

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

WRIT PETITION NO.7735 OF 2018

Mr. Sitaram Lahanya Wangad Petitioner

Vs.

The State of Maharashtra & Anr. Respondents

Mr. Sanjeev Sawant i/by Mr. Samir M. Suryawanshi for the
Petitioner.

Ms. Mansi Bane, AGP for Respondent nos. 1 and 2.

Mr. Ajit M. Savagave for respondent nos. 3 and 4.

Coram : SMT. SADHANA S. JADHAV, J.

Date : 3rd October 2018.

P.C.:

1 The petitioner herein impugns the order dated 25th July 2017 passed by the Education Officer (Primary), Zilla Parishad, Palghar thereby holding that the petitioner had voluntarily resigned from Vasti School and therefore is not entitled to be absorbed in service. The facts of the case in nutshell are as follows :

The petitioner was appointed as a Para-Teacher at Vasti School at Patilpada, Dhamangaon, Taluka Dahanu, District Palghar

vide order dated 10th June 2006. That the Incharge of Centre (Kendra Pramukh), Ambesari, Taluka Dahanu had also endorsed that the petitioner had worked for two years as a Para-Teacher and therefore he shall be given an appointment as a Teacher in the said school. Similarly the Block Development Officer, Panchayat Samittee, Dahanu had also recommended regular appointment of the petitioner since he had satisfactorily completed his probation during the period 2006 to 2008. The petitioner belongs to Varli, Scheduled Tribe and his caste claim has been validated by an order dated 19th May 2003. By letter dated 3rd February 2012, the Joint Director of Administration, M.P.S.P. had also given no objection certificate for appointment of the petitioner on the vacant post in the said Vasti School. According to the petitioner, he is entitled to the benefits contemplated by the G.R. dated 31st July 2009 and 27th September 2011.

2 The petitioner had made a representation to the respondent-authorities on 20th January 2017 claiming entitlement to the benefits vide G.R. dated G.R. dated 31st July 2009 and 27th

September 2011 and that he had been rendered jobless on account of closure of the Vasti School.

3 The representations made by the petitioner were not being decided and therefore the petitioner was constrained to file Civil Writ Petition No. 1429 of 2017. The said petition was disposed of by this Court vide order dated 2nd February 2017 thereby directing respondent nos. 3 and 4 to decide representation of the petitioner on the basis of G.R. dated 4th June 2016 as early as possible, preferably within a period of six weeks from 2nd February 2017. Since liberty was granted to file supporting documents, the petitioner had also filed the same by 10th February 2017. The said representation was not decided before 20th January 2017 and therefore, the petitioner had filed Contempt Petition (Stamp) No.17242 of 2017 before this Court. Notices were issued on 3rd July 2017.

4 The petitioner was held ineligible for appointment as Primary Teacher on the ground that he had voluntarily abandoned the services of the School.

5 Learned counsel for the petitioner submits that the Vasti School where the petitioner was working as a Para-Teacher was closed down by the State of Maharashtra in 2009.

6 The G.R. dated 31st July 2009 contemplates that in Vasti Schools, which are converted to Primary Schools, one post shall be reserved for appointment through Shikshan Sevak Scheme and Para-Teachers, who have worked in Vasti Schools shall be appointed on temporary contract basis.

7 It is submitted that one Mangal Mahadu Sutar and others who were working as Para-Teachers had made a representation for considering their appointments as Primary Teachers and that their representation have been considered favourably. G.R. dated 27th September 2011 contemplates that by an order dated 27th March 2008,, Vasti Schools have been converted to Primary Schools and the Para-Teachers working in Vasti Schools shall be eligible for appointment as Primary Teachers in continuation of G.R. dated 31st

July 2009. That they shall be appointed on temporary basis and would be entitled to receive an honorarium. However, those Para-Teachers, whose performance was not satisfactory and have therefore been removed from the post of Para-Teachers shall not be entitled to the said benefit. Similarly, those Para-Teachers, who have resigned or have abandoned their services were also not eligible for the benefits of the G.R. dated 31st July 2009 and 27th September 2011.

8 It is pertinent to note that the respondent has filed an affidavit and has submitted that since the petitioner had abandoned the services is not eligible to be re-appointed as Primary Teacher on contract basis.

9 Upon perusal of the papers, it appears that vide an undated letter, the petitioner was denied the benefit. While considering the orders passed by this Court in Writ Petition No. 2995 of 2017 and the Contempt Petition, the Chief Executive Officer and the Education Officer of Zilla Parishad, Palghar have held that the

petitioner is not entitled to be appointed as Primary Teacher since he is ineligible as per the seniority list. It is pertinent to note that this is an un-dated letter. It is the contention of the respondent that in the year 2008, Vasti Schools were closed down by the State of Maharashtra. It is contended that the petitioner had not completed two years as a Para- Teacher since the Vasti Schools were closed down by the State of Maharashtra in the year 2008 and the appointment of the petitioner is of the year 2006. It is contended that it is incorrect to hold that Chandan Dalvi was appointed on 1st August 2008 as there is no documentary evidence to indicate that he was appointed in August 2008, since the petitioner was working there. That notices were issued to respondent nos. 3 and 4 in Writ Petition No. 1429 of 2017, but they had not caused their appearance before this Court and therefore they are not entitled to take a stand that they had no opportunity to point out non-applicability of the G.R. dated 1st March 2014.

10 In fact, there are inconsistent reasons assigned for not considering the petitioner eligible to the benefit of G.R. dated 1st

March 2014. The petitioner submits that there is no record to indicate that the petitioner had voluntarily abandoned the services. Moreover, there is no letter of appointment issued in favour of Chandan Dalvi. The respondents have taken two inconsistent stands for holding the petitioner ineligible to the benefits of G.R. dated 31st July 2009.

11 Learned counsel for the petitioner has placed implicit reliance upon the judgment and order of Division Bench of this Court in Writ Petition Nos. 2254 of 2010, 4447 of 2010 and 4449 of 2010 dated 13th October 2010, wherein the Division Bench has held that “The Government Resolution is applicable to all such Teachers, who were working in Vasti Schools and who have been rendered jobless on account of closure of Vasti Schools”. The benefits were given to the Para-Teachers, irrespective of the fact that they were not in employment of Vasti Schools on 27th March 2008 i.e. the date on which Vasti Schools were converted into the Primary Schools.

12 In the present case, in fact more than two authorities had recommended appointment of the petitioner as a Primary Teacher. There is no material on record to indicate that the petitioner had abandoned the services of the School prior to 27th March 2008. In fact, he had completed two years of service as per report of the Block Development Officer and other authorities. His appointment is of 10th June 2006. It is also submitted that there is huge vacancy in Palghar district and therefore the petitioner, who has experience of working as Para-Teacher deserves to be appointed as Primary Teacher on contract basis.

13 In view of the above observations, the petition deserves to be allowed.

14 The order dated 25th July 2017 passed by the Education Officer (Primary), Zilla Parishad, Palghar is quashed and set aside.

15 The petitioner be appointed as a Primary Teacher at the earliest.

(SMT. SADHANA S. JADHAV, J.)