

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

WRIT PETITION NO.7935 OF 2018

1 Smt. Sulekha Balan Nair

2 Maharashtra Holy Cross Sisters
Society, Kalyan (W), Thane Petitioners

Vs.

1 The State of Maharashtra
2 The Education Officer (Secondary)
Zilla Parishad, Thane Respondents

Mr. N.V. Bandiwadekar I/by Ms. Ashwini N. Bandiwadekar for the
Petitioners.

Ms. Vaishali Nimbalkar, AGP for Respondents 1 and 2.

Mr. Sheshrao Bade, Education Officer (Secondary), Zilla Parishad,
Thane present.

Coram : SMT. SADHANA S. JADHAV, J.

Date : 31st October 2018.

P.C.:

1 Rule. Rule made returnable forthwith with the consent
of the parties.

2 The petitioner no.1 herein impugns the order dated 28th February 2018 passed by the Education Officer (Secondary), Zilla Parishad, Thane, thereby refusing to grant approval to the appointment of the petitioner no.1 as a “Junior Clerk/Shikshan Sevak” in Maharashtra Holy Cross Sisters Society, Thane run by Holy Cross Convent School, Thane. The Petitioner no.2- School is Religious (Christian) Minority Educational Institution.

3 The petitioners submit that on 6th November 2003 due to demise of Alice Raju, who was working as a Junior Clerk, the post had fallen vacant. Mrs. Sulbha Lonkar retired on superannuation in the year 2009 and therefore the post had fallen vacant. The school had published an advertisement in Times of India on 17th March 2010 for filling up vacancy. The candidates were called for oral interview and thereafter the petitioner no.1 was appointed as “Junior Clerk” for a period of three years from 4th June 2010 on monthly honorarium of Rs.2,000/-.

4 That the Headmaster of the said School had submitted a proposal to the Education Officer (Secondary), Zilla Parishad, Thane seeking approval to the appointment of petitioner no.1 and also one Sandip Patil. By an order dated 23rd September 2011, an approval was granted in favour of Sandip Patil as Junior Clerk w.e.f. 2nd June 2010. An approval was also granted in favour of Shikshan Sevak, however, the post of petitioner no.1 was not approved on the ground that there was a ban on recruitment of non-teaching employees.

5 It is submitted that subsequent proposals were submitted for approving the post of petitioner no.1 by demonstrating that the appointment was made by following due procedure of law and that the post had fallen vacant w.e.f. 4th June 2010, whereas the ban was imposed vide G.R. dated 5th June 2010.

6 By letter dated 22nd March 2017, a proposal was submitted for individual approval of petitioner no.1 and finally by an order dated 28th February 2018, the Education Officer (Secondary), Zilla Parishad, Thane had refused to grant approval.

7 Learned counsel for the petitioners submits that the G.R. dated 12th February 2015 is in continuation of the G.R. dated 23rd October 2013 and therefore the Education Officer not ought to have refused approval to the services of petitioner no.1.

8 As against this, learned AGP submits that the petitioner no.1 was not appointed in the Pay-scale of 5,200/- to 20,200/- and in fact she was appointed on honorarium of Rs.2,000/- and that in all probabilities, the Education officer had passed common order without examining the case individually. Moreover, her post was not demarcated in the category of non-teaching staff, but she was being appointed as a Clerk/Shikshan Sevak and that the School had not specified the post on which the petitioner no.1 would be working. It is in these circumstances, according to the learned AGP the petition deserves to be dismissed.

9 The definition of employee as per Section 2(7) of the Maharashtra Employees of Private Schools Regulation Act, 1977 (“MEPS Act”) reads as follows:

2(7) Employee means any member of the teaching and non-teaching staff of a recognised school [and includes Assistant Teacher (probationary)]

Shikshan Sevaks:- This category has been included in categories of “**employees**” on honorarium basis for probation period of 3 years as base cadre to be appointed and confirmed as Assistant Teacher.

10 It is pertinent to note that the G.R. dated 25th November, 2005 is based on Section 2(7) of MEPS Act wherein it is clearly mentioned that the non-teaching staff i.e. the Clerks, Peons and others are appointed as per Shikshan Sevaks Scheme and not as per Secondary School Code. Their appointments are not made on the pay-scales but they are entitled to an honorarium for a period of three years just like the teaching staff, who are appointed as Shikshan Sevaks. The Petitioners are appointed prior to the G.R. dated 12th February, 2015.

11 The Education Officer is present and admits that the non-teaching staff is covered by the Shikshan Sevaks Scheme. The Education Officer further submits that the inclusion of non-teaching staff under the Shikshan Sevaks Scheme is subject to appointment

and approvals by the educational authorities. That exclusion of non-teaching staff would reverse a long standing practise.

12 In the case of Uma Kant (Dr.) and Ors. Vs. Bhika Lal Jain (Dr.) and Ors., reported in 1991 II CLR 734., the Hon'ble Apex Court has held as follows :

“It is well settled that in matters relating to Educational Institutions, if two interpretations are possible, the Courts would ordinarily be reluctant to accept that interpretation which would upset and reverse the long course of action and decision taken by such educational authorities and would accept the interpretation made by such educational authorities.”

13 Learned AGP, upon instructions, submits that the Committee constituted has not taken any decision either on the staffing pattern or otherwise. The posts of the present Petitioners cannot be considered under the G.R. dated 12th February 2015 as it does not get retrospective effect but prospective appointments were banned.

14 It is, in these circumstances that the petition deserves to be allowed. The order dated 28th February, 2018 passed by the Education Officer, (Secondary) Zilla Parishad, Thane is hereby quashed and set aside and rule is made absolute in terms of prayer clause (b).

15 At this stage, the learned AGP seeks stay to the order. It is a matter of fact and record that in the catena of decisions, the refusal to approve the posts on the basis of the G.R. does not get retrospective effect and, therefore, the prayer for staying the order is declined.

(SMT. SADHANA S. JADHAV, J.)