

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9407 OF 2013

Kiran Dhanpal Vanvade

... Petitioner

Vs

The State of Maharashtra, through the
Secretary for Secondary Education and Ors.

... Respondents

Mr.Kiran S. Bapat for the Petitioner.

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

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

THURSDAY, 22ND NOVEMBER, 2018

P.C. :

1 By this petition, the petitioner seeks the relief in terms of prayer clauses (a) and (b). These prayers are reproduced for ready reference here-in-below:-

- a. That this Hon'ble Court be pleased to issue a writ, order or direction in the nature of certiorari or a writ of certiorari or any other appropriate writ calling for entire record and proceedings in respect of impugned order dated 11.9.2012 and 7.1.2013 passed by the Education Officer, (Secondary) Z.P.

Kolhapur; and after going through its legality, propriety and validity thereof be pleased to quash and set aside the same.

b. That this Hon'ble Court be pleased to issue order or direction or a writ of mandamus or any other appropriate writ directing the Respondents to grant approval to the appointment of the Petitioner as Asst. Teacher w.e.f. 2.7.2007 with all consequential benefits.

2 The petitioner, has in this petition, narrated that he is working as an Assistant Teacher in the respondent No.3 school. The first respondent is the State, whereas the second respondent is the Education Officer (Secondary), Zilla Parishad, Kolhapur. The fourth respondent is an institution running a Junior College.

3 The petitioner says that he is qualified inasmuch as his educational qualifications are M.A. B.Ed.. The third respondent appointed him as an Assistant Teacher on 22nd November, 2004 in Saraswati High School, Taklewadi. The appointment was in un-aided division. On 10th February, 2005, the petitioner was transferred to Janatara Kalpwruksh Vidya Mandir, Jaisingpur. That is also an educational institution under the same Management, namely,

respondent No.3. There also, the appointment is made to un-aided post. After transfer, a proposal for individual approval was forwarded by the Management on 19th October, 2005. That proposal was accepted on 28th November, 2006. The petitioner's appointment was approved, but on a probation. That is with effect from 1st July, 2005. Exhibit A is the copy of that approval. The approval is, of course, conditional. After that, the petitioner resigned from the services on 30th June, 2007. He was desirous of seeking an appointment in grant-in-aid school i.e. respondent No.4. That is also an educational institution under the same Management. The petitioner had put in two years of service and thereafter he was a permanent teacher. His appointment could not have been otherwise than as a permanent teacher. The Government Resolution dated 29th October, 1980 is relied upon so as to seek a condonation of the break in the services rendered by the petitioner and Exhibit B is the copy of this Government Resolution.

4 After the petitioner joined the respondent No.4, he was appointed as a “Shikshan Sevak”. He completed three years on 2nd July, 2010. Since then he is drawing the regular pay scale.

5 The contention of Shri Bapat appearing for the petitioner is that the nomenclature to this appointment is not proper. The appointment is under the wrong label or nomenclature, namely, as “Shikshan Sevak”. The scheme of “Shikshan Sevak” drawn by the Government of Maharashtra and published by Government Resolution dated 13th October, 2000 does not envisage an appointment of a party like the petitioner as “Shikshan Sevak”. Relying upon Exhibits 'C' and 'D' to the writ petition, Shri Bapat contends that the petitioner became aware of the Government Policies and he made an application to the fourth respondent seeking benefit of this Government Resolution and to revise his pay scale with effect from 2nd July, 2007 in accordance therewith.

6 Even the school was supportive and the fourth respondent requested the Education Officer to extend the benefit of the Government Resolution dated 15th September, 2011 and grant regular pay scale to the petitioner with effect from the above date. Shri Bapat then contends that on 11th September, 2012, the Education Officer informed the Management that since there is no provision for treating the service rendered by the petitioner in un-aided schools by clubbing it

with the services rendered in aided school, the proposal of the fourth respondent cannot be accepted.

7 It is this direction which has been challenged and, according to Shri Bapat, even the Deputy Director of Education failed to render justice and the appellate order is vitiated by non application of mind.

8 Shri Bapat submits that similar issue has been dealt with by this Court in Civil Writ Petition No.5258 of 2012 decided on 12th September, 2012 and based on that, this writ petition must succeed.

9 The learned AGP on the other hand submits that the petitioner cannot be granted the benefit in terms of the prayers in this writ petition. The Government Resolution dated 15th September, 2011 applies to such employees who have already put in three years service as “Shikshan Sevak” in aided school. Such person need not be appointed as a fresh candidate, but he can be appointed as Assistant Teacher. Once such services are rendered by the petitioner prior to his appointment in aided school or in an un-aided section or institution,

then, the clubbing of the services cannot be permitted and there is no merit in the argument that the petitioner's initial appointment as "Shikshan Sevak" by the fourth respondent is contrary to law. For these reasons it is submitted that the petition be dismissed. In paragraphs 7 and 8 of the affidavit-in-reply at page 46 of the paper-book, this is what is stated :-

"With reference to Paras 10, 11 and 12 of the Petition, I say and submit that as made clear hereinabove the order dt.07.01.2013 passed by the Respondent No.2 is quite proper. I say and reiterate that vide Govt. Resolution dated 15th September 2011 the Respondent State have issued Orders to the effect that a teacher, who has already put in 3 years service as Shikshan Sevak be given fresh appointment in another aided school as an Asstt. Teacher and he need not be again appointed as Shikshan Sevak. The Govt. Resolution dated 13th October, 2000 is issued for bringing up and implementation of Shikshan Sevak Scheme in Aided Schools. The orders in both these Govt. Resolutions are not applicable in the Petitioner's case.

With reference to Paras 13 and 14 of the Petition, I say and submit that the Respondent State have not issued Orders to the effect that a teacher appointed afresh in Aided School be given appointment as Asstt. Teacher provided he has already rendered services in Unaided School/Section/Post. As made repeatedly clear hereinabove the orders issued in G.R. dt.13.10.2000 and

dt.15.09.2011 are not held applicable in the Petitioner's case. Under the circumstances the contentions raised by the Petitioner are not proper and cannot be accepted.”

10 For a proper appreciation of this controversy, it would be necessary to refer to the exhibits. It is common ground that on 28th November, 2006, the Education Officer (Secondary) Zilla Parishad Kolhapur considered the proposal of the Management dated 29th October, 2005. The approval to the petitioner's appointment came to be granted on terms. Even if that was against an un-aided post, still, the appointment had to be approved and there is no dispute in that regard. The approval order says that the petitioner has been appointed against a permanent vacancy, which is meant for open category candidate. He has been appointed as Assistant Teacher and this is a fresh appointment. The probation period commences from 1st July, 2005.

11 By Exhibit B the Government of Maharashtra enunciated a policy and the issue before it is how to fix the pay of a teacher who joins one school, but demits his office or resigns from service from there and accepts appointment in another school, then, how his pay has to be

determined and for the purposes of revising the pay scales, which date has to be reckoned. The earlier orders were issued on 30th July, 1974. This policy says that once services are rendered for some period or duration in one school and the teacher is appointed in that very school later on, then, the services rendered earlier, but having been broken either on resignation or otherwise can be reckoned and can be taken into consideration. That is the policy, but while clarifying the same, this Resolution says at Annexure 35 that if such appointment is made in Non Government Secondary School and if the teacher resigns from the services of that school and later on joins either that school or some other school, but under the same management, then, as well, for fixing and revision of pay scale for granting increased pay, such services which have been technically broken should be clubbed. There is no objection to such clubbing. However, the earlier services having been disrupted, then, from date of such disruption till the resumption of duty under the fresh appointment, the concerned teacher should not have rendered full time services. If such services are part time, then, the clubbing or joinder was permitted.

12 13th October, 2000 (Exhibit C) is a policy of making appointment as “Shikshan Sevak”. We are not concerned with the entire policy enunciated, but we are concerned with Annexure A to this policy. In Annexure A, the whole scheme is enunciated and it has been stated very clearly in this policy and particularly, Annexure A Serial No.16 that the orders referred to in the policy and the annexures are inapplicable to the teachers appointed part time and on clock hour basis, the teachers who have been rendered surplus and the teachers who have already been made permanent, but have resigned from their service and have sought fresh appointment. It is this category which is relied upon by Shri Bapat to submit that the petitioner's case is covered by the same. It is evident from the affidavit in reply as well that this petitioner was appointed earlier in the school referred to in Exhibit A. He was appointed as an Assistant Teacher. He was appointed on 1st July, 2005 and he was appointed on probation with effect from that date. The probation period having been completed satisfactorily, the proposal for approving the appointment has been forwarded and evidently that proposal says that the period of probation has been completed. Equally the order at Exhibit A does not say that the appointment is on probation. Therefore, the petitioner's initial

appointment was against the permanent vacancy. He already possessed the qualification for the post of Assistant Teacher. He was appointed as Assistant Teacher by the third respondent in Saraswati High School, Taklewadi. That was against an un-aided post. On 10th February, 2005, the petitioner was transferred to Janatara Kalpwruksh Vidya Mandir. It is also an educational institution run by the same Management. That was an appointment against the non-aided post with effect from 11th February, 2005. On 19th October, 2005, the approval for individual appointment was sought and that has been granted by the order dated 28th November, 2006. Pertinently, the Education Officer (Secondary) does not deny or dispute this factual position. Equally, he has not denied the position emerging from the record and particularly, highlighted in para 4. The petitioner resigned from the service on 30th June, 2007. Thereafter he noticed that there was vacancy in the fourth respondent school, which is receiving grant-in-aid from the Government. The petitioner, therefore, sought his appointment and it may be that the appointment was erroneously made as “Shikshan Sevak”, but the petitioner completed three years even in that post on 2nd July, 2010.

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 sub-section (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 sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed. The proviso to sub-section (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 un-aided 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 sub-section(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. Breaks in service could have been condoned for the services have been rendered in educational institution under the same Management. This position is also not denied in the affidavit-in-reply. In the above circumstances and in the facts peculiar to the petitioner's case, the orders impugned in this writ petition cannot be sustained. The affidavit-in-reply makes a reference not only to the Government Policy of 13th October, 2000, but also to the Government Resolution dated 15th September, 2011. There as well, the subject was that if there

is a regular vacancy and if such vacancies are filled, then, the incumbent on that post seeking appointment elsewhere, he would not be governed by the Shikshan Sevak Policy. The Government decided that in all the schools, if appointments of teachers are made as Shikshan Sevaks and they have satisfactorily completed the period of three years in that post, and if such teachers are appointed in aided posts, then, their appointments should not be made as Shikshan Sevaks for they have already become Assistant Teachers. Their appointments shall be made not as Shikshan Sevaks, but as Assistant Teachers or regular teachers. However, that will be on condition and that condition says that such teachers should be appointed against the regular vacancy by ordinary and normal mode of recruitment and appointment and they should complete the requisite period of probation of three years. Once they complete the same and are reckoned as regular teachers, then their appointments to aided posts should not be made as Shikshan Sevaks, but their services rendered prior to their appointments in aided schools or sections shall be taken into consideration for computing pension and pensionary benefits. The condition No.3, however, excludes such teachers who earlier served as primary teachers and then were appointed in higher secondary sections or have gone from secondary

sections to junior colleges, then, their pay scale cannot be protected.

14 In the present case, this condition is not applicable. The petitioner was appointed as an Assistant Teacher in Saraswati High School. His later appointment on transfer to the school mentioned in paragraph 3 with effect from 11th February, 2005 is not as a primary teacher. Throughout, the petitioner has been taken as a teacher rendering service in one section. He is not on transfer either serving as primary teacher and then was appointed in higher secondary sections or has gone from secondary section to junior college. Therefore, it is evident that the clubbing of the services for pensionary benefits in terms of the Government Resolution dated 15th September, 2011 is also permissible. The impugned orders failed to notice these stipulations and conditions and that is why the justification provided insofar as these orders in the affidavit-in-reply of State cannot be accepted. It is clear from the Management's proposal, copy of which is at Exhibit F that all the above facts are undisputed. Yet the Education Officer (Secondary) erroneously says that the petitioner's services rendered in the un-aided post cannot be taken into consideration as requested by the Management. He rejected the proposal of the fourth respondent

Management without application of mind. He was of the opinion that there was no policy of clubbing. When the petitioner approached the Deputy Director in appeal, in the memo of appeal, he categorically stated that his services are firstly in a un-aided post. For no fault of his, he was transferred to another un-aided school though his services were approved in the first un-aided school. It was the mistake of the fourth respondent to have appointed him as “Shikshan Sevak” for which he cannot be blamed. With this factual position, the Deputy Director could not have maintained or upheld the order of the Education Officer. None of these orders take notice of the Government Policies and the conditions therein.

15 In the circumstances, these orders are vitiated by non application of mind. They are ex-facie erroneous and illegal. They cannot be sustained. They are quashed and set aside. The writ petition is allowed in terms of prayer clauses (a) and (b).

16 In view of the fact that we are quashing and setting aside the impugned orders, the petitioner shall be granted all consequential reliefs, including fixation of his pay on regular pay scale of an Assistant

Teacher with effect from 2nd July, 2007 to 2nd July, 2010. Since his appointment was erroneously made by the fourth respondent as “Shikshan Sevak” and not as an Assistant Teacher and the petitioner was not a party to such illegal appointment or a beneficiary thereof, then, such relief can be granted. He is a deserving candidate. There is no allegation of any fraud or suppression of material facts on his part either. Hence, the writ petition stands allowed in the above terms.

17 We clarify that we have granted the relief in the facts and circumstances peculiar to the petitioner and this does not necessarily mean that our direction shall operate as far as other teachers are concerned.

18 The writ petition stands disposed of accordingly.

[SMT. BHARATI H. DANGRE]

[S.C. DHARMADHIKARI, J.]