

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

WRIT PETITION NO.8802 OF 2018

Sufiyan M. Hanif Surme Petitioner

Vs.

The State of Maharashtra & Ors. Respondents

Mr. N.V. Bandiwadekar a/w Mr. Sagar Mane I/by Ms. Ashwini Bandiwadekar for the Petitioner.

Ms. Vaishali Nimbalkar, AGP for Respondents.

Ms. Charushila Chaudhari, Deputy Secretary, School Education Department, Maharashtra.

Coram : SMT. SADHANA S. JADHAV, J.

Date : 5th October 2018.

P.C.:

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

2 The petitioner herein impugns the order dated 27th June 2018 passed by the Education Officer, Zilla Parishad, Thane refusing to grant approval to the appointment of the petitioner as a “Junior

Clerk” in Yakub Baig High School & Junior College, Panvel, District Raigad run by Panvel Education Society. The School is Urdu Linguistic/Muslim Religious Minority Educational Institution.

3 One Mr. Diwan A. Matin was working as a Junior Clerk in the said School, on the post duly sanctioned by the Education Officer. He was to retire on superannuation and his post therefore became vacant. In order to fill up the vacant post, the respondent no. 3 published an advertisement in daily newspaper “The Inquilab” dated 12th July 2009. Pursuant to the advertisement, the petitioner had made an application for the said post. That he was interviewed by the Selection Committee.

4 After following due procedure of law, by an order dated 13th January 2010, the petitioner was appointed as a “Junior Clerk” in the said School, on the pay-scale of Rs.5,200/- to Rs.20,200/-.

5 The Headmaster of the said School had submitted a proposal to the Education Officer seeking approval to the

appointment of the petitioner. After a long persuasion, on 1st October 2012, the Education Officer had accepted the proposal. By an order dated 27th June 2018, the Education Officer had refused to accept the proposal on the ground that there is a ban on recruitment to the vacant posts and moreover the Government has resolved to maintain status-quo till the staffing pattern is finalised by the Committee, duly appointed by the Education Department.

6 Perused the Government Resolution (GR) dated 12th February 2015. It is in continuation of the G.R. dated 23rd October 2013. A Committee was constituted of twelve members to determine the staffing pattern in consonance with the strength of the students of the School and till then the posts were to be kept vacant. Perused the G.R. dated 23rd October 2013, by which Resolution dated 25th November 2005 was superseded. As per G.R. dated 23rd October 2013, total 74,310 non-teaching staff was determined and sanctioned. The G.R. dated 12th February 2015 is in continuation of the said G.R. dated 23rd October 2013.

7 It is pertinent to note that the petitioner herein was appointed on a vacant sanctioned post w.e.f. 13th January 2010 and therefore the G.R. dated 12th February 2015 would not be applicable to the appointment of the present petitioner. It is not the case of the respondents that the said G.R. was made effective retrospectively.

8 It is further pertinent to note that the post on which the petitioner was officiating was sanctioned. Every year, he was appointed in clear vacancy. The post was sanctioned on the basis of the strength of the students. The Education Officer had issued orders thereby Sanch Manyata of the teaching and non-teaching posts and one post of Junior Clerk was sanctioned and available on the date of appointment of the petitioner and even thereafter. Moreover, the School happens to be minority Educational Institution.

9 According to the learned counsel for the petitioner vide G.R. dated 13th July 2016, there are separate rules for determining, sanctioning and approving the posts of teaching and non-teaching

staff in the minority institutions, for which guidelines are framed and the G.R. dated 13th July 2016 would be applicable to the case of the petitioner. Be that as it may, since the petitioner was appointed on 13th January 2010, i.e. prior to the G.R. dated 12th February 2015, the Education Officer ought to have sanctioned the post of the petitioner, holding that the post was admissible and liable to be sanctioned. The said G.R. has not been given retrospective effect. In view of the same, the petition deserves to be allowed.

10 The Order dated 27th June 2018 is hereby quashed and set aside.

11 The petition is allowed in terms of prayer clause (b).

(SMT. SADHANA S. JADHAV, J.)