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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2844 OF 2015

Mrs. Shilpa Shailesh Mangle .. Petitioner
Vs.
The State of Maharashtra & ors. .. Respondents

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Mr. N.V. Bandiwadekar with Mr. Vinayak Kumbhar I/by Mr. S.A. Mane for the petitioner.
Mr. S.S. Panchpor, AGP for respondent Nos.1 and 2.
Mr. R.S. Datar for respondent Nos.3 and 4.

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

DATE : 17th OCTOBER, 2018

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

Rule. Rule is made returnable forthwith.

2. Heard by consent of the parties.

3. By this Petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a direction to the respondent No.3 – Khopoli Municipal Council and respondent No.4 – Khopoli Municipal Council School Board to

immediately submit to the respondent No.2 – Education Officer (Secondary), Zilla Parishad, the proposal for approval to appoint the petitioner as 'Shikshan Sevika' with effect from 10/11/2003 and thereafter as full time Assistant Teacher from 9/11/2006 in the aided school of the respondent No. 4 – School Board viz. Chhatrapati Shahu Maharaj Madhyamik Vidyalay, Khopoli, Taluka Khalapur, District Raigad and accordingly the respondent No.2 – may be directed to grant approval to the said appointment of the petitioner. The petitioner has further prayed for arrears of salary and payment of monthly salary on regular basis in the post of Assistant Teacher in the aided school of respondent No.4 – School Board.

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

The petitioner claims to belong to OBC category and her qualification is B.Sc. (Chemistry) and B.Ed. (Science/Maths) and thus the petitioner is duly qualified for appointment in the post of 'Shikshan Sevak/Assistant Teacher' in the Secondary School. The petitioner worked as a teacher in the Primary

School of the respondent No.4 – School Board for the period from 11/7/1994 to 5/5/1995 on temporary basis. The petitioner was appointed as Primary Teacher in Municipal Primary School and was continued without any break.

5. The respondent No.4 – School Board was running two Secondary Schools at the relevant time. One of the school is receiving 100% grant and other one runs on no grant basis. At present, the School Board was having five secondary schools, out of which only one is aided school.

6. The petitioner was appointed on 20/10/2003 as a Shikshan Sevika for three years in the aided school of the respondent No. 4- School Board on an honorarium of Rs.4000/- per month for a period of 3 years from the grant released by the Municipal Council, and not from the grant-in-aid received from the State Government. It is claimed that the School Board never forwarded the petitioner's proposal to the respondent No.2 – Education Officer (Secondary) for approval of the aforesaid

appointment of the petitioner as Shikshan Sevika in the Secondary School.

7. Upon completion of three years as Shikshan Sevika, the petitioner became Assistant Teacher and was paid salary in the pay scale for the Assistant Teacher in the Secondary School. The respondent No.4 – School Board however did not submit a proposal to the respondent No.2 for approval to petitioner's appointment. Several representations were made by the petitioner as well as similar situations on 24/6/2010 but there was no response. The respondent No.4 – School Board vide letter dated 23/7/2010 informed the petitioner that the School Board is willing to absorb the petitioner in the Secondary School at Takai for which the petitioner should give consent. By the letter dated 27/7/2010, the petitioner consented for such absorption. Vide an order dated 29/8/2012, the order for absorption was issued by the respondent No.4 and thereafter, the petitioner is working in Takai school from 1/9/2012.

8. It appears that in the meanwhile administration of

the School Board submitted a detailed report to the respondent No.3 – Municipal Council pointing out the illegalities committed regarding absorption of the petitioner in the Secondary School and an inquiry was ordered to be conducted by the respondent No.3. No action however has been taken by the respondent No.3 – Municipal Council.

9. It is the contention of the petitioner that even after she was absorbed in the Takai School, proposal is not forwarded to the respondent No.2 for approval. As per the roster of the School Board regarding teachers working in its Secondary Schools, there is backlog of two posts in OBC category and on the other hand excess appointments are made in Open Category. The approval for two open category teachers, who are appointed subsequently has been obtained.

10. It is the grievance of the petitioner that as the approval is not granted, the petitioner is not being paid the salary on regular basis from the grant-in-aid received from the

Government. Learned Counsel for the petitioner submitted that the respondents are not justified in not obtaining approval to the petitioner as Shikshan Sevak/Assistant Teacher in the aided secondary school of the respondent No.4 – School Board, even though there are vacancies in the OBC category to which the petitioner belongs, while on the other hand excess appointments are made in Open Category and the teachers appointed subsequently are granted approval. Learned Counsel submits that the Petition therefore deserves to be allowed.

11. Learned AGP on the other hand invited our attention to the affidavit-in-reply filed on behalf of the respondent No. 2 – Education Officer (Secondary), Zilla Parishad, Raigad. It is the stand of the respondent No.2 that since the year 2002-03, there are number of surplus teachers available in the said school who are paid without any work load given to them. There are 11 surplus teachers in the said school to whom the Government is paying their salaries without any work load assigned to them. It is further pointed out that there were four graduate and one

under graduate surplus teachers working in the school in the academic year 2003-04 and three surplus graduate teachers and one under graduate teacher rendered surplus in the academic year 2005-06. Despite so many surplus teachers, appointment of the petitioner was made in illegal manner and proposal for approval of the said appointment was made on 30/9/2011, virtually after 8 years of her appointment in the said school. It is the stand of the respondent No.2 that no prescribed procedure of advertisement and interview has been taken place. There has been no consideration whether any any work load is available for said teacher and whether there are any clear vacancies and adherence to the roster point on the date of such appointment. It is pointed out that though the said appointment has been made by the Administrative Officer and the Municipal Secondary School, Khopoli, in the year 2003 and further the said Municipal School Board has granted the benefit of 5th Pay Commission of 5500-9000 since the year 2008, no proposal for approval of the petitioner was received by the Education officer (Secondary), Zilla Parishad, Raigad, till 30/9/2011. The

appointment of the petitioner was not in accordance with law and after following due procedure and this is a clear case of 'back door entry'. A proposal was submitted for the first time on 30/9/2011 by the Administrator, Municipal School Board without any supporting documents as regards the availability of the vacancies, roster point, issuance of advertisement, etc..

12. An affidavit-in-reply has been filed by one Sanjay Shinde, Chief Officer of respondent No.3 – Municipal Council dated 14/4/2018. In the affidavit, it is stated that the petitioner was working with the Primary School for about nine years prior to her appointment as Shikshan Sevika in the Secondary School of respondent No.3. Taking into account the services rendered by the petitioner for about nine years, the petitioner was appointed as Shikshan Sevika with effect from 10th November, 2003. Upon completion of the petitioner's tenure as Shikshan Sevika, she has been appointed as Assistant Teacher with effect from 9th November, 2006.

13. As per the directions issued by the respondent No.2 vide letter dated 14th January, 2011, the petitioner was absorbed in Secondary School run by respondent No.3. Thereafter, a fresh proposal dated 30th July, 2014 has been submitted by the respondent No.2 seeking approval. As per the direction of this Court dated 22nd November, 2017, a proposal dated 29th November, 2017 has been submitted to respondent No.2 seeking approval to the appointment of petitioner.

14. We have considered the submissions made by the learned Counsel on behalf of the parties. It is not in dispute that the petitioner belongs to OBC category and she is duly qualified for appointment of the post of Shikshan Sevika in the Secondary School. The petitioner was initially appointed in the School of the respondent No.4 – School Board for the period from 11/7/1994 to 5/5/1995 on temporary basis. Thereafter, she was appointed as Primary Teacher in Municipal Primary School and was continued without any break till she was appointed as Shikshan Sevika by an order dated 20/10/2003.

15. Thus, after almost nine years of service with the Primary School, the petitioner was appointed as Shikshan Sevika in aided school of the respondent No. 4 – School Board. Upon completion of three years as Shikshan Sevika, the petitioner became a Assistant Teacher and was paid salary in the pay scale for the post of Assistant Teacher in the Secondary School. No proposal however submitted to the respondent No.2 for approval. The salary was not being paid regularly to the five teachers which include the petitioner and therefore representation was made on 24/6/2010.

16. By a letter dated 14/1/2011, the respondent No.2 directed the respondent Nos. 3 and 4 that necessary action be taken to absorb five surplus teachers which included the petitioner and give benefit of the service. The initial date of appointment of the petitioner as Shikshan Sevika is shown as 10/11/2003.

17. By another letter dated 19/1/2011, the respondent

No.2 instructed the respondent Nos.3 and 4 to absorb the petitioner immediately and compliance report be forwarded to the respondent No.2.

18. By an order dated 29/8/2012, the respondent No.4 absorbed the petitioner with effect from 1/9/2012 till further orders. Accordingly, the petitioner joined the school at Takai on 1/9/2012 and submitted a joining report. By a letter dated 18/12/2012 the respondent was informed that the petitioner has been absorbed and the proposal thereof has been submitted to the respondent No.2.

19. It is therefore apparent that the respondent No.4 absorbed the petitioner pursuant to the instructions of the respondent No. 2 – Education Officer (Secondary). There is no dispute that the petitioner is duly qualified. The petitioner has been working as Shikshan Sevika from 20th October, 2003 and was appointed as Assistant Teacher in the year 2006. She has been absorbed in the vacant post by an order dated 29/8/2012

passed by the respondent No.3. The communications dated 14/1/2011 and 29/8/2012 clearly reveal that it is the respondent No.2 who has instructed the respondent Nos. 3 and 4 to take appropriate steps to absorb the petitioners and submit a report. Now that the petitioner has been absorbed pursuant to the instructions of the respondent No.2, the respondent No.2 is seeking various compliances. The respondent No.4 - Board has already forwarded a proposal dated 30th July, 2014 for approval to the appointment of the petitioner to which there has been no response. Again pursuant to the directions issued by this Court on 22/11/2017 a proposal dated 29/11/2017 has been submitted to the respondent No.2 for seeking approval to the appointment of the petitioner.

20. The roster clearly reveals that there is a backlog of two posts meant for OBC category. The petitioner admittedly belongs to OBC category. Even the approval order dated 1st March, 2013 in respect of teachers belonging to Open category indicates that the respondent No.2 had granted approval to the

appointment of the said Assistant Teachers from 16/9/2002 and 23/8/2005 pursuant to a proposal which was forwarded by the respondent No.3 on 28/9/2011 and 18/8/2011.

21. It is a matter of record that by a letter dated 30/7/2014 a fresh proposal was submitted by the School to the respondent No.2 for granting approval to the appointment of the petitioner along with her colleague Smt. Shivganga Sambhaji Narwade (the petitioner in Writ Petition No.2845 of 2015). We find that the roster of the school was inspected and verified by the B.C. Cell on 21/4/2012 and it was certified that there was backlog of two posts in OBC category. The petitioner as well as the petitioner in Writ Petition No. 2845 of 2015 are admittedly belonging to OBC category. The petitioner is duly qualified. We also notice the contention of the petitioner as regards Assistant Teachers who are appointed after the petitioner, the respondent No.2 has approved their appointments. In this view of the matter, when the petitioner is working as Shikshan Sevika from 2003 and thereafter as a full time Assistant Teacher from 2006

with the respondent No. 4- School Board and now that the petitioner has been absorbed as an Assistant Teacher in the aided school of the respondent No. 4 with effect from 1/9/2012, in a clear and vacant post, there is no impediment for grant of approval to the appointment of the petitioner. The petitioner admittedly belongs to OBC category and upon inspection and verification of the roster, it is clearly revealed that there was backlog of two posts in OBC category where the petitioner and other petitioner in Writ Petition No. 2845 of 2015 can be accommodated. Moreover, it is at the insistence of the respondent No.2 that the petitioner came to be absorbed in the said post and as directed by him the proposal of the petitioner was forwarded for approval. In this view of the matter, we find that the action on the part of the respondent No.2 – Education officer in delaying the grant of approval to the petitioner's appointment on one pretext or the other is untenable.

22. The petition therefore deserves to be allowed. Hence the following order.

ORDER

(i) Respondent No.2 is directed to grant approval to the appointment of the petitioners with effect from the date of their initial appointment.

(ii) Respondent Nos. 2 and 3 are directed to pay the regular salary to the petitioners from the month of November, 2018.

(iii) Arrears if any, for the period between May, 2017 to October, 2018 be cleared within a period of six months from the date of this order.

23. Rule made absolute in the above terms.

(M.S. KARNIK, J.)

(B.R.GAVAI, J.)