

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

WRIT PETITION NO.3922 OF 2012

Shailaja Vijay Patil

..Petitioner

Versus

State of Maharashtra and others

..Respondents

Mr. V. A. Shastry, Advocate for the Petitioner.

Ms. Nisha Mehra, AGP for Respondent Nos.1 and 2.

Ms. Ashwini Surendran i/by Mr. A. T. Gade, Advocate for Respondent No.5.

CORAM : B. R. GAVAI &

B. P. COLABAWALLA, JJ.

DATE : 23rd JANUARY, 2018

PC.

1] Rule. Rule made returnable forthwith. Heard by consent.

2] The Petitioner has approached this Court being aggrieved by the order dated 11th April 2012, vide which the approval granted to the Petitioner as Shikshan Sevak came to be rejected.

3] The Petitioner came to be appointed as Shikshan Shevak by the Respondent Nos.3 and 4 on 15th June 2009. Vide order passed by the Respondent No.2 - Education Officer dated 29th September 2010, the Petitioner's appointment as Shikshan Sevak came to be approved for a period of three years i.e. from 15th June 2009 to 14th June 2012. Vide the impugned order dated 11th April 2012, the same has been stayed. In the

affidavit in reply filed on behalf of Respondent No.2 - Education Officer, it is stated that the impugned order was passed since the post on which the Petitioner was appointed was belonging to Scheduled Tribe category. However, the perusal of the impugned order would reveal that no such ground is stated. The only ground on which the impugned order is stayed, is that some complaint has been received with regard to the appointment of the Petitioner.

4] It appears that there is internal dispute with regard to the management of the Respondent No.3 Trust. The Respondent No.5 belonging to one of the rival groups, appears to have complained against the Petitioner's appointment and on the basis of the same, the impugned order is passed.

5] We find that the impugned order is not sustainable, in as much as, the reason given in impugned order is something different and the ground given in the affidavit something else. The Apex Court in the case Mohinder Singh Gill and another Vs. Chief Election Commissioner, New Delhi and others reported in 1978 AIR 851, has held that the parties cannot be permitted to improve orders by averments made in the affidavit in reply.

6] In that view of the matter, the impugned order deserves to be quashed and set aside.

7] The perusal of the record would reveal that this Court vide order dated 2nd May 2012 had granted interim protection. Learned counsel for the Petitioner informs that the said protection is still continued till this date.

8] In so far as the ground regarding the post being belonging to Scheduled Tribe category and the Petitioner belonging to open category is concerned, direction can be given to the Education Officer to treat the Petitioner as candidate from open category and fill in the next vacancy by a candidate belonging to Scheduled Tribe category.

9] Rule is therefore made absolute in the following terms.

I) The impugned order dated 11th April 2012 is quashed and set aside.

II) The order dated 29th September 2010 is confirmed. It is made clear that upon completion of three years period as Shikshan Sevak, the Petitioner would be entitled to be absorbed as Assistant Teacher.

III) The Respondent Nos.2 to 4 are directed to treat the post on which the Petitioner was appointed as a post from open category and interchange the same by filling a candidate belonging to Schedule Tribe category in next available vacancy from open category, if by now the quota of Schedule Tribe category is not yet fulfilled.

IV) The Petitioner would be paid regular salary with effect from the month of February 2018.

V) The arrears shall be cleared within a period of six months from today.

[B. P. COLABAWALLA, J.]

[B. R. GAVAI, J.]