

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

WRIT PETITION NO. 5737 OF 2013

Mrs. Chhaya Dilip Nalawade ... Petitioner

Vs

1 The State of Maharashtra & Ors. ... Respondents

Mr. N.V. Bandiwadekar for the Petitioner.

Mrs. S.D. Vyas, 'B' Panel Counsel for the Respondent Nos.1 and 2 – State.

Mr. G.B. Walawalkar i/b S.P. Thorat for the Respondent No.3.

Mr., Mayuresh S. Lage for the Respondent Nos.4 & 5.

Mr. Mandar V. Limaye for the Respondent No.6.

Mr. Sunil D. Dighe for the Respondent No.7.

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

MONDAY, 19TH NOVEMBER, 2018

P.C. :

1 By this writ petition under Article 226 of the Constitution of India, the writ petitioner seeks the following reliefs :

“(b) By a suitable writ, order or direction this

Hon'ble Court be pleased to direct the Respondent Nos.4 and 5 to immediately submit proposal to Respondent No.3 and seek approval to the appointment of Petitioner as primary teacher in the aided divisions of Std. 1 to 4 in Respondent No.5 school with effect from 1/12/2001.

(c) By a suitable writ, order or direction this Hon'ble Court be pleased to direct that after the Respondent Nos.4 and 5 submitting the proposal to Respondent No.3 as prayed in prayer clause (b) aforesaid, the Respondent No.3 may be directed to grant approval to the appointment of Petitioner as primary teacher on aided divisions of Std. 1 to 4 in Respondent No.5 School with effect from 1/12/2001 and also release the grant for payment of salary to the Petitioner from the date when the said divisions / school started receiving grant-in-aid from the State Government."

2 By prayer clause (d), the petitioner says that the order passed on 6th October, 2008, of the third respondent, be set aside for that grants benefit to the respondent Nos.6 and 7. At this stage, we are not inclined to grant any relief in terms of prayer clause (d) of the writ petition which reads as under :

"(d) By a suitable writ, order or direction this Hon'ble Court be pleased to quash and set aside the order dated 6/10/2008 [Exhibit-U] issued by the Respondent No.3 granting approval to the

appointment of Respondents No.6 and 7 as teachers in the aided divisions of Std. 1 to 4 of Respondent No.5 school, and instead the Respondent No.3 may be directed to grant approval to the Petitioner in that aided post from the date of initial appointment i.e. 1/12/2001 with all consequential service benefits.”

3 The writ petitioner says that the undisputed factual position would denote that she was appointed, after she was found to be duly qualified, as a Primary teacher. She says that she is an open category candidate. She is SSC, D.Ed. She was duly qualified for appointment as a teacher in Primary School / Primary Section. The fourth respondent is the Educational Institution registered under the Maharashtra Public Trusts Act, 1950 and Societies Registration Act, 1860. It is running the fifth respondent-School which is Government recognized. It was started in the year 1999. The permission was granted on unaided basis. The School has classes of Standard I to IV. The petitioner states that Standards I to IV were started on unaided basis initially. The grant-in-aid at 20% was released from Accounting Year 2004-05. Thereafter, in terms of the Government's policy, Standards I to IV received further stages of the grant, namely

40% in Accounting Year 2005-06, 60% in Accounting Year 2006-07, 80% in Accounting Year 2007-08 and 100% in Accounting Year 2008-09. Thus, the Primary Section is fully aided now, whereas Standards V to VII continue to be unaided.

4 The third respondent is the Education Officer (Primary), Zilla Parishad, Thane. He is the authority empowered by law to decide as to how appointments to the post of Primary teachers have to be approved. The second respondent is the Deputy Director of Education (Primary), Mumbai Region.

5 The Management is bent upon appointing the petitioner as an Assistant teacher in the fifth respondent-School, but not after the appointment being approved as a Primary teacher. The petitioner's grievance is that although it appointed the petitioner as a Primary Section teacher with effect from 1st December, 2001 and without any break, the petitioner having worked continuously, she was eligible and duly qualified for being termed as a approved Primary Teacher. Instead, the petitioner was informed that the respondent Nos.6 and 7, an open category and a Scheduled Caste candidate, though appointed on 9th June,

2004, have been placed above the petitioner while seeking approval. The seniority list prepared by the Management shows otherwise. The petitioner was placed at Sr. No.2, whereas the respondent Nos.6 and 7 are placed at Sr. Nos.4 and 5, below the petitioner.

6 Though the 80% grant was released to the Primary Section, the Management did not forward the petitioner's name for approval. In other words, no approval was sought to her appointment. The grievance is that the teachers appointed subsequently were identified for seeking approval by the Management and that is because there are reasons other than academic issues. It is in these circumstances that though the petitioner was found to be over aged on the earlier occasions, the Government passed an order relaxing the upper age limit. That is how the Management stood by the petitioner at that time, but suddenly for seeking approval to her appointment, the Management seems to be contending otherwise.

6 This specific stand of the petitioner is reflected in the writ petition from paragraphs 1 to 11 and then comes paragraph

12, which reads as under :

“12 The Petitioner states that at the time of initial appointment of Petitioner, the school was not receiving any grant-in-aid and it was unaided school. As per policy of the State Government, the school started receiving stagewise grant from the year 2004-05 at 20% and ultimately reached the stage of 100% grant in the year 2008-09. This grant has been sanctioned for the divisions of Std. 1 to 4, and whereas the divisions of Std. 5 to 7 are concerned, they are even today being run on unaided basis. The Petitioner was appointed in the year 2001 when the school was having classes of Std.1 to 4 only. In view of the initial appointment of the Petitioner with prescribed qualification, continuous service of Petitioner without break and order passed by the Government granting relaxation of upper age limit in favour of the Petitioner, the Petitioner was and is entitled to receive approval as a primary teacher in the aided Divisions of Std. 1 to 4. The Petitioner is amongst the initial teachers appointed when the school was started or immediately thereafter. Thus the Petitioner is one of the senior most teacher in the school. As stated above, initially the Petitioner was placed above the Respondents No.6 and 7 in the Seniority List but later on she came to be placed below the said Respondents. The Petitioner states that in the Seniority List prepared by the Management in respect of the teachers working in the school the Petitioner was given appropriate placement on the basis of date of initial appointment till the year 2004-

05. However, suddenly from the year 2005-06 the Respondents No.6 and 7 were placed at Sr. Nos.3 and 4 respectively in the Seniority List whereas the Petitioner was pushed down to Sr. No.5 in the Seniority List. Hereto annexed and marked at EXHIBIT-S [Colly] are copies of the said Seniority Lists. It can be seen from the said Seniority Lists that the Respondents No.6 and 7 have been appointed subsequent to the Petitioner, but still they have been shown above the Petitioner. On that basis, the Respondents No.4 and 5 have obtained approval to the appointment of Respondents No.6 and 7 in the aided divisions of Std. 1 to 4, whereas the Management is trying to seek approval to the Petitioner for Division of Std. 5 to 7 which are not receiving any grant-in-aid. The Petitioner states that there are 4 sanctioned posts of teachers for divisions of Std.1 to 4 and since the Petitioner is at Sr. No. 5 in the Seniority Lists, the Petitioner is being considered as working in divisions of Std. 5 to 7 which also has 4 sanctioned posts. However since beginning the Petitioner has been working in the divisions of Std.1 to 4 and in the light of order passed by the Government granting relaxation of upper age limit, the Petitioner is entitled to receive approval as primary teacher on the aided divisions of Std. 1 to 4. Hereto annexed and marked at EXHIBIT-T is a copy of the reply received by the Petitioner from the Respondent No.5 under the RTI Act, giving details of the sanctioned and filled up post of teachers in Respondent No.5 school from the year 2001-02 till the year 2011-12.”

7 Further, the petitioner says that there is grave injustice caused to her as her appointment, though requiring approval, has not been approved. The then Education Officer (Primary) was sympathetic and found that the petitioner's grievance is genuine. But beyond sending a letter to the Management, copy of which is at page 28 of the paper book, the Education Officer did nothing. He was reminded on 5th July, 2012 by the second respondent, but even then no orders have been passed by the said Education Officer.

8 We are of the firm opinion that the High Court is not the forum which can decide the issue of approval and of appointment to the post of Primary School teacher or Primary Sections of Multipurpose School. It is the statutory authority which must exercise its statutory powers and within the four corners of law. This Court cannot be a substitute for such statutory authority. It would then mean that in writ jurisdiction, we take over all such administrative powers and functions.

9 We are further of the firm opinion that though the petitioner in the writ petition seeks a relief in terms of prayer

clause (d), which we have reproduced above, so long as the statutory authority passes an order, by mere inaction of the said authority we cannot take over the functions, authority and power of such functionaries. It is only when we completely take over that we would be able to decide whether the order passed and challenged in this writ petition is fair, just, legal and proper. Today, we express no opinion on this issue. It is entirely for the Education Officer to arrive at a conclusion and which may justify recalling or quashing the order of 2008. Presently, we are not inclined to do so. However, our disinclination at this stage shall not prevent and preclude the respondent No.2 from passing such orders as are permissible in law, including setting at naught its order of 2008.

10 We, therefore, dispose of this writ petition by directing the respondent No.3 to take up the issue of granting approval to the petitioner's appointment in the Primary Section as a Primary teacher and as claimed, with effect from 1st December, 2001. This issue is made over to the statutory authority who shall pass a reasoned order after hearing all concerned. He shall grant an opportunity of personal hearing, not only to the petitioner, but to

the Management and to the teachers – respondent Nos.6 and 7. Thereafter, he must pass a speaking order. All this would be done as expeditiously as possible and, in any event, within a period of three months from the date of communication of this order.

11 The writ petition is disposed of by clarifying that all contentions are kept open. Let all concerned appear before the respondent No.3 on 27th November, 2018.

SMT. BHARATI H. DANGRE, J.

S.C. DHARMADHIKARI, J.