

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

WRIT PETITION NO.5470 OF 2013

Mrs.Sangeeta Shashikant Sawant
R/o.D-10, Mr.Arun Niwas,
Shastri Nagar, Old Dombivali,
Dombivali (West), Thane-421 202,
Thane District.

...Petitioner

V/s.

1. The State of Maharashtra
Through the Secretary,
School Education Department,
Mantralaya, Mumbai- 400 032.
2. Director of Education (Primary)
M.S., Pune.
3. Deputy Director of Education
Mumbai Region, having office at
Jawahar Bal Bhavan, Netaja Subhash
Marg, Charni Road, Mumbai- 400004
4. Education Officer (Primary)
Zilla Parishad, Thane
5. Kalyan Dombivali Municipal
Corporation, School Board.
At Kalyan, District-Thane.
Through its Administrative Officer.
6. Uday Shikshan Prasarak Mandal
Esha Apartment, Dnyan Mandir
Vidyalaya & Vishnu Nagar,
Dombivali (West)
Thane-421202, District-Thane.
Through its Chairman/Secretary

7. Dadasaheb M.K. Wani Primary School
Dnyan Mandi Vidya Sankul,
P-12, Near Mamta Hospital,
Residential Zone, MIDC,
Dombivali (E), Thane-421204,
District-Thane.

...Respondents

Mr.Narendra V. Bandiwadekar for the Petitioner.

Mr.S.B. Kalel, Assistant Government Pleader for Respondent Nos.1
and 3.

Mr.A.S. Rao for Respondent No.5.

Ms.Deepali Yatin Deherkar for Respondent Nos.6 and 7.

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

RESERVED ON : 27th JUNE 2018

PRONOUNCED ON : 17th JULY 2018

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

1. Rule. Rule made returnable forthwith.

2 The petitioner, being aggrieved by the order passed by the Education Officer (Primary), Zilla Parishad, Thane, granting approval to her appointment as Shikshan Sevak on fixed honorarium has approached this Court seeking a direction to quash and set aside the said order and seeking approval as an Assistant Teacher in a prescribed pay-scale with effect from June 2002 and

and has sought further relief of realising and granting aid for payment of her salary in the regular pay-scale of Assistant Teacher.

3. The petitioner came to be appointed as a Assistant Teacher in the primary school run by Uday Shikshan Prasarak Mandal, District-Thane. At the relevant time of her appointment she was holding a qualification of SSC and therefore her appointment was in the capacity of an untrained teacher. In the year 1988, the petitioner passed Certificate Course in Teacher in Card Board Work and Book Binding and in April 1994 she acquired a certificate in Tailoring and Cutting from the Board of Maharashtra State Vocational Examinations. It is to be noted at the time of appointment of the petitioner in the primary school, the school was not in receipt of grant in aid from the State Government, however, from the year 1988 the school became a recipient of the 100% grant. The petitioner acquired the qualification of D.Ed. in 2002, and to be precise in the month of May and therefore she became a qualified candidate for being appointed as a Assistant Teacher in primary school.

4. On acquiring the said qualification, the respondent No.6-Management appointed the petitioner as Assistant Teacher in

the Primary school in the pay-scale of Rs.4500-7000. The appointment was made on probation period of two years and the petitioner satisfactorily completed the period of probation and hence she became a deemed permanent employee in terms of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The Head Mistress of the school, forwarded a proposal to the school board of the Kalyan Dombivali Municipal Corporation vide proposal dated 23.09.2002 and requested for grant of approval to the appointment of petitioner in the capacity as primary teacher. The respondent No.5 is a Competent Authority established under the provisions of the Bombay Primary Education Act, 1947 and the Rules 1949 thereunder and to grant approval to the appointments of teaching and non-teaching employees made in the private primary schools within the area of the Kalyan Dombivali Municipal Corporation.

When the proposal of the petitioner was forwarded to the School Board, the Administrative Officer of the school board instructed that if the petitioner would give an undertaking that she will not claim any benefits and arrears of salary for the period from June 2002, the approval to her appointment can be granted. Accordingly, the petitioner executed such an undertaking on 13-07-2004, at the same time another proposal came to be

forwarded to the Deputy Director of Education, Nashik Region, Nashik for relaxing the overage of the petitioner, at the time of initial appointment in the year 1985. The Deputy Director of Education condoned the overage of the petitioner by his order dated 6/9.02.2004.

In spite of the legal impediment being cleared, the respondent No.3 did not confer approval to the appointment of the petitioner which constrained the petitioner to make repeated representations. Later, by order dated 15.06.2007 the approval was granted to the appointment of the petitioner (SSC, D.Ed.) as Assistant Teacher in the school with effect from 13.06.2002. It is pertinent to note that said approval was granted on fixed honorarium of Rs.3,000/- per month and was limited for a period commencing from 13.03.2002 to 30.04.2003. The approval order categorically mentioned that in the academic session 2003-2004 two divisions of schools are reduced, and resultantly two posts of teachers are also reduced. It was therefore, mentioned that there is no post vacant from the year 2003-2004 and all other teachers were working in permanent capacity. The said order of approval does not take into consideration that the petitioner has continued as Assistant Teacher till the date of approval i.e. from 2002-2003 till the academic year 2007-2008.

5. The petitioner raised a grievance about approval being conferred limited to one year, which resulted into directions being issued by the Deputy Director of Education, Mumbai Division to the Head Mistress of the school in which the petitioner was working. In the said communication the specific undertaking given by the Secretary of Director of the institute namely Dnyan Mandir Primary School, Dombivali came to be recorded and the statement was made to the effect that from October 2007 the petitioner Smt.Sangeeta Sawant would be issued an order of appointment in the regular pay-scale of Rs.4500-7000 on a vacant post in the capacity of primary teacher, to which the petitioner acceded and thereafter, the compliance report was directed to be submitted to the office of the Deputy Director of Education, Mumbai Division. It is a specific grievance of the petitioner that in spite of the said undertaking given by the respondent-institute the same was not implemented. In the meantime, in the year 2009 the school in which the petitioner was working namely Dnyan Mandir Primary, School, Dombivali (West) was shifted to another area of MIDC, Dombivali, Taluka-Kalyan, District-Thane subject to certain conditions including condition to accommodate the qualified teachers in the said school and the said shifting was approved by the Education Officer, (Primary Zilla Parishad, Thane). However, the issue of the

appointment of the petitioner was still not resolved and the petitioner made repeated representation in regards to the same.

6. The petitioner received another order of appointment, this time from the respondent No.7 school with effect from 01.07.2011 as Assistant Teacher and on probation for the period of two years. Pursuant thereto a proposal was forwarded to respondent No.4 seeking approval of her appointment. The respondent No.4 granted approval to the appointment of the petitioner on the post of Shikshan Sevak with effect from 01.07.2011 for the period of three years on a fixed consolidated salary of Rs.6,000/-. The petitioner, being aggrieved by the said order preferred several representations agitating before the Education Authorities that the approval which was granted to the petitioner with effect from 01.07.2011 as Shikshan Sevak is *ex facie* illegal and in fact the petitioner was already appointed as Assistant Teacher and has discharged her duties in the primary school from the year 2002 in a regular pay-scale and therefore the grant of approval to her appointment as Shikshan Sevak from 01.07.2011 has caused great injustice on her. The representations were looked into by the State Government and by order dated 15-03-2013 it was communicated to the Education Officer (Primary Zilla Parishad,

Thane) that the decision taken by the State Government calls for no interference and the approval granted to her appointment with effect from 01.07.2011 as Assistant Teacher is just and proper and the said decision calls for no interference.

7. Being aggrieved by the said impugned order dated 16-01-2013 the petitioner has invoked the Writ Jurisdiction of this Hon'ble Court. On perusal of the petition it is noted that the petitioner was already appointed in the primary school on 05-08-1985 as an untrained teacher. However, in the year 2002 she acquired the requisite qualification as primary teacher that is D.Ed. and being duly qualified for the post of trained primary teacher the Management had issued order of an appointment to the petitioner in the prescribed pay-scale by order dated 15.06.2007. However, the approval to the appointment of the petitioner has been granted by Respondent No.4 on 15.06.2007 for a limited period of one year and the approval was granted on fixed honorarium at Rs.3,000/- The said approval was limited to period of one year on an assumption due to reduction of divisions, resulting into reduction of teaching posts, there is no vacancy available in which the petitioner could be accommodated. However, the respondent-authorities failed to take into consideration the fact that the petitioner was

continuously working as a teacher in primary school since 1985 and as a trained primary teacher from 2002. The approval therefore ought to have been granted to her from the date when she became a qualified primary teacher though the petitioner has already waived her right as untrained teacher from the year 1985 till 2002. However, by order dated 16.01.2013 which is impugned, the approval is again granted to the appointment of the petitioner from 01.07.2011 as Shikshan Sevak completely ignoring her services as a trained primary teacher with effect from 2002 and her continuous service referred by her till 30.06.2013. The petitioner was to retire from service on 31.10.2014 on attaining a age of superannuation and in that contingency her service would be counted only from 01.07.2011, in the post of Shikshan Sevak and resultantly depriving the petitioner of any retirement benefits since the period to be reckoned as service period would be only three years and four months. However, if the period is counted from June 2002 till the date of superannuation till 2014, the total service rendered by the petitioner would be 12 years 3 months which would qualify for grant of retirement benefits.

8. The petition was filed by the petitioner on 24.06.2013 and during the pendency of the petition she superannuated on

31.10.2014. The relief sought by the petitioner in the present Writ Petition is to grant approval appointment to the petitioner as Assistant Teacher from June 2002 and she is in any case not claiming continuity from the initial period of her appointment as untrained teacher in the year 1985.

In spite of the pendency of the matter from the year 2013, none of the respondent-authorities have bothered to file any affidavit in reply contesting the claim of the petitioner and therefore we have taken the contentions raised in the petition as not disputed. From the narration of facts in the Petition, it is not in dispute that the petitioner was issued with an order of appointment by the respondent No.6-Management as Assistant Teacher in the primary school in the prescribed pay-scale of Rs.4500-7000 on 05.05.2002. The said order of appointment was a period of probation of two years which the petitioner satisfactorily completed in the year 2004. The petitioner continued to render her services as primary teacher till her superannuation though, as noted above the approval was granted to her appointment limited to 13.06.2002 to 30.04.2003. In the proceedings conducted by the Deputy Director of Education in relation to the grievance of the petitioner, Management agreed that from October 2007 the petitioner would be appointed as primary teacher in the vacant post in regular pay scale of Rs.4500-7000 in

respondent No.7 school viz Dadasaheb M.K. Wani Primary School and accordingly the minutes of the said meeting were recorded and the compliance report was submitted to the Deputy Director of the Education. Thereafter, the petitioner continuously represented the authorities in order to honour the commitment given by the Management which however never saw the light of the day of and in fact when the primary school where the petitioner was working was permitted to be shifted on 12.02.2009, the permission was granted subject to the stipulation that the teachers working in the said school shall be continued in services and the management specifically had given an undertaking that the petitioner would be absorbed in the school on its shifting.

9. The Education Officer (Primary Zilla Parishad, Thane) repeatedly corresponded with the Deputy Director of Education, seeking guidance from the said authority with a view to the grant of approval of the appointment of the petitioner, in light of the position of the backlog and also by specifically updating the authority that in the year 2011-2012 the Head Master has retired from the said school and therefore one post of teacher has become available. In this back drop the proposal of the petitioner has been forwarded, so as to accommodate her as Assistant teacher from

01.07.2011. The said proposal was inturn forwarded to the School Education Department, Mantralaya, Mumbai on 12.10.2012. However, on such correspondence, certain queries were raised by the Section Officer including the qualifications of the petitioner, the duration for which the petitioner rendered her services and all other service details of the petitioner including the roster point made applicable by the institution. The Education Officer replied to the said queries promptly. On 4.01.2013 the Section Officer of the School Education Department forwarded communication to the Education Officer (Primary), thereby granting permission to grant approval of the appointment of the petitioner as Assistant Teacher on the vacant post from 01.07.2011 subject to the following conditions :-

- (a) If the Management proceeds to clear the backlog of Scheduled Tribe and other backward classes, approval should be granted.
- (b) The condition of age, for appointment of the petitioner be condoned from the Competent Authority.
- (c) The service rendered by the petitioner in the year 1985-2002 will not be counted for any purposes since, the said service was not approved by the department.

On receipt of the said communication the Education

Officer (Primary Zilla Parishad, Thane) issued the impugned order dated 16.01.2013 thereby granting approval of appointment of the petitioner from 01.07.2011, as Shishan Sevak on honorarium of Rs.6,000/-. The impugned order approves the petitioners appointment in the capacity of Shikshan Sevan for the period of 36 months.

10. The entire approach of the respondent-authorities in making the petitioner run from pillar to post and in the backdrop of the fact that the appointment of the petitioner was effected by the management in the regular pay-scale of the Assistant Teacher, long back in the year 2002 and with a clear understanding of the management that she would be accommodated in the transferred school i.e. in the respondent No.7 school, the respondent authorities have adopted highly injudicious approach and the said approach can only be described as insouciant. The Maharashtra Employees of Private School, MBPS Regulations Act, 2007, regulates the recruitment and conditions of service of employees in the private school and Section 5 cast, an obligation on the Management to fill in every permanent vacancy in a private school by appointment of person duly qualified to fill such vacancy. Sub-section 2 of Section 5 contemplates every person to be appointed to fill such permanent

vacancy on probation for the period of two years and on completion of the said probation, is deemed to have been confirmed. The respondent-authorities have acted in clear contravention of the scheme of the said enactment and when the appointment of the petitioner in the year 2002 specifically mentioned that it was on probation for the period of two years, the petitioner could not have been put to disadvantageous position by repeatedly appointing her as Shikshan Sevak and placing her in such capacity on a fixed honorarium. By the impugned order the respondent No.4 granted approval to the appointment of the petitioner from 01.07.2011 in the capacity of Shikshan Sevak for the period of three years, in complete ignorance of the fact that the appointment order issued in favour of the petitioner on 05.05.2002 was issued on probation of two years and in the pay-scale applicable to Assistant Teacher. Once such appointment has been issued and the petitioner being qualified to hold a clear and permanent vacancy in the year 2002, the subsequent contingencies of reduction in the classes, resultantly reducing the number of teachers in the year 2003-2004 cannot act as a detriment to the petitioner. The approach of the respondent authorities in keeping the petitioner on tenterhooks throughout her service career can only be deprecated.

In light of the above observations, the impugned order

dated 16.01.2013 is quashed and set aside. The respondent No.4 is directed to grant approval to the appointment of the petitioner as Assistant Teacher in the prescribed pay-scale with effect from 05.05.2002 and treat the said service rendered by the petitioner in the capacity as Assistant Teacher to be continuous till the date of her superannuation. The Respondent No.4 is directed to release the grant in aid towards payment of her salary as a regular Assistant Teacher from 05.05.2002 and release the said salary in her favour by adjusting the amount which is already paid to the petitioner, during the service rendered by her. The said arrears accruing to the petitioner on account of the fixation of a pay-scale in the capacity as Assistant Teacher be disbursed to the petitioner within a period of three months from today. Rule is made absolute. No order as to costs.

(SMT.BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI,J.)