

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

WRIT PETITION NO.11299 OF 2018

- 1 Smt. Archana Gajanan Patil
Age : 41 years, Occ.: Service
R/at Room No. 201, Bldg. no.6,
Siddhi Vinayak Park,
Lokmanya Nagar, Thane (W)
- 2 Vidya Prasarak Sanstha,
Balkum, Thane – 400 608
Through its Chairman & Secretary Petitioners

Vs.

- 1 The State of Maharashtra
Through the Secretary,
School Education Department,
Mantralaya, Mumbai.
- 2 The Education Officer (Secondary)
Zilla Parishad, Thane Respondents

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

Ms. Mansi Bane, AGP for Respondents.

Coram : SMT. SADHANA S. JADHAV, J.
Date : 10th October 2018.

P.C.:

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

2 The petitioner herein impugns the order dated 28th August 2018 passed by the Education Officer (Secondary), Zilla Parishad, Thane refusing to grant approval to the appointment of the petitioner as a “Junior Clerk” in Vidya Prasarak Sanstha's Vidyalaya and Junior College, Balkum, Thane run by Petitioner no.2-Institution.

3 Mr. Ramji Butaji Patil, Senior Clerk and Mr. Pandharinath Zotingrao Jadhav were working as a Senior Clerk and Junior Clerk respectively in the said School, on the posts duly sanctioned by the Education Officer. They were to retire on superannuation and their posts therefore became vacant. The post of Junior Clerk is an entry post, whereas the post of Senior Clerk is a promotional post. Therefore, in order to fill up the vacant post of Junior Clerk, the respondent no. 2 published an advertisement in

newspaper “Daily Thane Vaibhav” dated 26th June 2014. 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 15th July 2014, the petitioner was appointed as a “Junior Clerk-Shikshan Sevak” in the said School for a period of three years, on the monthly honorarium of Rs.2,000/-.

5 The Headmistress of the said School had submitted a proposal to the Education Officer seeking approval to the appointment of the petitioner no.1. By an order dated 28th August 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. 15th July 2014 for a period of three years 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 This Court cannot be oblivious of the fact that the petitioner was appointed on 15th July 2014, i.e. prior to the G.R. dated 12th February 2015, that too under the Shikshan Sevak Scheme, 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.

9 The Order dated 28th August 2018 is hereby quashed and set aside.

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

(SMT. SADHANA S. JADHAV, J.)