

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12102 OF 2012

Mrs.Pooja Nitin Mhatre

... Petitioner

Vs

The State of Maharashtra, through Secretary
Ministry of Education and Sports and Ors.

... Respondents

WITH
WRIT PETITION NO.12101 OF 2012
WITH
CIVIL APPLICATION NO.1645 OF 2016

Mrs. Kirti Bhushan Naik

... Petitioner

Vs

The State of Maharashtra, through Secretary
Ministry of Education and Sports and Ors.

... Respondents

Mr.B.G.Ligade i/b Mr.Drupad S. Patil for the petitioner in WP
Nos.12102 of 2012 and 12101 of 2012 and CAW No.1645 of 2016.

Mr.V.M. Mali, AGP for State in WP No.12102 of 2012.

Mr.S.B. Kalel, AGP for State in WP No.12101 of 2012.

Mr.Pavan S. Patil for Respondent Nos.3 and 4 in WP Nos.12102 of 2012
and 12101 of 2012.

Mr.V.V.Ugale i/b Mr.A.M. Saraogi for Respondent No.5 in WP
Nos.12102 of 2012 and 12101 of 2012.

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

TUESDAY, 18TH DECEMBER, 2018

P.C. :

1 Heard both sides.

2 Rule. Respondents waive service. By consent, Rule is made returnable forthwith.

3 The two petitioners before us are challenging the orders passed by the Education Officer (Secondary), Zilla Parishad, Thane.

4 By the impugned order dated 8th October, 2012, the Management/Secretary of the Management (Barve Education Society, Vasai) which is conducting and running Nirmal Vidyalaya, Nirmal Vasai is informed that its proposal seeking approval to the appointments of the petitioners cannot be accepted. The impugned order says that there is a complaint about the recruitment of these two teachers/petitioners. The complaint was forwarded to the Management and together with the show cause notice so as to seek its explanation as to why the proposal and individual in nature seeking approval to the appointments of the petitioners should not be rejected. The explanation of the

Management was not found to be satisfactory. It was, therefore, rejected.

5 Then, the impugned order makes a reference to Rule 9 of the Maharashtra Employees of Private Schools Rules, 1981 (For short, “MEPS Rules”) and the schedules annexed thereto. It holds that while appointing the petitioners pursuant to an advertisement, allegedly, the “No Objection Certificate” of the Education Officer was not obtained. The second reason is that there was no advertisement published in the newspaper. The third reason is that the petitioners were appointed although they did not fulfill the requirement of the proof of graduation and a Bachelors Degree in the concerned subjects and still they were allowed to appear for the written examination and invited for an interview.

6 On such Writ Petitions which challenges the refusal to approve the appointments, this Court, after hearing the petitioners, the learned AGP as also respondent No.5 passed the following order on 31st January, 2013:-

“Issue notice to the respondents before admission, returnable on 07.03.2013.

Till further orders, the impugned order is stayed.”

This order is continuing till date.

7 In response to the Petition, an affidavit in reply has been filed by the State. That affidavit says that the fifth respondent before this Court in Writ Petition No.12102 of 2012 had lodged complaints on 28th March, 2012 and 18th May, 2012 with the second respondent regarding the approval granted to the appointment of the petitioner as “Shikshan Sevak” in the fourth respondent-School. Pursuant to these complaints, on 22nd May, 2012 the second respondent heard all concerned parties and he noticed that the appointment of the petitioner was not as per the procedure for recruitment laid down in Rule 9(8) of MEPS Rules, 1981. Hence, an explanation was called for from the Management. After carefully perusing that explanation, it was noticed that the explanation was not satisfactory. Hence, the impugned order has been passed.

8 An additional affidavit has been filed by the petitioner in which she says that she has been working from the date of appointment as an Assistant Teacher. She has been regularly signing the Muster

Roll. She has also discharged her duties as a teacher and has taken part in several seminars and programs arranged for the benefit of teachers and for upgradation of their knowledge. She has attended several functions, ceremonies and other extra-curricular activities. She says that she was duly qualified and there are no complaints made by the Management and the parents. The Education Officer has passed the order only on the ground that she was not holding the proof of fulfilling the eligibility criteria insofar as educational qualification is concerned. In fact, she says, all certificates were in her possession. She had already appeared for the examination and she was awaiting results. When the advertisement was published by the School Management for no fault of hers, the result could not be declared. Since she already appeared for the examination and the Management was convinced about her competence and merit, she was allowed to participate in the selection process. After that process was complete, the relevant certificate was forwarded and the Management being satisfied therewith, the decision was taken to appoint her as Assistant Teacher. There is, therefore, no irregularity in the process of appointment.

9 On such Writ Petitions, we have heard both sides. We have perused, with their assistance, the Writ Petitions and the annexures thereto as also the affidavits placed on record.

10 The complaint that was made by the gentleman who is the fifth respondent before us is not containing the requisite details and particulars. It is a complaint not made by any aggrieved teacher, but by a person who claims to be a Journalist. He was interested in obtaining a job for a family member. It is in these circumstances that relying upon several newspaper cuttings and reports, the complaint was lodged. Be that as it may, in the show cause notice, copy of which is at Exhibit 'H' at page 55 of the paper-book and which is addressed to the petitioner, it is stated that the petitioner was appointed in the open category. She has cleared her B.Sc. examination in March, 2007. She has cleared her B.Ed. examination on 12th July, 2010. The written examination was held on 21st June, 2010 and the other test was held on 23rd June, 2010. The appointment order is dated 1st September, 2011. Thus, the petitioner had not cleared her B.Ed. Examination. It is in these circumstances that she was called upon to clarify as to why her appointment should not be disapproved and why she should not be

visited with all the consequences permitted in law.

11 In her written explanation to the show cause notice, she says that she cleared her B.Sc. examination in March 2007. In April 2010, she appeared for the B.Ed. Examination. The results were yet to be declared and the marklist was not available. Since she was convinced that she is going to clear the examination, she made applications seeking jobs. Since the school reopens in the month of June and the advertisements are issued well in advance, but the marklist of B.Ed. examination is available only in July-August, she made this application. Despite noting the above position and with regard to non declaration of her results for the B.Ed. Examination, she was allowed to appear for the routine test and thereafter the other test on 23rd June, 2010. It is stated that there is no stipulation in the Rules that a person who is exam-going and whose results are yet to be declared is prohibited from applying. That apart, the petitioner has been employed by the Management and she has been receiving a paltry sum from the Management. She has, on 1st September, 2011, obtained approval to her appointment as “Shikshan Sevak”. Thus, she is a trained graduate teacher. There was no other condition and which is allegedly violated.

It is in these circumstances, she says that her appointment should not be disturbed merely because a stranger has complained about the appointment procedure.

12 Then, at page 59 of the paper-book, we have the explanation of the Secretary. That Secretary says that on the date on which she was appointed, she was qualified. Though she was examining, but she was not appointed. All that happened was before the date of declaration of results, she was allowed to apply. She was allowed to undergo a written test and other selection test. However, she was not appointed and her appointment letter has been given after she produced the marklist. The marklist is dated 12th July, 2010 and after perusing the same, the appointment order of 13th July, 2010 has been issued to her. It is clear that the MEPS Rules contemplate appointment of untrained and trained teachers. In fact, the petitioner was not assigned any pay scale of a trained teacher post. She was given a pay scale of an untrained teacher post. It is with reference to a scheme of 13th October, 2004 and which refers to Shikshan Sevak's appointment, that the petitioner's appointment was made. The pay scales of trained teachers and untrained teachers are different and

distinct. An untrained teacher can be invited for an interview. It is in these circumstances that the appointment may be irregular, but it is not illegal. The proposal was forwarded in the Academic Year 2010-2011, but the approval was not granted on account of a backlog. Thereafter, when the entire backlog was cleared, then, the proposal was forwarded once again and that individual proposal was accepted by an order of 27th December, 2011. On the date on which that proposal was accepted, there was no backlog of backward category candidates and it is in these circumstances that the Management requested that her appointment should not be brought to an end. The pay bills also have not been forwarded until the order of 27th December, 2011. In fact, it is the Management which has borne the burden of her salary from 13th July, 2010 to 31st December, 2011. This was the position with regard to the appointment of Mrs.Kirti Bhushan Naik who is B.A. English and B.Ed.

13 As far as Mrs.Pooja Nitin Mhatre is concerned, she is B.Sc. B.Ed. and she was also similarly placed. She appeared for B.Ed. examination, but the results thereof were not declared. The explanation given by the Management was that at times, the teachers

have to be appointed considering the workload. When the petitioner- Mrs.Pooja Nitin Mhatre was appointed, at that time the workload of a teacher for the subjects of Mathematics and Science was available and a teacher had to be appointed for that subjects. That is how at the written test, she was allowed to appear and the Management considered her merit. Once it was satisfied with the knowledge of the petitioner, then, the Management decided to give her an appointment order which was also issued after she produced the marklist for the B.Ed. examination. That is dated 12th July, 2010. Therefore the marklist was available 20 days after the above tests were conducted. She has been taken on board for the Academic Year 2010-2011 on an honorarium. She has been appointed on 1st September, 2011 and the individual proposal seeking approval to her appointment was forwarded in the Academic Year 2011-2012. It is in these circumstances that reliance was placed on the Secondary Schools Code and all the stipulations therein so as to support the appointment of the petitioners in these petitions.

14 While it is true that the Petition of Shri Umesh Sonji Shingda, who was similarly placed, may have been withdrawn,

however, the facts in his case are slightly different.

15 Apart from that, what we have noticed is that in the impugned order, there is a clear contradiction. The first reason assigned for refusing the approval or cancelling the approval earlier granted is that before publishing the advertisement seeking to appoint teachers in the above subjects, the Management did not obtain a No Objection Certificate from the Education Officer (Secondary), Zilla Parishad, Thane. The second reason contradicts the first reason. If no advertisement was published at all, then, we do not see how the first reason could have been assigned and sustained so as to cancel the appointment earlier granted. The first reason means that there was an advertisement published, but without obtaining No Objection Certificate from the office of the Education Officer. Now, the show cause notice does not proceed to seek an explanation on this count from the petitioners or the Management. The specific allegation in the show cause notice is that the two teachers were not qualified on the date when the advertisement was published and that they did not acquire the qualification before the last date stipulated in this advertisement. Thus, these allegations in the show cause notice presuppose that there

was indeed an advertisement published. Once the impugned order has travelled beyond the show cause notice or included two grounds which are not forming part thereof, then, we do not sustain the order. It is well settled that when the show cause notice is issued alleging violation of certain provisions of Rules and Regulations and that alone is the basis on which the action of this nature is proposed to be taken, then, the order passed on such show cause notice cannot travel beyond these specific allegations. They cannot include in the order something which was not found to be the basis of the allegations in the show cause notice. This is introducing an extraneous material so as to sustain drastic action.

16 We are in agreement with the learned counsel for the petitioners, Mr.B.G. Ligade that the impugned order, therefore, travels much beyond the show cause notice.

17 Insofar as the third ground or reason assigned in the show cause notice as also in the impugned order that the petitioners had not cleared the B.Ed. examination, still they were allowed to take routine test and invited for the interview is concerned, we find that there was a specific explanation given to the show cause notice. The explanation is

given by both, the Management as also the teachers. The specific explanation is that there is no prohibition in the Rules in calling for a candidate who is yet to fulfill the eligibility criteria, insofar as educational qualification is concerned, for a routine test or an oral interview. That could be conditional upon production of proof of obtaining the qualification on the date when the appointment is made. Thus, the process that the Management undertook in this case was, if the candidates are otherwise meritorious and eligible and not disqualified, then, merely because they were unable to produce the proof of having cleared the B.Ed. examination on the date when they took the written test and offered for the oral interview does not mean that they were disqualified or ineligible. They were at the best such candidates who did not possess the proof of having cleared the examination on the date when they put in their applications.

18 We have carefully perused the explanation of the Management in that regard and which makes specific reference to Rule 9(8) of the MEPS Rules, the Secondary Schools Code and the schedule to the MEPS Rules. While passing the impugned order, there is absolutely no reference made to this explanation of the Management

and the petitioners. Far from dealing with it, once this explanation is totally brushed aside and not also termed as frivolous or contrary to law, then, we cannot sustain the order impugned in the present Petitions. That order is indeed drastic in nature. It has civil consequences. It has also adverse effect on the career of those teachers who have already been appointed and are working selflessly. There is absolutely no grievance insofar as the merits of these candidates are concerned. Once they claimed that their appointments were at best irregular and they were innocent in the process and the Management has also given an explanation consistent with the insertion of the advertisement in the newspaper, then, we do not think that a drastic order of this nature should be sustained by us.

19 As a result of the above discussion, these Writ Petitions succeed. The impugned orders are quashed and set aside. In the light of the fact that the advertisement inserted in the newspaper, and particularly daily “Samana”, copy of which is at Exhibit 'C' at page 40 of the paper-book of Writ Petition No.12102 of 2012 not communicating a last date, then, in the peculiar facts and circumstances of this case, we do not think that the petitioners should be visited with the extreme

action of cancellation of the approvals to their apportionments. The approvals were validly granted. There was no occasion to cancel them.

20 Hence we restore the earlier orders approving their appointments. We quash the impugned order and make the Rule absolute. There will be no order as to costs. All consequences of our earlier order shall follow and that the petitioners appointment should be taken as duly approved with effect from the dates of approval in their cases. They would be entitled to draw the regular pay scale and all ancillary and incidental benefits including continuity of service and pension, if admissible in terms of Rules. Their Service Books shall be corrected accordingly.

21 In view of the disposal of Writ Petitions, Civil Application No.1645 of 2016 stands disposed of.

[SMT. BHARATI H. DANGRE, J.]

[S.C. DHARMADHIKARI, J.]