

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.3419 OF 2018**

Shantaram S/o Zipru Mali,
Age: 51 Years, Occu.: Service,
R/o Yashwantnagar, Shivaji Chowk,
Near Navnath Tekdi, Bhadgaon,
Tq. Bhadgaon, District Jalgaon ..PETITIONER

Versus

1. The State of Maharashtra,
through its Secretary,
School Education Department,
Mantralaya, Mumbai.
2. The Education Officer
(Secondary), Zilla Parishad,
Jalgaon.
3. The Head Master,
Adarsh Kanya Vidyalaya,
and Junior College,
Bhadgaon, Tq. Bhadgaon,
District Jalgaon. ..RESPONDENTS

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Mr. S. R. Barlinge, Advocates for the Petitioner.
Mr. A. R. Kale, A.G.P. for Respondent-State.
Mr. Kalyan V. Patil, Advocate for Respondent No.3.

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**CORAM : S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

Closed for Orders on : 05.07.2019.

Order Pronounced on : . .2019.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The proposal seeking approval to the appointment of the petitioner is rejected. Aggrieved thereby, the present writ petition.

2. Mr. Barlinge, learned counsel for the petitioner submits that the petitioner was

appointed as part-time teacher from 2005 to 2006 and was working continuously for nine years. The petitioner was appointed after following due selection process. In the year 2014, vacancy of full-time teacher arose on account of voluntary retirement of Smt. K. H. Khan. The management passed a Resolution appointing the petitioner to the post of full-time teacher on 28.04.2014. The learned counsel submits that the appointment of the petitioner as Part Time was approved by the Education Officer from time to time. The petitioner is appointed as full-time teacher by Resolution dated 28.04.2014 with effect from 16.06.2014. The learned counsel submits that the Government Resolution dated 02.05.2012 prohibiting fresh appointed will not apply in the present case. The petitioner was already working as part-time teacher for more than nine years. It is only now full-time teacher post is available, the petitioner is appointed as full-time teacher. The respondents are also not releasing salary of the petitioner. The learned counsel relies on the Government Resolution dated 08.08.1996 to submit that the Higher Technical Education Department has also taken a view that those who are working as part-time teachers in Non-Government Colleges shall be absorbed as full-time teachers.

3. Mr. Kale, learned A.G.P. submits that the petitioner was never appointed as full-time teacher by following due selection process, as required

under Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. In the year 2014, there was also ban on fresh recruitment as per the Government Resolution dated 02.05.2012. Unless 100% surplus teachers are absorbed, no fresh appointment could have been made.

4. The learned A.G.P. further submits that the Government Resolution dated 08.08.1996 relied by the petitioner is issued by the Higher Technical Education Department and not by the School Education Department. The same is not applicable.

5. We have considered the submissions canvassed by the learned counsel for the respective parties.

6. The petitioner it appears is appointed on sanctioned post as the part-time teacher. It also appears that the petitioner was appointed as part-time teacher after following the due selection process, as is required under Section 5 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The appointment of the petitioner as part-time teacher is approved from time to time by the Education Officer. Since 2004 to 2014 the petitioner was working continuously as part-time teacher and his appointment as part-time teacher is also approved.

7. We had asked the learned A.G.P. as to whether it is a case of respondents that the post

on which the petitioner was appointed as part time teacher is not sanctioned or that whether the appointment of the petitioner is not by following the proper procedure. The learned A.G.P. fairly conceded that it is not the case of the Education Officer that the petitioner was appointed as part-time teacher without following due selection process and that the petitioner was appointed on the sanctioned post meant for part-time. In such situation, when the appointment of the petitioner as part-time teacher in the Academic year 2005-2006 was by following the due selection process and was made on sanctioned post available for a part-time teacher, it would be inequitable to contend that even after working for nine years as part-time teacher, upon the availability of the Full Time post on retirement of another employee the petitioner should not be absorbed as Full Time employee.

8. We would have appreciated the contention of respondents, if the petitioner's appointment as part-time teacher was without following the due selection process or was not on sanctioned post or either the petitioner did not possess the qualification. The petitioner as it appears possesses the necessary qualification, he is appointed after following due selection process as part-time teacher and is also appointed on the sanctioned post. In view of these facts, it would be improper for the respondents to contend that on

availability of full-time teacher post the petitioner ought to have again undergone fresh selection process or that some other person should have been absorbed. The petitioner's salary as part-time teacher was also paid by the State Government.

9. In view of the above, we quash and set aside the impugned order. The Education Officer shall reconsider the proposal of the petitioner for grant of approval as full-time teacher. The same shall be decided afresh within a period of four (04) months on its own merits. However, the said proposal shall not be rejected on the ground that at the relevant time there was ban on recruitment or that there were surplus candidates available. The Education Officer shall consider that the petitioner was appointed by following due selection process.

10. Depending upon the decision taken by the Education Officer, the salary bills of the petitioner shall also be forwarded by the management and processed by the Education Officer.

11. The Writ Petition accordingly stands disposed of. No costs.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE