

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9825 OF 2013

Mrs. Deepa Dattu Patil
residing at Yashwant Nagar,
Karve, Tal. Chandgad,
District Kolhapur

.. Petitioner

Versus

- 1 State of Maharashtra
through its Secretary,
Education and Sports Department
Mantralaya Annexe, Mumbai.
- 2 Education Officer (Secondary),
Zilla Parishad
Kolhapur
- 3 President,
Sharda Shikshan Prasarak
Mandal Yeshwant Nagar
District Kolhapur
- 4 Head Master,
Dhananjay Vidyalay, Naganwadi,
Taluka Chandgad, Dist Kolhapur .. Respondents

...

Mr. M.S. Topkar for the petitioner.
Mr. S.B. Kalel, AGP for respondent nos. 1 and 2.
Mr. Saurabh Pakale with Mr. Anukul Seeth i/b M.V. Thorat for
respondent no. 3.

**CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.**

RESERVED ON: 21st NOVEMBER 2018

PRONOUNCED ON: 30th NOVEMBER 2018

JUDGMENT (Per BHARATI H. DANGRE, J)

1 The petitioner, working as an Assistant Teacher in the respondent no.4 School has approached this Court seeking direction to the respondent nos.1 and 2 i.e. State of Maharashtra and the Education Officer (Secondary), Zilla Parishad, Kolhapur to approve her appointment as Full Time Assistant Teacher with retrospective effect from June 1997 and confer the consequential benefits upon such an approval being granted to her. She has also sought direction for payment of regular salary as Assistant Teacher from the date of regularization. The petition impleads the President of Sharda Shikshan Prasarak Mandal, Yeshwant Nagar (Karve), Taluka Chandgad, District Kolhapur as respondent no.3 and the Head Master of Dhananjay Vidyalay, Naganwadi, Taluka Chandgad, District Kolhapur which is a school receiving Grant-in-Aid from respondent nos.1 and 2 is impleaded as respondent no.4.

The said Writ Petition was instituted in the year 2013 and on 18th October 2013, this Court was pleased to issue notice to the respondents and directed them to file reply.

2 The grievance raised in the petition can be summarized briefly in the following terms.

The petitioner possesses the qualification of SSC, D.Ed and in the Academic Session 1993-94, she came to be appointed as Assistant Teacher in the D.Ed pay scale by an order dated 10th August 1993 after following due procedure of selection. She was appointed for teaching students from VI to VII standard. Her services were discontinued at the end of academic session and a fresh order of appointment issued to her on 7th June 1994 by the President of the Respondent no.3 recruiting her as an Assistant Teacher (part time) with effect from 13th June 1994 on purely temporary basis. The said appointment continued till 30th April 1995 as the order of appointment made it clear that the appointment was to continue till 30th April 1995. i.e. till the end of the academic session and the terms of employment would be governed by the

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

3 As per the petitioner, the respondent no.4 School was started in the year 1983, but it was not in receipt of grants from State Government. In the year 1993-94, though actual sanctioned strength of Assistant teachers was 5 ½, additional divisions were required to be started since the year 1991 due to natural growth and a proposal for sanction of additional Assistant teachers was forwarded to respondent no.2.

The case of the petitioner is that she continued to work in the subsequent academic session and there was a clear vacancy to accommodate her. The petitioner places reliance on an intimation issued by the Dy. Director of Education to the respondent no.4, thereby enhancing the number of Assistant Teachers sanctioned to the extent of 5 ½ to 10 and it is the case of the petitioner that she ought to have been treated as working against a clear, sanctioned and a vacant post. It is the specific case of the petitioner that the said post was not ear-marked for any reserved category. The petitioner relies upon the staff

approval proforma for the year 1994-95 forwarded by respondent no.4 to the respondent no.2 which includes the name of the petitioner along with nine other persons whose proposals were forwarded for approval. However, the appointment of the petitioner came to be approved only for a period of one year from 1st November 1995 to 30th April 1996, whereas in respect of other employees, the approval came to be granted on permanent basis, though the said teachers were appointed subsequent to the petitioner. The specific case of the petitioner is that she rendered satisfactory and continuous services on clear permanent vacant post since 1993 and she ought to have been treated as a permanent employee in terms of the provisions of the law governing her i.e. Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "MEPS Act") which do not permit an institution to appoint an employee on temporary basis and the appointment could be effected only in accordance with the provisions of the said enactment.

4 According to the petitioner, the respondent no.4 School started receiving Grant-in-Aid from the year 1996-97 and another appointment order came to be issued in her favour in the said academic session and her name was also forwarded for approval to the respondent no.2 which came to be returned with an endorsement that the appointment being fresh, a new and separate proposal be forwarded. For the academic session 1997-98, though the petitioner continued to work as Assistant Teacher, her name was not forwarded for approval. In the academic session 1998-99, the sanctioned post increased to 14 Full time and one Part time Assistant Teacher. The petitioner who was working with respondent no.4 was shown as a fresh appointee and her proposal was forwarded to respondent no.2. This proposal came to be approved by the respondent no.2 which was limited for the academic session 1998-99 as a fresh appointment. In the year 1999-2000, the proposal was again forwarded along with 14 other Assistant Teachers, thereupon the respondent no.2 directed the respondent no.4 to submit the 'No Objection Certificate' (NOC) for petitioner's appointment.

The petitioner, however, was unaware of all the aforesaid developments and she was under the impression that the salary was not been paid to her since her appointment was not approved. It was only in the year 1999 and 2000, some amount was paid to the petitioner.

5 During the pendency of the aforesaid development, the State Government issued a resolution on 17th January 2001, wherein it directed that three out of four posts in the school with Std V to VII should have Assistant teachers possessing SSC/HSC/D.Ed qualification and one should be a trained graduate possessing a graduate degree with B.Ed qualification. Since the petitioner was the only Assistant Teacher possessing SSC, D.Ed qualification in the school with sanctioned strength of 15 Assistant teachers, she was hopeful of an approval being conferred on her. The petitioner repeatedly made grievance with the respondent authorities who tried to shift the blame from one to another. Resultantly, no approval came to be conferred on her neither her service came to be regularized. Being disappointed with the approach of the respondent

authority, the petitioner decided to proceed on *fast* until death till any action was taken on her proposal. The respondent no.4, in turn, submitted the proposal to the respondent no.2 but the said proposal was only for the period commencing from 9th June 2003 to 8th June 2006. The meetings were arranged in the chamber of Deputy Director of Education and the respondent nos.2 to 4 were directed to remain present with documents. However, there was cold response at the instance of respondent nos.3 and 4. This resulted into the revelation of the fact that the approval to the appointment of the petitioner was granted as a temporary employee till 1998-99 and for the year 2003-04 her appointment was shown as 'Shikshan Sevak'. The Deputy Director, therefore, directed the respondent no.2 to obtain a fresh proposal from respondent no.4 in order to pass appropriate orders. The petitioner has placed all the said communications on record. She has placed reliance on the heap of correspondence entered *inter-se* between the respondent nos.1, 2 and respondent no.4. Ultimately, she refers to a communication addressed by the Education Officer to the respondent no.4 who had re-iterated about the pending

proposal of the petitioner and also appraised the respondent no.4 of the serious consequences if no action is taken on the said proposal. The Education Officer forwarded a proposal to the Dy. Director of Education wherein following facts in relation to the appointment of the petitioner came to be mentioned :

- (i) Appointment effected on 13th June 1994 for the academic session 1994-95 as an Assistant Teacher in D.Ed scale.
- (ii) Further appointment order issued on 12th June 1995 in favour of Sou. Patil for the academic session 1995-96. In pursuance to the said appointment, D.Ed Pay Scale has been released in her favour as a full time teacher from 1st November 1995 to 30th April 1996.
- (iii) For the academic session 1996-97, appointment order issued on 12th June 1996. However, no approval was granted in the backdrop of existing backlog.
- (iv) In the academic session 1997-98, no appointment order issued in favour of Mrs.Patil though she actually worked in the school and signed the muster roll.

- (v) In the academic session 1998-99, appointment order issued on 10th June 1998 and the Department had approved the said appointment from 1st November 1998 to 30th April 1999 in the D.Ed scale and salary has been paid.
- (vi) In the academic session 1990-2000, Mrs.Patil was appointed by order dated 14th June 1999. However, in the backdrop of the existing backlog and non-submission of the NOC, the approval was not granted.
- (vii) In the academic session 2000-01 to 2004-05, the name of Mrs.Patil was included but demand was made for a separate proposal. Separate proposal was not forwarded.
- (viii) In the mean time, Mrs.Patil came to be appointed on a consolidated salary of Rs.3,000/- as Shikshan Sevak by an order dated 9th March 2003 and a proposal came to be forwarded to the Education Officer (Secondary). The deficiencies were noted in the said proposal but there was no compliance thereof.

(ix) For the academic session 1999-2000, proposal was forwarded seeking approval with effect from 14th June 1999.

6 In the backdrop of the aforesaid factual scenario, the Education Officer, therefore, sought guidance from the Dy. Director of Education, Kolhapur Division to the effect as to whether an approval has to be granted for the Academic Year 1999-2000. The Deputy Director of Education reverted back to the Education Officer by his communication dated 11th August 2009 directing him to take appropriate action in terms of the existing rules, order etc. A reference was also made by the Education Officer, (Secondary) Zilla Parishad to the Secondary School Education Department on 16th April 2010 seeking guidance in the aforesaid factual background. The Deputy Director of Education by his communication addressed on 3rd May 2010 to the Secretary, School Education and Sports Department, recommended that Mrs. Patil was working since 13th June 1994 and one post of teacher to accommodate her is also vacant, however, the approval was refused on the ground that there is a backlog. A recommendation was, therefore,

made to the State Government that approval be granted to the appointment of Mrs.Patil with retrospective effect from 14th June 1999.

7 Perusal of the said communication would reveal that the State Government takes a strange stand and by making reference to The Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 (for short “Maharashtra Act No.VIII of 2004) informs to the Deputy Director of Education that the appointment of Mrs.Patil was on a reserved post and if such proposal is forwarded for approval, the Reservation Act of 2004 contemplates an action against such an officer. In light of the aforesaid communication, the appointment of the petitioner till date is unapproved. This has constrained the petitioner to approach this Court seeking direction to approve her appointment as a regular full time Assistant Teacher with effect from June 1997 and confer her with the necessary benefits.

8 With the assistance of the learned counsel for the petitioner Shri M.S. Topkar and learned AGP Shri Kalel and also Advocate Saurabh Pakale appearing for respondent no.3, we have perused the petition along with his annexures. We have also heard the learned counsel for the parties. On perusal of the chronology of events, we are rather astounded to note the conduct of the respondent authorities in dealing with the claim of the petitioner for approval pending since the year 1994. The petitioner came to be appointed for the first time in the year 1993 and her services came to be discontinued at the end of the academic year and again she came to be appointed for the next academic session and this rigmarole continued for all the academic sessions, though the petitioner was duly qualified to be appointed as a trained graduate possessing S.S.C, D.Ed qualification. It is the policy of the Government as contained in the Resolution that three out of four posts in a school running Std V to VII should be teachers possessing SSC/HSC, D.Ed qualification and one is permitted to avail the graduate quota with a B.Ed qualification. The petitioner was a

sole teacher with SSC, D.Ed qualification and inspite of the policy of the State Government itself, her proposal was kept pending for a considerable time by citing reason that there was a backlog or in some academic session, the management itself not forwarding the proposal to the respondent no.2. The Education Officer himself had made the Management aware about the pending proposal and acknowledged the fact that the petitioner has been continuously working since her appointment. It had also reprimanded the management when it appointed her as 'Shikshan Sevak' in the year 2003-04, in view of the fact that she was continuously working from the academic session 1999-2000 to 2002-03 and sought proposal for approving the appointment of the petitioner. The Deputy Director of Education being conscious of the factual development had requested the State Government to grant approval to the appointment of the petitioner who was continuously rendering the services from 13th June 1994 and there was one post which was vacant in the D.Ed scale. He, therefore, recommended her appointment to be approved. Surprisingly, the State authorities do not take any concrete

stand on the same, but merely observe that an action is contemplated under Act No.VIII of 2004 if a approval of open category candidate is sought on a backlog roster point. We do not feel that the provisions of the The Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 can be invoked in the given situation. The said Act aims to provide for reservation for vacancies in public services and posts in favour of persons belonging to Scheduled Caste, Scheduled Tribes, De-notified Tribe, and Other Backward Classes of Citizens and for matters connected therewith. The said enactment stipulates the reservation and its percentage to be followed in all appointments to be made in public services. The said enactment also fixes a responsibility on the appointing authority for ensuring compliance with the provisions of this Act and invests the appointing authority with such powers as may be necessary to effectively discharge such duty assigned to him. The penalty provision contained in the said enactment is attracted when an appointing authority entrusted with such a

duty, willfully acts in a manner, intended to contravene or defeat the provisions of the Act. We do not see as to how the provisions of the said Act are attracted in considering the proposal of the petitioner which was already approved by the authorities on earlier occasion and on some occasion refused on the ground that there is a backlog. It is not in dispute that the petitioner has rendered continuous service since the date of her appointment without any interruption and the management has not given any details by verifying the roster point to justify its stand that there was a backlog nor did the education authority competent to grant approval to such appointments have confirmed the same.

In such circumstances, we do not find any justification in the stand of the respondent authorities in not approving the appointment of the petitioner specifically when the Deputy Director of Education has also recommended her appointment to be approved with retrospective date. In such circumstances, we feel that grave injustice has been caused to the petitioner by not approving her appointment in spite of her

continuous service and the qualification possessed by her. Hence, we are inclined to allow the Writ Petition.

9 We direct the respondent nos.1 and 2 to approve the appointment of the petitioner as Full Time Assistant Teacher with effect from June 1997. We also direct the respondents to release arrears of salary and all the incidental benefits accruing from such regularization and direct the same to be released in favour of the petitioner within a period of three months from today. Respondents are also further directed to pay regular salary to the petitioner as the Assistant Teacher on regularizing her services in the said capacity.

Rule is made absolute accordingly.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)