

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.3764 OF 2016

Miss Sanjeedabee d/o Shaikh Ismail

Petitioner

Versus

The State of Maharashtra & others

Respondents

Mr.M.C.Syed, advocate for the petitioner.

Mr.K.S.Patil, AGP for Respondents No.1 to 3.

Mr.Vivek Dhage, advocate for Respondent No.6.

**CORAM : PRASANNA B. VARALE &
AVINASH G. GHAROTE, JJ.**

DATE : 23rd September, 2019

PER COURT:

1 Heard Mr.M.C.Syed, learned Counsel for the petitioner.

2 The petitioner has approached this Court with the principal prayer i.e. prayer clause "B", whereby the petitioner seeks direction to Respondent No.3 – Education Officer (Secondary), *Zilla Parishad*, Jalgaon, to grant approval to the appointment of the petitioner from 01.09.1999 instead of 11.06.2005.

3 It is not in dispute that the petitioner has initiated series of proceedings prior to the filing of this petition.

4 The submission of the learned Counsel for the

petitioner is, the petitioner was appointed in Respondent No.5- Urdu Girls High School, Raver, District Jalgaon, being run by Respondent No.4- Raver Taluka Urdu Education Society, Raver, District Jalgaon. It is interesting to note that the document placed on record at Exhibit "A" is being treated as a basis for the claim of the petitioner, which is in the form of an appointment order dated 28.08.1994 issued through the Head Mistress of the School, though the same is stated to be a typed copy. The said document is having several blank spaces relating to relevant aspects such as, in clause (1) 'Rule' (kept blank) 'on' (date is kept blank), 'scale of Rs.....' (kept blank). In clause (2) of the so called appointment order, even the dates are not mentioned so as to disclose from which period and up to what period the appointment of the petitioner was made on purely temporary basis. Be that as it may.

5 There is nothing on record to show that this exercise of appointing the petitioner by the Head Mistress of the School was supported by a conscious decision/resolution of the Respondent-Society. This conscious decision of the Society could certainly find place either in the resolutions being passed in the meeting of the Society or issuance of advertisement calling upon the eligible

candidates possessing requisite qualification, etc. There is nothing on record to show that either the Society passed any resolution approving the action of Head Mistress appointing the petitioner or in any exercise undertaken by the Society to select a right candidate, petitioner was found to be the best suitable candidate amongst all.

6 At this stage, learned Counsel for the petitioner, prayed for grant of time to place on record the relevant documents. We can hardly see any justifiable reason to grant time to the petitioner on a simple ground that the petition is filed in the year 2016 and the petitioner now requires time to file documents before this Court so as to support the appointment order issued by the Head Mistress of the School, that too when we have concluded hearing of the parties and are in the midst of dictating the order. At the cost of repetition, we say that the order of appointment placed on record was issued by the Head Mistress of the School without there being any support of conscious decision of the Respondent-Society.

7 Now the other documents placed on record show that the petitioner had approached this Court by filing Writ Petition No.1733 of 2001, wherein prayers made by the petitioners were in

the nature of seeking directions to the Respondents to pay salary to the petitioner from the date of joining service i.e. from 29.08.1994. A further direction was sought against the Respondents to recognise the services of the petitioner as permanent employee, continuity of service and other incidental benefits. The Division Bench of this Court, by an order dated 21.06.2002, in clear and unambiguous terms, observed that the Counsel for the petitioner is not able to tell the Court as to whether petitioner is presently in service or not. The Division Bench also observed that for the past claim of salary, it was of the view that the petitioner should avail the ordinary civil remedy, if so advised. Resultantly, the petition was dismissed in *limine*.

8 Being aggrieved, the petitioner for the reasons best known to her, filed Writ Petition No.4993 of 2003, challenging the order of this Court dated 21.06.2002 in W.P. No.1733 of 2001. The Division Bench, by an order dated 25.03.2004, found no reason to entertain the petition on the ground that for grant of similar kind of relief, the petitioner had filed W.P. No.1733 of 2001. On the contrary, the Division Bench dismissed the petition in *limine* with a specific observation that such an attempt of filing petition for same relief is not sustainable and the fresh petition is not maintainable.

Liberty was granted to the petitioner to file a Review Petition.

9 The petitioner, as per the liberty granted, filed Review Application. The Division Bench of this Court, in its detailed order, running in more than five pages, firstly referred to the inordinate delay in filing the Review Application and also referred to the submissions advanced by the learned Counsel on merits of the application, which find place in paragraph 4 of the order, which reads as under:

“4 Advocate Shri Brahme, to some extent, has opened his argument on the point of review. He claims that, review can be allowed if there is error apparent on the face of record. He claimed that, in the writ petition, the petitioner had also prayed for fixation of seniority and continuity of service and these two prayers were rejected by the impugned order, which speaks only about back wages. At his request, having scanned the record of the writ petition, it is evident that the order at Exhibit A dated 28.08.1988 was an order appointing the petitioner only for academic year 1994-95 and that too in leave vacancy. Advocate

Shri Brahme is not able to show us any appointment order for the academic year 1995-96 or thereafter. In the impugned order, we have noticed that the advocate was unable to make a statement whether, the petitioner was in service or not. In the absence of any appointment order for the academic year 1995-96 onwards, even for other prayers the Writ Petition could have been justifiably dismissed. There is, therefore, no substance in the contention of advocate Shri Brahme that, there is error apparent in the impugned order. “

10 Thus, the Review Application was not decided only on the ground of delay but also on assessment of merits of the matter and the Division Bench again in clear terms observed that it could not find any error apparent in the impugned order. Resultantly, the Civil Application, seeking review of the order, was rejected.

11 Now coming to the other interesting features of the matter, we have gone through the contentions of Respondent No.6, which are reflected in his affidavit-in-reply. Respondent No.6 states that in the year 1994, Respondent No.5-school was running recognised divisions only for 8th to 10th standards. In the year

1999, approval was granted to the school to start 5th standard division. Accordingly, an advertisement was issued for appointment of an Assistant teacher for 5th standard. Respondent No.6, another candidate, put his claim in response to the advertisement and interestingly enough, the petitioner made no attempt to put her claim. She did not even bother to apply. The learned Counsel for the petitioner submits that it was not necessary for the petitioner to put her claim in response to the advertisement, which was issued in the year 1999 and the petitioner was under an impression that she was already appointed as Assistant teacher with continuity of service and as such, there was no reason for the petitioner to submit her claim again. If that was the impression of the petitioner, she is at liberty to carry that impression, but it will not bind this Court to accept this submission as meritorious on the backdrop of the clear fact that when there was no recognition or approval granted to the 5th standard in the year 1994 and when she thought it fit not to put her claim in response to the advertisement issued in the year 1999 and take part in the process of selection, then she has to blame herself only and none else. As Respondent No.6 was found and selected as a right candidate, Respondent-Society appointed him and a proposal was submitted to the Education Officer and the

Education Officer granted approval in favour of Respondent No.6.

12 Another submission of the learned Counsel for the petitioner is, there is an appointment order issued by the Education Officer which supports the claim of the petitioner. The learned Counsel for the petitioner then invited our attention to the appointment order dated 01.04.2008. Considering the entire text of the order, we are unable to accept the case of the petitioner that the petitioner was duly appointed in the year 1994 and her services were continued and as such, it was not necessary for the petitioner to participate in the process of selection of the candidates for the post of Assistant Teacher, by way of an advertisement, which was issued in the year 1999.

13 As we have stated above that there was a series of proceedings, we may refer to certain orders of the Education Officer. The petitioner had approached the Education Officer by submitting a representation on 20.02.2009. In the process of decision, the Education Officer granted an opportunity of hearing to all the parties. The Society was represented through its Chairman. The petitioner was also present before the Education Officer and advanced her submissions. The Head Mistress was

also present. The Education Officer, referred to all relevant facts, including the fact that the petitioner initially submitted an affidavit that she will not claim benefits of service rendered by her from 1999 to 2005, however, taking a somersault before the Education Officer that such an affidavit is not under her wish but it was given under pressure. The Education Officer, apart from other grounds, dealt with this submission also and in clear terms stated that this somersault taken by the petitioner cannot be accepted.

14 Thus, considering all these aspects, the Education Officer could not find any favour in respect of claim of the petitioner and resultantly action initiated against the petitioner was upheld by turning down the submissions of the petitioner. This order, passed by the Education Officer, was subject matter of challenge in Writ Petition No.8380 of 2013. The Division Bench of this Court deemed it appropriate to remit the matter back to the Education Officer for decision afresh. This exercise of rendering fresh decision was undertaken by the Education Officer and vide order dated 05.02.2015, the Education Officer, considering all relevant facts, affirmed its earlier order. This order dated 05.02.2015 is subject matter of challenge in the present petition.

15 We have given the sequence of events in detail. The orders were passed by this Court on more than one occasion and more particularly on the ground that the petitioner was appointed by the Head Mistress in the year 1994 when the 5th standard class was not even recognised by the Education Department and the process for appointment of Assistant teacher for recognised division of 5th standard was initiated only in the year 1999 and the petitioner failed to stake her claim in response to the said advertisement, we see absolutely no reason either to entertain the petition for the relief in the nature of directions sought to the Respondent-authorities or challenge being raised to the order dated 05.02.2015 of the Education Officer. The only inescapable conclusion drawn by us is that the petition is thoroughly meritless and deserves to be dismissed.

16 Writ Petition is accordingly dismissed.

AVINASH G. GHAROTE
JUDGE

PRASANNA B. VARALE
JUDGE

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