and set aside directing the Respondents to grant approval to the Petitioner as full time teacher declaring that the

Petitioner has been appointed as full time teacher with Respondent No.4 and entitled for all benefits of full time teacher with full back wages from the date of her appointment from Respondent Nos.3 and 4.

(c) That this Hon'ble Court be please to issue writ of mandamus or any other appropriate writ, order or direction in the nature of Mandamus, under the writ jurisdiction of this Hon'ble Court as provided under Art.226 of the Constitution of India, 1950, directing the Respondent No.3 and 4 to submit the proposal of the Petitioner for approval as full time teacher to Respondent No.2 with all necessary information.”

2 The petitioner says that if prayers (a), (b), (c) and (d) cannot be granted, then, atleast relief in terms of alternate prayer (e) be granted.

3 We are not inclined to grant any relief in the Writ Petition for we are of the firm opinion that this Petition projects the sorry and dismal state of affairs prevailing in the State of Maharashtra and, particularly these regions, namely, Western Maharashtra and Konkan.

4 In Maharashtra State, there is a mushrooming growth of educational institutions. Those who have absolutely no experience in the field of education, but are closely connected with the political parties either in power at local or at the State level, become bold

enough to establish the Societies and Trusts claiming that their laudable object and aim is to impart education.

5 The third respondent is the President of Shri Maruti Shikshan Prasarak Mandal. It is claiming to be the Management of the fourth respondent-Junior College. We find that this Management has, according to the petitioner, inserted and published an advertisement inviting applications for filling up the post of a teacher in Economics. On 14th and 15th April, 2002, the advertisement was published in daily “Sakal”, which is a newspaper widely circulated in Kolhapur District wherein this respondent No.3-Management and respondent No.4-Junior College are located.

6 The petitioner claims to be a resident of village Nesari, Taluka Gadhinglaj, District Kolhapur. On the date of filing of the Petition, she was aged 40 years. Naturally this educational institution imparting education in Gadhinglaj Taluka, District Kolhapur having circulated this advertisement, copy of which is at Exhibit A to the Petition, that the petitioner has forwarded the application.

7 The petitioner says that this advertisement was noticed by her, though it has not been published at a prominent page of this newspaper. It is published not in bold type, but under the caption 'small advertisement'. It says that there is an unaided Junior College in Gadhinglaj Taluka and that the post of teachers in Marathi, Hindi, Economics, Political Science have to be filled in and that there is one vacancy each in these subjects. These posts are stated to be vacant and that the Junior College-respondent No.4 is the concerned College which inserted this advertisement according to the petitioner. She, therefore, applied and according to her, an interview was held on 13th June, 2002 resulting in her appointment as a probationary for two years. The petitioner claims that the true copy of the appointment order is marked as Exhibit 'C' to the Petition.

8 Then it is stated that the Education Officer granted one division in 2003 by letter dated 7th February, 2002 on non aided grant basis for the fourth respondent-Junior College in Arts Division. For the additional division, three full time teachers were required. The petitioner claims that she and one more teacher has been appointed as full time teacher, however, their appointments were approved on clock

hour basis. The petitioner says that she has been allowed to work in the fourth respondent-College as full time teacher. She has also been appointed as examiner for Higher Secondary examinations. She has also been allowed to check the examination papers and all this work she did from 2005 to 2010. She was also selected for training in the year 2007 and all this according to her is documented. Having successfully completed the probation period, she claims that she should be appointed as a full time teacher/made permanent and an approval to this appointment be sought expeditiously by the Management.

9 The petitioner accuses the Management for having sent defective proposal and that is why her complaint is that the appointment was not approved. She, therefore, approached the Education Officer, but it appears that the Education Officer was not willing to redress her grievance. In this connection, she filed first writ petition being Writ Petition No.5804 of 2012 in this Court and this Court was pleased to pass an order on her Petition and which order is to the following effect.

“1. The grievance of the Petitioner is that though she was appointed as an Assistant Teacher on 13th June 2002 and the order of appointment specifies that she was on probation for a period of 2 years, the letter of approval of the Deputy Director of

Education, Kolhapur has granted approval to the Petitioner only as a part time teacher. The contention of the Petitioner is that the advertisement that was issued by the Management was for a full time post and the Petitioner was duly appointed on probation. Counsel submits that initially the Management did not submit complete papers to the department, as a result of which approvals were not granted. Subsequently, when approvals have been granted, the Petitioner has been treated erroneously as a part time employee, Counsel appearing on behalf of the Management disputes the entitlement of the Petitioner to a full time appointment having regard to the nature of the approval.

2. In our view, it may not be necessary for the Court to entertain the Petition at the present stage, since it is appropriate to direct that the Deputy Director of Education, Higher Secondary Education Department, Kolhapur (the second Respondent) should hold an enquiry into the nature of the appointment and all other relevant facts after furnishing to the Petitioner and the Management an opportunity of being heard. We accordingly dispose of the Petition directing the Petitioner as well as the third Respondent and Fourth Respondent management to produce within a period of two weeks all the documentary material before the second Respondent. The second Respondent shall pass a reasoned order thereafter within a period of two months.

3. The time schedule set out herein above shall begin to operate after an authenticated copy of this order is produced on the record of the Second Respondent. For that purpose, the parties shall appear before the Second Respondent on 23rd July 2012 at 1.00 noon.

4. The second Respondent shall also enquire into whether the salary due and payable to the Petitioner has been duly paid and pass necessary direction, as may be in accordance with the law.

5. The Petition is accordingly disposed of. There shall be no order as to costs.”

10 It is claimed that despite such an order of this Court, the appointment of the petitioner was not approved. Instead, she is in receipt of the impugned order. The impugned order proceeds on the footing that the petitioner was assigned the workload for the year 2003-2004 and for 2004-2005 in the subject of Economics and Cooperation. For the other years, she has been allowed the workload in Economics subject. From the date of appointment, she has not been assigned the duties and, particularly, to teach the subjects Economics and Cooperation. The petitioner has also not been assigned duties to teach the subject Environment, as that subject appears to have been assigned to some other teachers. In such circumstances, the Education Officer says that he cannot assume that the petitioner was assigned the workload of other teachers and that is why her appointment can be approved as full time teacher. The Education Officer found that she has only been assigned duties on clock hour basis and that too 16 clock hour basis. For the purpose of a full time teacher, atleast 17 to 20 clock hours have to be achieved. If at all the subject of Environment and teaching duties in that regard were assigned to her, possibly the workload for a full time teacher could have been completed. It is in these circumstances, the approval to the petitioner's post as full time

teacher has been denied.

11 From the record it appears that when the order was passed by this Education Officer, there were indeed some documents furnished to him. It also appears that the record in relation to other teachers was also placed.

12 It is in these circumstances that when the petitioner made a representation to the Education Officer, but finding that there is no redressal of the grievance stated therein, this Writ Petition was filed.

13 In the first affidavit filed by the Assistant Director of Education, Kolhapur Region, Kolhapur in reply to this Petition, which is at page 98, it is claimed that this Petition has been filed purportedly to challenge the orders passed pursuant to the directions of this Court. It is claimed that the respondent Management, namely, respondent Nos.3 and 4 started a Junior College in Arts Section, i.e. Higher Secondary wing in Arts Section and forwarded a proposal for sanction of one division each of 11th standard Arts and 12th standard Arts. The Management did not obtain sanction to these divisions, but pending

sanction of the divisions, the appointment of the petitioner purportedly as full time teacher has been made. One division each of 11th standard Arts and 12th standard Arts came to be sanctioned by sanction letter dated 7th February, 2003 on “No Grant Basis” as per the Government Policy. However, no proposal for approval of the appointment commensurate with the workload of the subject, in which the petitioner is qualified, is then received. The proposal for approval of appointment of the petitioner on these unaided divisions on clock hour basis for the year 2002-2003, which was received on 23rd November, 2002, was approved by letter dated 7th February, 2003. The proposals for the years 2003-2004 to 2006-2007 were received in October 2008. Though respondent No.4 was directed by letter of 29th April, 2009 to submit separate proposals alongwith the necessary papers, respondent No.4 failed to do so. The complete proposals were once again directed to be forwarded by reminder of 22nd October, 2010, but what was forwarded was a part-time one clock hour basis record of the petitioner from 2002-2003 onwards. That is how the deponent of this affidavit culled out the workload of the petitioner and the requirement in that behalf as per the rules and regulations. Once the petitioner is qualified to teach Economics and Co-operation subjects, but there was no sufficient

workload so as to approve her appointment as full-time teacher and that appointment was found to be erroneous, then, we are nobody to substitute this opinion of the Education Officer as a whole in our writ jurisdiction. We may reach a different conclusion, but unless the appreciation of the proposal on record by the Education Officer or by this Deputy Director, Education is found to be *ex-facie* erroneous and illegal so also the refusal to the appointment of the petitioner, arbitrary and *mala fide*, the writ court has no business to interfere.

14 Later on, however, when this Petition was placed before us, we discovered and from the documents relied upon by the petitioner herself that the advertisement is silent on very essential particulars. Though the advertisement says that there is a vacancy in the post of teacher in the subjects of Marathi, Hindi, Economics and Political Science, what we find missing in this advertisement is the subject or reference to the subject Co-operation and Environment. Further, neither the pay scales nor the workload is mentioned in this advertisement. Apart from that, the petitioner has been stated to be appointed and the order of appointment is also stated to be issued with effect from 14th June, 2002 to 13th June, 2004 in the leave duration

vacancy. Now, with regard to all these documents, we had passed a detailed order on 3rd December, 2018. This order was passed after hearing both sides. This order reads as under:-

1 The earlier order clearly requires the concerned official, not only to remain present, but file a reply as to on what basis the approval was refused.

2 From the record it appears that some papers have been forwarded by the Management, but, on instructions, Mr. Kalel, learned AGP, says that there is no copy of a proper advertisement inviting applications on record. There is no proof of any Selection Committee having been constituted nor any interviews held. In such state of affairs, we do not see how the State Government allows such Educational Institutions to function. Though there is no salary grant, there are other concessions which the State extends to Educational Institutions and these are at the cost of public ex-chequer. If public funds are utilised to promote and encourage higher education in the State, then, merely because the Institutions are not managed, administered or controlled by the State or function under the State strictly, still, in the relevant statutes the State's obligation and duty to monitor and supervise the functioning and working of all such Institutions is spelled out. We have seen that this duty has not been discharged by the Deputy Director of Higher and Secondary Education as also the first respondent.

3 We do not know under what circumstances respondent Nos.3 and 4 have been allowed to function in this way and why no action has been taken against such Institutions till date.

4 Let the Secretary in the Department of School Education, Government of Maharashtra, file his affidavit before the next date indicating what action he will take against such Institutions and the Departmental officials for allowing the state of affairs noticed by us in the earlier order to continue.

5 Post this matter on 17th December, under the caption "For Passing Orders".

6 In the event no affidavit is filed, we will proceed to dispose of this petition in terms of our earlier orders and then all consequences in law shall be visited on the Management and the concerned officials.”

15 Pursuant to this order, Charushila Devendra Chaudhari working as Deputy Secretary, School Education and Sports Department, Mantralaya, Mumbai filed a detailed affidavit in which, she has stated that the principles of natural justice have not been violated, inasmuch as, the record produced by the parties would indicate that there is no compliance with law. Once the rules and regulations have not been complied with, then, on this admitted position, no conclusion other than the one reached by the Department of Education/School Education and Sports Department can be reached. In fact, undue mercy has been shown to the petitioner by treating her as a teacher appointed on clock hour basis. In this affidavit, the pertinent statements are to the following effect :-

“It is seen from the documents enclosed with the Petition that the Petitioner has relied upon the appointment order dated 13th June, 2002 as a full time Teacher. However, the management has said that they have not issued the said order. The validity of the appointment order dated 13th June, 2002 has not verified. Further, the procedure of recruitment has not been followed as prescribed by the State Government from time to time.

I say and submit that as the matter pertains to the Petitioner and the Respondent management, none of them have yet produced any authentic document on this behalf. After going

through the documents, it is seen that management has stated at Page No.87 and 93 of the petition that the appointment order dated 13.06.2002 has not been issued by management and it is fake document. The management has also stated that it has issued appointment order on 01.06.2002 as a part time teacher.”

16 The Deputy Secretary says that it is necessary to ascertain from the original records whether the petitioner was indeed appointed in pursuance of the advertisement issued by the Management. It is clear from this affidavit that there was neither enough workload and, therefore, there was no question of sanctioning a post of full-time teacher in the concerned subject. Insofar as the appointment order and stated to be on clock hour basis is concerned, that record also has not been verified, but what has been culled out by the Department on the basis of the available documents is that the Management claims that it has not issued the order of appointment dated 13th June, 2002 and it is fake and fraudulent document. Once this is the position on record of the Department of School Education and Sports, then, reinforcing our earlier view, it is evident that this appointment of the petitioner cannot be converted into a full-time teacher, as claimed. The deponent of this affidavit says that action will be taken against such Institutions and Department officials for allowing the state of affairs noted by us in our earlier orders and present order to continue. When the Management is

in default, the grant is withdrawn, but when the divisions run by the Management are on no-grant basis and they are not receiving any kind of salary and non-salary grant by the State Government, then, there is no question of withholding the grant. There can be definitely an action to derecognize the School/Junior College. However, such orders are not issued in mid term and drastic steps of this nature are ordinarily not taken when the students, teachers and non teaching staff will suffer, if the same is initiated in the midst of the Academic Year.

17 However, nothing prevents the Department from initiating such steps atleast at the end of the Academic Year if such cases are brought to it and of the present nature and the Department of School Education and Sports is going to close its eye and allow a *prima facie* fraud detected by it to be perpetuated, then, it will have none, but itself to blame. In the State of Maharashtra, particularly, in Western Maharashtra and Konkan region when we find that there is a mushrooming growth of Schools, High Schools, Junior Colleges and there is no check or control, much less any regulation, then, the quality of education is bound to suffer. The public funds at large and at times in the form of allotment of land, other concessions and relaxations or

exemptions etc. are naturally misused by certain vested interests. At the behest of the political masters and bosses in power, they grab the benefits and largesse of the above nature and set up sub-standard educational institutions with no infrastructure, proper staff etc. Lack of trained staff results in deterioration of the quality of education and taking a back seat. On account of favours and blessings from the political masters and those political leaders to whom such Managements are close, no action has ever been initiated and that is what we have highlighted in our earlier order.

18 In the teeth of the admitted state of affairs and there being absolutely no prejudice caused to the petitioner, we do not see how we can exercise our writ jurisdiction to grant substantive relief or even alternate relief. It is entirely for the petitioner to take steps against the Management if she feels that she has been deprived of her legitimate dues. She can also proceed against the State Government for allowing the Management to continue to run such an institution where she has sought appointment as teacher and indeed appointed. She can then sue all of them and claim compensation and other monetary reliefs as permissible in law. We do not see any reason to entertain this Petition,

which is second in line and on the same cause of action. It is therefore rejected. There will be no order as to costs.

19 We are sorry to note that until the orders are passed by this Court, it never dawned on the State of Maharashtra and particularly School Education and Sports Department that there is a huge number of such educational institutions in the State of Maharashtra and particularly, in Western Maharashtra, who have set up their shops only to grab the benefits from the State. They are not interested in imparting quality education at all. They name the educational institutions after freedom fighters, eminent social workers and such political leaders who belong to the political party in power and thereafter with the blessings of the Government Department and its officials like the Deputy Secretary, who is present in Court, continue to grab benefits. Till such time as this Court passes the order, the Departments concerned are not even aware of what its power, duties and obligations are and particularly towards the students and general public. It is at our cost and with the tax payers money that such institutions are flourishing in the State of Maharashtra. With the utter neglect and at times undue favour shown, these state of affairs are

bound to continue. We say nothing more. If necessary, let the Principal Secretary in this Department take appropriate steps against all concerned, including the Education Officer and Deputy Secretary and other officials in the Department. A copy of this order be forwarded to him for necessary action.

[SMT. BHARATI H. DANGRE, J.]

[S.C. DHARMADHIKARI, J.]