

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

WRIT PETITION NO. 2439 OF 2017

Mrs.Namrata Ravindra Patil

...Petitioner

Vs.

Sane Guruji Seva Mandal & Ors.

...Respondents

Mr.N.V. Bandiwadekar I/b. Sagar A. Mane for Petitioner.

Mr.Girish J. Paryani for Respondent No.2.

Mr.A.R. Metkari, AGP for Respondent No.3.

CORAM : S.C. GUPTE, J.

DATE : 9 JULY 2018

P.C. :

Heard learned Counsel for the parties.

2 This petition challenges an order passed by the School Tribunal at Navi Mumbai on an appeal filed under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules framed thereunder, challenging a termination order issued by the Respondent management to the Petitioner.

3 The Petitioner was working in the post of Shikshan Sevak. She claims to have applied to the post in pursuance of an advertisement published by the Respondent management in local newspapers. She attended the interview and was selected. By an order dated 15 October 2012, she was appointed in the post of Shikshan Sevak for a period of three years with effect from 16 July 2012. The management's case for terminating the Petitioner is that before she could complete two years in

the post of Shikshan Sevak, the management's application for approval to her post made to the Education Department did not get a favourable response from the department and in the premises, she was terminated on 7 November 2014. The want of approval by the Education Department was on the ground that by Government Resolution issued on 2 May 2012, private and local authority schools were directed by the Government not to fill in vacant posts of teachers in their respective schools without first appointing surplus teachers so long as the surplus subsisted.

4 It is the case of the Petitioner that communications were addressed between 1 March 2011 and 25 April 2012 by the school management to the Education Department requesting the latter to either send a surplus teacher to the school or grant permission to appoint a teacher. It is submitted that since these communications elicited no response from the Education Department, an advertisement was issued on 10 June 2012 for the vacant post, which was of H.S.C., D.Ed. arising as a result of promotion of an H.S.C., D.Ed. teacher to the next pay scale of B.A., B.Ed. Learned Counsel relies on judgments of our court in cases of teachers where appointments were made after communicating vacancies to the Education Officer and upon failure to get any response from the latter. It is clear that in these cases decided by the court, communications were made after the GR of 2 May 2012, whereunder appointment of new teachers was banned by the State Government till absorption of surplus teachers. This ban was ordered on account of a substantial surplus of teachers, whose engagement was rendered surplus due to reduction in posts or other reasons not attributable to them and who had spent years in service. After the directive of the State Government, in case any school management had vacant post of a teacher, which was required to be filled

in, the management had to write to the Education Officer and either seek the name of a surplus teacher for absorption or permission to appoint a new teacher in the vacant post. The judgments of our court were on the footing that in cases, where after this G.R., and despite communications to the Education Department, neither the name of a surplus teacher was forwarded nor permission granted to the management to fill the post, the post could not be kept lying vacant for an indefinite period awaiting response of the State Government. In the premises, those appointments, which were made after (i) the communication of the management elicited no response from the Education Department, and (ii) due procedure for appointment was followed, had to be approved. In most of these cases, the teachers so appointed had completed their probationary periods for appointments and continued to work as regular teachers in schools. Our Court held that such teachers and managements could not suffer on account of ban on recruitment. That was the basis on which those orders were passed. In the present case, after the GR of 2 May 2012, there is not even a single communication by the concerned school to the Education Officer. The advertisement appears to have been issued on 10 June 2012 and the vacant post filled in. It is of no avail to the Petitioner that communications concerning vacancies were addressed to the Education Department between March 2011 and April 2012. These anyway had to be addressed by virtue of the mandate of Section 5(1) of the MEPS Act. An entirely new situation, however, arose on 2 May 2012, when the State Government issued a ban on recruitment. After May 2012, in view of that ban, the State was expected to send names of surplus teachers to Educational institutions, whenever vacancies were communicated by the latter and if the State failed to do, no fault would be found with the appointments made by the management to fill up the vacancies after

following due procedure. This law has no application to the facts of the present case.

5 Besides, the Petitioner did not complete her probationary period. Even before she could complete the probationary period, the post, which was originally vacant and which was filled in by her appointment, was reduced. For the academic year 2015-2016, the post had no sanction. That is one more reason why the impugned order cannot be interfered with. Even if the termination was expressly on the ground that the appointment did not have approval in the face of the State Government's ban on recruitment, the fact that the post itself was reduced by the State during the pendency of the Petitioner's probationary period is but a relevant fact, which can always be taken into account whilst considering any appropriate relief on the teacher's appeal.

6 There is, thus, no fault or infirmity with the impugned order of the School Tribunal. There is, accordingly, no merit in the petition. The petition is dismissed.

(S.C. GUPTE, J.)