

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3271 OF 2019

Manisha Pagire

....Petitioner

V/s.

The State of Maharashtra,
Through its Secretary & Ors.

....Respondents

* * * *

Mrs. Lata Patne a/w. Mr. Vinod Joshi, Advocate for the
petitioner.

Mr. S.B. Kalel, AGP for respondents no.1 to 3.

Respondent no.4 is absent, though served.

Mr. R.M. Pethe, Advocate for respondents no.5 and 6.

CORAM : B.R. GAVAI, &

SANDEEP K. SHINDE, JJ.

Thursday, 25th April, 2019.

ORAL JUDGMENT (PER : B.R. GAVAI, J) :

1. Rule. Rule made returnable forthwith. Heard
finally by consent of respondents no.1 to 3, 5 and 6.

Respondent no.4 is absent though served.

2. By the judgment and order of the even date delivered in Writ Petition No. 5313 of 2017 and other connected petitions, it is already held that the issue of surplus Teacher would not be applicable when a Teacher is being transferred from unaided post to an aided post in the same School or a different School under the Management of the same School.

3. The learned Counsel for the Corporation vehemently opposes the petition.

4. In the present case, the petitioner was appointed as an Assistant Teacher on an unaided post on 16th June, 2010 and approval was also granted to her appointment on the said post by the Competent Authority on 18th October, 2012 w.e.f. 16th October, 2012.

5. Perusal of page-23 which is the proposal submitted by the School, would reveal that, on superannuation of Smt. Mangala Subhash Gund, Head-Mistress of the School, one, Mrs. Shubhangi Manuel

Sadankar was promoted as Head-Mistress and approval was also granted to her appointment as Head-Mistress. As such, the aided post occupied by Shubhangi Sadankar became vacant and a proposal was submitted on 2nd June, 2017 for approval of the petitioner on the said aided post.

5. The same is rejected by the impugned order dated 28th March, 2018 only on the ground that the Circular dated 28th June, 2016 does not permit the same unless the surplus Teachers are absolved. Vide judgment and order of even date, the same is held to be impermissible in-law. It was held that, teacher appointed on unaided post after following due procedure and approval granted to the said appointment, on a vacancy of aided post being available, such a Teacher can be transferred to the said aided post.

6. In that view of the matter, the impugned order is quashed and set aside. The respondents are directed to grant approval to the appointment of the petitioner on aided post from 1st February, 2017.

7. Salary be paid to the petitioner and the arrears

Rane

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be paid within three months.

(SANDEEP K. SHINDE, J)

(B.R. GAVAI, J)