

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4850 OF 2014

Smt.Kadambari Manohar Nagvekar } Petitioner
versus
The State of Maharashtra and Ors. } Respondents

Ms.Pranita P.Hingmire for the petitioner.

Mr.S.B.Kalel-AGP for State.

**CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.**

DATE :- FEBRUARY 18, 2019

P.C. :-

1. The petitioner's grievance is that her appointment as a Librarian should be approved, but the approval is refused on flimsy grounds. The order refusing approval has been passed without considering the materials on record and only holding that when there was a ban on recruitment of non-teaching staff, still, the concerned school has appointed the petitioner. Therefore, the approval cannot be granted.

2. The facts in this petition, as revealed from the paper book are that the petitioner was appointed as a Librarian in respondent no.4-school. The third respondent is the management. The petitioner claims that the appointment was made after following due process of law, inasmuch as, prior to

issuing the appointment order, an advertisement was issued in the newspapers. Pursuant thereto, the petitioner applied and she was interviewed. Later on, she was selected. There was a clear and permanent vacancy and the appointment order is dated 9th August, 2012. A copy of this appointment order is at Exhibit 'A'.

3. It is then stated that the third respondent-management passed a Resolution dated 27th August, 2012 and pursuant thereto, forwarded a proposal so as to seek approval to the petitioner's appointment. They pointed out that there was a vacancy in the post of Librarian as the earlier Librarian Rekha Radhesham Puranik retired from the post because of her ill health. She retired on 8th August, 2012. That is why the third respondent decided to fill that post. The fourth respondent-Principal submitted proposal for approval to the appointment of the petitioner on 25th October, 2012. Along with this proposal, the fourth respondent annexed all necessary documents. However, that proposal was refused on the above ground.

4. The contention of the petitioner's counsel is that the staff strength was sanctioned for academic years 2010-11, 2011-12 and 2012-13. The staff strength as sanctioned included teaching and non-teaching posts. That included a full time post of Librarian. That the librarian's post was sanctioned because the school, at the

relevant time, had more than 1000 students and today, it is conceded that the students' strength is 2000.

5. The further argument is that if the petitioner's appointment is now faulted and stated to be not in accordance with rules, then, even after the communication refusing approval on 3rd June, 2013, the Education Officer (Secondary), Zilla Parishad, Raigad-Alibaug, District Raigad addressed a communication to the Deputy Director of Education, Mumbai Division, Mumbai stating that in 2013, there was a direction issued by the Department to verify the students' strength and there was a campaign arranged for that purpose. During that time, it was noticed that some appointments have been made during the ban period. Now, by this communication, a relaxation was sought insofar as the petitioner's appointment is concerned. Thus, a request was made to exclude about 20 non-teaching staff who had been appointed during this period. The argument of the petitioner's advocate is, despite such communication, the petitioner's appointment has not been approved.

6. Mr.Kalel learned AGP appearing for the State invited our attention to the affidavit in reply and says that Ms.Rekha Radhesham Puranik was Librarian in respondent no.4-school from 26th August, 1985 and she started initially as a part time

Librarian. She became full time Librarian with effect from 16th April, 1997 up to 9th August, 2012. Before that date, she took retirement on medical grounds. Once there was a ban on recruitment of teaching and non-teaching staff until 100% absorption of surplus teachers, then, the petitioner's appointment cannot be said to be valid and the approval was rightly refused.

7. Respondent nos. 3 and 4 have filed an affidavit and stated that the earlier Librarian was on leave from August, 2010 to August, 2012 due to her ill health and thereafter, she retired. In these circumstances and when she was not attending the school that a letter was addressed on 2nd July, 2012 to respondent no.2 seeking permission/no-objection certificate to place an advertisement to fill up the vacant post of Librarian. That letter was not replied and since the existing Librarian was on continuous leave since March, 2010 and the post was lying vacant, that is why the management issued an advertisement on 20th July, 2012 and that is how the petitioner came to be appointed. Reliance was placed on Exhibits 'D' and 'E' to the affidavit in reply in this regard.

8. After having heard both sides and perusing the petition and its annexures and all affidavits in reply, we are of the opinion that the petitioner was appointed by the Lokmanya Shikshan

Prasarak Mandal. It says that there is a school known as S.M.Vadake Vidyalaya, Chondi-Kihim, Taluka Alibaug, District Raigad. The advertisement, which is relied upon, is evidently issued without any no-objection certificate from the statutory authority. In fact, a letter was addressed seeking permission to insert such an advertisement, but on the own showing of the management, there was no reply to this letter. Thereafter, the management, on its own, inserted this advertisement and invited the eligible candidates to apply. The petitioner made an application on 25th July, 2012 and it is stated that she was one amongst 12 others who applied. The petitioner came to be selected at serial number 1. Therefore, an appointment order was issued in her favour and post that appointment order, approval for that appointment was sought.

9. The petitioner's advocate relies upon a communication at Exhibit 'F' at page 77 which denotes that the appointment was made during the ban period. In fact, the appointment is post 2nd May, 2012. If it was made during that period, then, the reliance placed on this Government Resolution by the deponent of the affidavit in reply, namely, the Deputy Education Officer (Secondary), Zilla Parishad, Raigad-Alibag, District Raigad cannot be said to be ill founded. He has placed a copy of this

Government Resolution also on record. It says very categorically that though quality education has to be imparted under the auspices of the State as also local bodies, the State of Maharashtra through the Department of School Education and Sports discovered that there are about 1 lakh schools. Approximately 2 crore students are studying therein. The budget allocation is of Rs. 29,000 crores, from which, 87% is spent on salaries of teaching and non-teaching staff, their pension etc. and rest of the amount is utilised for free uniforms, books, food and other related expenses on students. With all this, the Government noticed that there is a gross abuse of the facilities and misuse of funds. There have been bogus admissions granted and therefore, despite lack of students and infrastructure, grants have been grabbed and such misappropriation of public funds alerted the Government. That is why it launched a campaign and drive. It carried out individual inspection and that is how Government Resolution dated 24th August, 2011 is referred. It then took up for consideration the experience in Nanded District and which revealed that the grants have been abused to such an extent that in 1,00,887 schools, the attendance roll shows enrollment of 2,03,69,638 students. The students regularly attending are 1,82,99,118 and absent students are 20,70,520 (10.16%). The lack of attendance is faced by schools other than

English medium schools which are private and unaided, permanently unaided secondary schools and partly unaided schools, the municipal corporation schools, the schools for disabled and such other schools which are managed for the downtrodden students. It is in these circumstances that this Government Resolution has been issued *inter-alia* placing a ban and that ban on recruitment is to be operative till such time as the teachers rendered surplus are absorbed. Thus, the target was 100% absorption to be achieved.

10. In these circumstances, we find that from inception, the petitioner's appointment is made by the management on its own. It has not bothered to wait for a no-objection certificate or approval to insert an advertisement in the newspapers. It declared the earlier Librarian as retired despite she had not put in her papers nor her retirement was due. The mere fact that she has stopped attending the school does not mean that there is a vacancy. In these circumstances, the management could not have assumed that there is a vacancy and therefore, it can address a letter and without awaiting for approval, it can issue advertisement and issue appointment order. All this is *ex-facie* illegal and in the teeth of the ban, this course could not have been adopted by the management. It is the management which has put

the petitioner in lurch. If at all the petitioner was unaware of all this, then, at best she can continue at the behest of the management, but, surely, we cannot direct the Education Department to grant the approval. That would be contrary to the ban imposed.

11. In the light of the fact that the policy has been amended subsequently as also the increase in students' strength, as and when the management seeks to make appointment against such a sanctioned post of full time Librarian, our order passed in this petition shall not be an impediment or obstacle in the petitioner making an application for that post. The management also can consider her application as well in accordance with the rules. Despite our order, the management can continue her and till such time as the above takes effect. The only clarification is that the appointment having not been approved by the Education Department, the grant/salary grant, so as to make admissible the salary to the petitioner and its disbursement, will not be necessary. The petitioner can, of course, claim whatever salaries which are determined by the management.

12. With the aforesaid clarification, we dismiss this petition. There would be no order as to costs.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)