

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITIOIN NO. 2774 OF 2012
WITH
CHAMBER SUMMONS (L) NO. 267 OF 2018**

Kamini Bharat Takwani	}	Petitioner
versus		
Brihanmumbai Municipal Corporation and Ors.	}	Respondents

Mr. Anantkumar L. Gore for the petitioners.

Mr.R. S. Alange for respondent nos. 1 to 3.

Mr. Ankit Tripathi with Ms. Prateeti Thakar and Mr. Shubham Mittal i/b. M/s.FF and Associates for respondent no.4.

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

DATE :- JUNE 29, 2018

P.C. :-

1. When this petition was placed for passing orders, surprisingly, Mr. Gore appears and says that the petitioner has discharged the earlier advocate-M/s. M. P. Vashi and Associates and has engaged him. He finds that the pleadings are deficient and the prayer is ambiguous. He has, therefore, moved an application seeking amendment to this petition.

2. This petition has been filed in this court on 3rd November, 2012 and in the form in which it has been filed, it has been listed before this court on 21 occasions in the past. On the earlier occasion, Ms. Prachi Khandge appeared and argued the case fully. Prior to that, after the Summer Vacation, on 4th June, 2018, the petitioner's advocate came and stated that the papers are misplaced in the petitioner's advocate's office. This court, therefore, directed the Registry to provide the petitioner's advocate with a complete copy of the petition, on payment of copying charges. Thereafter, the writ petition was listed on four occasions and it was argued by Ms. Prachi Khandge. She was specifically asked as to why the petitioner, although being duly served with the affidavit in reply filed in this petition as early as on 12th February, 2013, has not stated anything so as to controvert the position therein.

3. We find that in the affidavit in reply a categorical stand is taken that the petitioner was appointed in the Primary Section in a Gujarati medium school, which is a recognised un-aided school. Later on, the petitioner was informed that the Nursery Standard in Pre-Primary school has been closed. As far as the Primary Section is concerned, the Gujarati medium had only 36 students in that section. In these circumstances, the petitioner was

informed that the Management will have to phase out and her services cannot be continued. She has been working from 1997 and hence, she was offered a posting or a job in the English medium section in the year 2011. The petitioner herself preferred an application and has joined the English medium Primary Section pursuant to her own application.

4. We do not expect such a teacher to then complain and particularly when her tenure, service conditions and pay-scale has been protected and nothing is affected adversely. We do not see why the petitioner now wants another advocate to be engaged and to explain to this court purportedly that it is the Education Officer of the Municipal Corporation of Greater Mumbai, who has been misled and rather has allowed himself to be misled. This argument has also no substance because the petitioner may have raised a grievance with the Municipal Corporation of Greater Mumbai, but that is clearly after accepting the posting by the Management and not disowning her own communication. In these circumstances, we do not see why we should entertain this petition.

5. A copy of the communication of one Ms. Neeta Shah, who also was a teacher in Primary Section in Gujarati medium dated 29th June, 2011 is annexed to the affidavit in reply at page 44 of

the paper book. That teacher, who was similarly placed like that of the petitioner and on par with the petitioner, has chosen to join the English medium. We do not see, therefore, any reason as to why, after accepting all this and as stated in para 15 of the reply affidavit from as early as on 8th May, 2012, should we now allow her to put up contrary or contradictory case.

6. We, therefore, do not accede to the request of Mr. Gore to adjourn the matter. We also do not allow the petitioner to now amend the petition and to place completely different version for such an attempt is clearly an afterthought and to get over the position as stated on facts in the affidavit in reply. For all these reasons, the writ petition fails and it is dismissed, but without any order as to costs.

7. In the light of the disposal of the writ petition, the chamber summons does not survive and stands disposed of as such.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)