

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10459 OF 2018

Rayat Shikshan Sanstha and another. ... Petitioners.

V/s.

Suvarna Bhagwan Nalawade & Ors. ... Respondents.

**WITH
WRIT PETITION NO. 8503 OF 2018**

Gayatri Ganesh Nalawade ... Petitioner.

V/s.

The Secretary, Rayat Shikshan Sanstha,
Satara & Ors. ... Respondents.

**WITH
WRIT PETITION NO. 2047 OF 2019**

Smt. Suvarna Bhagwan Nalawade ... Petitioner.

V/s.

Rayat Shikshan Sanstha and another. ... Respondent.

**WITH
WRIT PETITION NO. 2052 OF 2019**

Rayat Shikshan Sanstha and another. ... Petitioners.

V/s.

Gayatri Ganesh Nalawade & Ors. ... Respondents.

Mr. Milind Deshmukh, Advocate for Petitioners in WP Nos. 10459/ 2018 & 2052/2019 and for Respondents in WP Nos. 8503/2018 & 2047/2019.

Mr. C.G. Gavnekar, Advocate for the Petitioners in WP Nos. 2047/ 2019 & 8503/2018 and for Respondent No.1 in WP Nos. 10459/ 2018 & 2052/2019.

Mrs. M.S. Bane, AGP for the State in all the matters.

CORAM : M. S. KARNIK, J.

DATE : MARCH 13, 2019.

PC :

1 Rule. Rule is made returnable forthwith by consent of the parties and heard finally.

2 These petitions are being disposed of by this common order since common order passed by the Tribunal is under challenge in these petitions.

3 Writ petition No. 8503 of 2018 is filed by the Petitioner (Gayatri Ganesh Nalawade), who is working as assistant teacher. Writ petition no. 2047 of 2019 is filed by the Petitioner (Smt. Suvarna Bhagwan Nalawade), who is also working as assistant teacher. Writ petition Nos. 10459 of 2018 and 2052 of 2019 are filed by the Petitioner - School Management.

4 Facts involved in writ petition no. 8503 of 2018 are taken into consideration for convenience. The parties are referred to as 'Teacher' and 'Management'. The Teachers are the 'Appellants' before the Tribunal.

5 By writ petition under Articles 226 and 227 of the Constitution of India, the Teachers as well as Management assail the order dated 16th March, 2018 passed by the Presiding Officer, School Tribunal, Kolhapur in Appeal No. 06 of 2016, the operative part of which is reproduced below :

“ORDER

1. Appeal is partly allowed as per following order.
2. The prayer for setting aside the order of Termination dated 16.06.2015 of Appellant is hereby rejected.
3. Prayer for reinstatement with the back wages is hereby rejected.
4. Appellant shall have preferential right over the post of full time permanent teacher as soon as permanent vacancy exists for her category by considering observations made in above judgment.

5. The Respondent No.1 is directed as per section 11(2)(e) of MEPS Act to pay as a compensation to Appellant full salary of 12 (twelve) months which was lastly paid to her.”

6 The Teachers in writ petition no. 8503 of 2018 and writ petition no. 2047 of 2019 are aggrieved by clause 2 & 3 of the operative order of the Tribunal. The Management being aggrieved by clause nos. 4 and 5 of the operative order passed by the School Tribunal, filed writ petition nos. 10459 of 2018 and 2052 of 2019.

7 The Teacher - Gayatri G.Nalawade, was appointed by the Management initially on 14.06.2007 for a period from 16.06.2007 to 30.04.2008 on clock hour basis. Thereafter, again by appointment order dated 16.06.2008, the teacher was appointed for a period from 23.06.2008 to 30.04.2009 on clock hour basis. Thereafter, the teacher was appointed by order dated 30.04.2009 for the period 01.08.2009 to 30.04.2010 on full time basis in the secondary school on a consolidated pay. She was again appointed on various occasions i.e. on 30.06.2007, 27.07.2012, 04.08.2013 and 19.07.2013 right upto 30.04.2015 on full time basis on consolidated pay. The appointment orders of the teachers on

full time basis as well as on clock hourly basis were approved by the Education Officer.

8 It is the case of the Teacher (Gayatri Nalawade) that she was appointed to teach Hindi subject. It is her case that the management prevented her from attending duties on 16.06.2015. This amounts to otherwise termination of her services. Respondent -Education Department demanded list of the candidates, who were working with the management, for giving approval. The management did not supply the same. After the management prevented the petitioner to join services, an advertisement in the year 2015 was published. It is the case of the teacher that the post which was advertised by the management was of Hindi teacher.

9 In the submission of learned counsel for the petitioner, since she has been working as a full time teacher for long number of years, in view of creation of the sanctioned post, it is the petitioner, who should have been appointed on permanent basis. Instead of doing that, the Respondent -Management appointed Respondent No.4 as a permanent teacher. In the submission of Mr. Gavnekar, the management did not take into consideration the government resolutions dated 31.01.2001 and 10.01.2005, while filling up the post. Mr. Gavnekar submitted that even in respect of regular part time employee, if later on the post of full time

teacher is sanctioned, the part-time teacher is entitled to be appointed against the said post on permanent basis. In his submission, there was no reason, why the petitioner who was working on temporary basis, could not be appointed on the post once it is sanctioned. Mr. Gavnekar invited my attention to the findings of the Tribunal, which are virtually in favour of the petitioner. Mr. Gavnekar submitted that even the Education Department was of the opinion or rather supported the stand of the petitioner that the Respondent -management could have adjusted reservation of the post in other school of society and the petitioner could have been absorbed on the post for Hindi subject which was very well possible. He submitted that the School Tribunal was not justified in rejecting the claim of the petitioner.

10 Mr. Milind Deshmukh, learned counsel appearing on behalf of the Respondent -management on the other hand supported the impugned order passed by the Tribunal. In his submission, the G.R. relied upon by Mr. Gavnekar, is applicable to the regular part timer, who is considered for appointment as regular full time teacher once the post becomes full time. It is submitted that the petitioner was not working as regular part- timer but was working as temporary teacher. He submitted that the said G.R.s' are not applicable and the Tribunal, in these circumstances, was justified in rejecting the claim of the petitioner. On the contrary, he submitted that

Tribunal was not justified in directing that the petitioner shall have preferential right to the post of full time permanent teacher as soon as permanent vacancy exists for open category. In his submission even the direction to pay compensation as per section 11(2)(e) of M.E.P.S, was not necessary in the facts of the present case. He would submit that pursuant to the advertisement issued, the management considered the case of respondent no. 4, who was eligible to be appointed. The teacher had no vested right to be appointed in the said post merely because she was working as an Assistant Teacher on temporary basis for a long time.

11 I have heard the learned counsel for the parties. I have perused the copies of the appeal memo, and gone through the government resolutions relied upon by Mr. Gavnekar. There is no dispute that the petitioner was appointed, initially on the clock-hour basis and thereafter, from time to time appointed on full time basis as a temporary teacher on consolidated pay. I find that most of appointments of the petitioners are approved. I have gone through the order passed by the Tribunal. It is clear that the teacher was appointed on temporary basis for full time teaching almost for six years. In fact by the letter dated 11.08.2016, even the Deputy Director of Education had issued direction to the Management to do needful for absorbing the teachers working on full time basis in the sanctioned vacancies newly ordered. The teacher was

working full time on temporary basis for years together. When the new post was sanctioned on which the petitioner has been working for six years, then this issue deserved a more closer scrutiny in view of the G.R. dated 31.01.2001 & G.R. dated 10.01.2005.

12 The teachers are working on full time basis for long years on temporary basis. Even the Deputy Director of Education had called upon the Management to do the needful for absorbing the teachers. In this view of the matter, in my opinion, the issue needs a fresh look.

13 Hence, following order.

- i. Impugned order dated 16.03.2018 passed by the Tribunal is quashed and set aside.
- ii. The matter is remanded back to the Tribunal for considering the same afresh in accordance with the law.
- iii. Needless to observe that the Tribunal to decide the appeals on its own merits without being influenced by any observations made by me.

iv. The Tribunal is requested to decide the appeals as early as possible and in any case within a period of 16 weeks from date of uploading of the order.

v. As fresh advertisement has been issued, clause 4 of the operative order of the Tribunal shall remain operative till decision on the Appeal by the Tribunal.

vi. Writ Petitions accordingly disposed of. Rule is partly made absolute in above terms with no order as to costs.

(M. S. KARNIK, J.)

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