

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11057 OF 2016

Kum. Vimal Parshuram Balid .. Petitioner
Vs.
Shri Sant Goroba Shikshan Sanstha
& ors. .. Respondents

.....
Mr. M.B. Deshmukh for the petitioner.
Mr. S.B. Kalel, AGP for State/respondent Nos. 4A and 5.

.....

**CORAM : B.R.GAVAI &
M.S. KARNIK, JJ.**

DATE : 8th OCTOBER, 2018

JUDGMENT (PER M.S.KARNIK, J.) :-

Rule. Rule is made returnable forthwith.

2. Heard by consent of the parties.

3. By filing this petition under Article 226 of the Constitution of India, the petitioner prays for a direction to the respondent Nos. 1 to 4A to appoint the petitioner as Assistant Teacher in the school by name 'Anand Vidya Niketan School' at Viman Nagar, Pune, on any of the three vacant posts which are

to be filled in the category of 'excess teachers' of respondent No.1 – Society. The petitioner has also prayed for consequential directions to pay monthly salary to the petitioner regularly and for arrears thereof.

4. The brief facts of the case are as under :

The petitioner was initially appointed as 'Shikshan Sevika' for a period three years from 15/7/2004 to 14/7/2006 on honorarium of Rs.3,000/- per month. She claims that she should have been made permanent after completion of three years and posted as Assistant Teacher. The Administrative Officer of the respondent No. 3 – Shikshan Mandal Pune Municipal Corporation approved her appointment vide letter dated 16/10/2006. The respondent No. 1 – Society, however, instead of allowing her to complete the period of three years, superseded her and preferred one Smt. R.B. Padshetti over her. Before completion of 3 years of the petitioner's tenure as 'Shikshan Sevika', by letter dated 4/7/2007 the respondent No.1- Society restrained her from signing muster and attending

classes. The petitioner challenged the impugned termination before the School Tribunal. The Tribunal vide order dated 6/8/2011 held that the petitioner was appointed in a clear and permanent vacant post by following due selection procedure laid down in MEPS Act and Rules and held that the impugned termination vide letter dated 4/7/2007 with effect from 27/4/2005 is arbitrary and illegal. The Tribunal accordingly directed the school to reinstate the petitioner in service as 'Shikshan Sevika' with effect from 4/7/2007 in its school by name 'Shri Sant Goroba Balvidya Niketan and further directed to pay her back wages from the date of termination till reinstatement. The Tribunal further directed that after completion of her period as 'Shikshan Sevika', she shall be continued as Assistant Teacher.

5. In Writ Petition No. 8793 of 2012, filed by the respondent No.1- Society challenging the order passed by the School Tribunal, this Court has modified the order of the Tribunal to the extent of back wages and rest of the order in respect of reinstatement was confirmed.

6. The respondent Nos. 1 and 2 thereafter asked the petitioner to join the school vide their letter dated 12/4/2016 and accordingly, the petitioner joined the school on 20/4/2016.

7. The society informed the petitioner that as the Marathi Medium School is being closed, she should work in English Medium Section of the Society, which is an unaided school and option was given to the petitioner to choose between back wages or reinstatement. Thereafter, vide her jointing report filed on 25/4/2016, the petitioner informed the Society that she had joined the services on 18/4/2016. Vide letter dated 28/6/2016, the Society informed the petitioner that Smt. R.B. Padshetti, who had completed the tenure as 'Shikshan Sevika' is now posted as Assistant Teacher as a result of which there was no sanctioned and vacant post in the School.

8. The petitioner submitted her representation dated 2nd September, 2016 to the respondent No. 4- Education Officer, Primary Section pointing out that she was reinstated on

20/4/2016, her salary for the period from 20/4/2016 has not been paid to her. She pointed out that in view of the reinstatement ordered by the Tribunal, her seniority since 15/7/2004 should be considered and in such event she should not be considered as 'excess teacher'.

9. It is the petitioner's case that there is a school at Viman Nagar named as 'Anand Vidya Niketan' wherein there are three vacant posts and the petitioner is holding all the qualifications for appointment on the said vacant post. Failure on the part of the respondents in taking action on her representation, she is constrained to file this Petition.

10. An affidavit-in-reply has been filed on behalf of the respondent No.2 pointing out that pursuant to the order of the Tribunal, the school has reinstated the petitioner with effect from the date of her appointment that is from 15/7/2004 on unaided post. It is pointed out that the said post had been approved for 100% aid in the year 2013-14. In this view of the

mater, a proposal was sent for the approval of the petitioner on the vacant and aided post to the respondent No. 3 - Administrative Officer, Education Department, PMC, Pune.

11. The Administrative Officer had forwarded the said proposal to the Education Officer, Primary Section, Pune ZP vide letter dated 20/11/2017 who granted approval to the petitioner's services as Assistant Teacher on the pay scale Rs.5200-20200 (Grade Pay – 2800) with effect from 1/10/2016. It is further pointed out that the approval is stayed by the respondent No.4 – Education Officer vide his letter dated 22/12/2017. This stay was on the ground that it was not ensured by the competent authority that all the surplus teachers from Pune District were absorbed before forwarding the proposal of the petitioner for approval. It is the stand of the respondent No.2 that as the petitioner is appointed from 15/7/2004 there is no need to get any such confirmation by the Education Officer. Previously there was no vacant post in the Primary Section but as the same is available now the petitioner's appointment can very well be approved.

12. The respondent No.4 – Education Officer has filed affidavit-in-reply that the respondent No.1- Society had submitted a proposal for granting approval in the regular pay scale of trained under graduate teacher on aided vacant post. The respondent No.4 approved the scale of trained under graduate teacher vide letter dated 20/11/2017. However, the said order dated 20/11/2017 was stayed by the letter dated 22/2/2017 on the ground that there is a provision of according approval to teachers appointed in aided and unaided primary and secondary schools by Committee formed under Chairmanship of Chief Executive Officer, Zilla Parishad, Pune vide Government Resolution dated 20/6/2004. Another reason for staying the approval granted is that as per Government Resolution dated 28/6/2014, it was not ensured by the competent authority that all the surplus teachers from Pune District were absorbed. Accordingly, the respondent No.4 has submitted a proposal for cancellation of the approval order dated 20/11/2017 to the Deputy Director of Education, Pune

Region, Pune as per Government Resolution dated 23/8/2017 which proposal is pending.

13. It is the stand of the respondent No.4 that the petitioner was reinstated in the respondent No.2 – School though there was no vacant post of trained under graduate teacher. The petitioner was initially appointed on the unaided post and she has been never appointed and approved on aided post in the respondent No.2 – School. Hence, she cannot be treated as surplus teacher and absorbed in the respondent No.2 – School or any other aided school. It is further pointed out that the petitioner cannot be appointed on the aided vacant post of under graduate teacher of the respondent No.2 School because in 2016-17, two under graduate teacher posts were re-sanctioned to the school for re-absorption of earlier two teachers who were made surplus in the earlier year 2015-16. Out of these two teachers, one Mrs. Khambayat Jyoti Ganesh has been re-absorbed in the respondent No.2 – School and another one Mrs. Yevalekar Rajashree Vivek is yet to be re-absorbed on the second

vacant post. For this purpose, second post is to be kept vacant and therefore the petitioner cannot claim on this post for appointment and even for approval.

14. We have heard learned Counsel for the parties.

15. There is no dispute that the petitioner was initially appointed as 'Shikshan Sevika' for the period commencing from 15/7/2004 to 14/7/2006. The initial appointment of the petitioner as 'Shikshan Sevika' was approved by the respondent No.3 – Administrative Officer vide letter dated 16/10/2006 with effect from 15/7/2004 on the unaided post of 'Shri Sant Goroba Balvidya Niketan', Viman Nagar, Pune, who is the respondent No.2 herein. The respondent No.3 granted permission to terminate the services of the petitioner by letter dated 4/7/2007. It is not in dispute that the said termination was set aside by the Tribunal. The Tribunal directed reinstatement of the petitioner with back wages. This Court was pleased to modify the order of the back wages but confirmed the order of

reinstatement of the petitioner. On the respondent No.2 submitting the proposal for granting approval in the regular pay scale of trained under graduate teacher on aided vacant post, the respondent No.4 – Education Officer, Primary Section, granted approval to the petitioner's appointment in the pay scale of trained under graduate teacher vide letter dated 20/11/2017.

16. We find that the School Tribunal while setting aside termination has clearly ordered reinstatement of the petitioner in service as 'Shikshan Sevika' and on completion of the period of 'Shikshan Sevika' shall continue in service as an Assistant Teacher. In so far as the payment of arrears during the period from the date of the termination till the date of reinstatement there is some dispute and proceedings in this regard are pending.

17. However, presently we are concerned with the validity of the order passed by the respondent No. 4- Education

Officer staying the approval already granted. It is clear that after the order was passed by the Tribunal, the petitioner was reinstated by the respondent Nos. 1 and 2 with effect from the date of her original appointment on an unaided post. As said post had been approved for 100% aid in the year 2013-14, the respondent Nos. 1 and 2 had sent the proposal to the respondent No.3 – Administrative Officer of the Corporation for approval of the petitioner on the said vacant and aided post. The respondent No.3 had thereafter forwarded the proposal to the respondent No.4 who considering all these aspects granted approval to the petitioner's service as an Assistant Teacher with effect from 1/10/2016 vide order dated 20/11/2017.

18. In our considered view, based on the proposal so submitted, if the respondent No.4 has considered the proposal and granted approval to the petitioner's service as an Assistant Teacher with effect from 1/10/2016, he would then have no power to stay the approval or cancel the approval so granted.

19. The Division Bench of this Court in the case of *Satpute Vidya Machindra Vs. State of Maharashtra & ors. (Writ Petition No. 3811 of 2013)* as also the Division Bench judgment of this Court in the case of *Suresh K. Thora Vs. The State of Maharashtra & ors. (Writ Petition No.4555 of 2011, decided on 14th November, 2011)* has held that the Education Officer can not have reviewed his own order and cancelled the approval of the appointment. It is further held that if the Education Officer was of the opinion that the approval order was obtained by fraud or by misleading or by furnishing fabricated documents about the qualification and experience, it was necessary for him to issue the show cause notice to the petitioner and the Management and to place the papers before the Deputy Director of Education for passing appropriate order for further action.

20. No doubt the petitioner has not made a specific prayer for setting aside the order dated 22/12/2017. She has nevertheless prayed for a wider relief of appointment as

Assistant Teacher in the School. During the pendency of the Petition, the proposal forwarded by the School for approval of the petitioner's appointment was initially approved but later stayed. The order dated 22/12/2017 passed during the pendency of the Petition and which is now brought on record is exfacie illegal and bad-in-law.

21. In this view of the matter, we find that the order dated 22/12/2017 passed by the respondent No.4 – is beyond the powers of the respondent No.4 and the order is therefore unsustainable. The petition therefore deserves to be allowed in terms of the order passed hereunder :

ORDER

- i) The order dated 22/12/2017 is quashed and set aside.
- ii) The order dated 20/11/2017 is held to be valid and in force.
- iii) Respondent No.2 is directed to submit the salary bills of the petitioner for payment of salary with effect from 1/10/2016.

iv) Respondent Nos. 3 and 4 are directed to sanction the salary bills and pay the regular salary to the petitioner from the month of November 2018. All the arrears shall be cleared within a period of 3 months from today.

22. Rule is made absolute with no order as to costs.

(M.S. KARNIK, J.)

(B.R.GAVAI, J.)