

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8346 OF 2012

Roopkamal Raghunath Bhosale	 Petitioner
V/s.	
Indrayani Vidya Mandir, Pune and Ors.	 Respondents

Mr. R.C. Sadasivan for the Petitioner.

Mr. S.V. Pitre for Respondent Nos.1 and 2.

Mr. S.B. Kalel, A.G.P. for Respondent Nos.4 to 6.

Dr. Vijay Narkhede, the Joint Director, Higher Education, Pune Region, Pune, is present.

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

DATE : 5TH MARCH, 2019.

P.C. :

1. Heard both sides.
2. On this Writ Petition, we have repeatedly been finding total non co-operation and lack of assistance from the Government and particularly the Secretary, the Deputy Secretary, the Director and the Joint Director of the Department of Higher Education.
3. The Joint Director is present in Court, but, just as he was confused

and not able to answer any of the queries of the Court on earlier occasion, today we find his performance to be worst.

4. On 11th February 2019, we had passed the following order :-

- “1. Let Mr. Kalel speak to both the Deputy Secretary in the Department of Higher and Technical Education as also the Director and make a statement whether the Petitioner can be considered for transfer from unaided to aided section. The Petitioner claims to be belonging to Scheduled Caste and says that in the aided section, there is a backlog and the reservation meant for the Scheduled Caste, as per the roster, has yet not been removed. Meaning thereby, no Scheduled Caste teacher is still appointed.*
- 2. We think that such a decision has to be taken by the authority and this should not be left to the Court. A decision can always be taken on a case-to-case basis and without that being treated as a precedent for future cases.*
- 3. Mr. Kalel should inform us accordingly on the next date. Since Mr. Sadasivan has apologized for his absence on the earlier occasion, we do not proceed to dismiss the Writ Petition, but now place it for passing final orders on 20-2-2019.”*

5. All that this Court is seeking was a clarification as to whether the Petitioner can be considered for transfer from unaided section to aided section in the same College / Educational Institution. Petitioner had stated before us that she belongs to the Scheduled Caste and in the aided section, there is a backlog. The reservation meant for the Scheduled

Caste, as per the roster, has yet not been removed. Thus, the reservation continues and no Scheduled Caste Teacher was appointed.

6. On the earlier occasion, we were informed that, a decision on case-to-case basis can be taken and particularly at the Management level.

7. Today, we are informed that, there being no policy to accommodate such Teacher, nothing can be done to assist the Petitioner.

8. When we invited the attention of the learned A.G.P. to the affidavits and additional affidavits placed on record, in which the Petitioner sets out several instances of such accommodation in other Colleges and Institutions, this Joint Director present in the Court has no answer. He only says that, time be granted so that a further affidavit will be filed.

9. We do not think that in a Petition, which is pending in this Court from 2012 and to be precise from 23rd August 2012, such a request can now be granted.

10. We have seen on the earlier occasion that there is an affidavit-in-reply, which has been filed on behalf of the Directorate of Higher Education and the State. The first affidavit is that of one Gangadhar P. Date, the Administrative Officer in the Office of the Joint Director of

Higher Education, Pune Region, Pune. He does not deal with any averments and allegations in the Petition, but simply says that nothing can be done, because there is no policy.

11. Then, there is another affidavit of Dr. Sunil Sudhakar Shete, the then Joint Director of Higher Education, Pune Region, Pune, who says that, once the 2nd Respondent-College was allowed to insert an advertisement to fill-up the vacant posts of teaching staff, one Open Category and one Scheduled Caste Category, and the Management published an advertisement on 31st July 2012, nothing can be done.

12. Pertinently, on 6th July 2012, the 1st Respondent-Management forwarded a proposal so as to accommodate the Petitioner, but, to our mind, inadvertently, termed it as a transfer. We are surprised as to how such arrangement and accommodation of a Teacher, in difficulty and distress, in the same Management / same Educational Institution can be said to be a transfer. At best, it is a shifting from the Unaided Section to the Aided Section. If there is a vacancy in the Aided Section, then, no such shifting is permissible and necessarily fresh recruitment process has to be initiated, is the understanding of the Respondents contesting the Writ Petition. It is extremely unfortunate, because this understanding proceeds on the basis that there is a transfer to a vacant post. There is, according to us, no such transfer, but mere shifting. That

is how repeatedly the Petitioner is pointing out in the affidavits after affidavits, that it is not the first time that such accommodation has been allowed. She has given instances of at-least 9 such cases in her affidavit-in-rejoinder dated 12th December 2013 and particularly in paragraph No.2, running page Nos.98 to 100.

13. After this affidavit was served, the additional affidavit came to be filed on behalf of Respondent Nos.4 to 6 and by the same gentleman Dr. Sunil Sudhakar Shete. In this additional affidavit, affirmed on 8th January 2014, total silence is maintained as to how the shifting or accommodation in the 9 cases was allowed.

14. Throughout, the Respondent-State and the Directorate maintains that, as per present Government Policy, there is no provision for transfer of teaching staff from Unaided Section to Aided Section and if that is allowed, it may affect the Reservation Policy of the State Government and that will set a wrong precedent. That will also increase the financial burden on the exchequer.

15. All this remains very much confusing and unclear to us. Firstly, for the Government to release to the Management 'Grant-in-Aid' to pay salaries to those teachers, who are working in the Aided Section; the number of teachers is known; the exact financial burden is known; and if

one teacher retires, another teacher is appointed in his place in the Aided Section. There is no additional financial burden. Secondly, if, on 31st July 2012, the 1st Respondent-Management inserted an advertisement, but, till date, it has not been able to fill-up the vacant reserved post meant for Scheduled Tribe category, then why a Scheduled Caste Teacher like the Petitioner cannot be accommodated in his or her place, has also not been explained to us. Finally, this is not a case of transfer at all and, presently, the Management has not placed on record anything, which would indicate that the existing vacancy in Aided Section is already filled-up. If we are informed that the existing vacancies are unfilled and there is a post available to accommodate the Petitioner, then, we do not see why a case-to-case basis decision is not taken.

16. In such circumstances, we do not intend to wipe out the past service of the Petitioner. The Petitioner is qualified, for she is M.Com. She also has passed the 'State Eligibility Test' and belongs to the reserved category. She was appointed as a 'Lecturer' in Commerce. The 'Recruitment Process' commenced with insertion of an advertisement on 19th August 2002 in 'Daily Sakal' of Pune. The post was shown that time as 'reserved for Scheduled Caste category'. The Petitioner appeared for the interview before a duly constituted Selection Committee and she has given the details of the composition and constitution of the same. Though

the Petitioner was appointed with effect from 25th November 2002 as a 'Full-Time Lecturer' and made permanent and her appointment was approved by the University of Pune, still, for some strange reasons, she was not appointed in the aided section. The other instances are given of Mr. S.M. Jagtap, Mr. P.V. Sathe and one Mr. D.P. Kakade, belonging to the Open Category. Therefore, if Mr. S.M. Jagtap, a 'Full-Time Lecturer' of Commerce, holding an aided post, retired on 31st August 2010 and the appointment to this post was not made even after one advertisement was inserted, then, the Petitioner has worked enough to earn this shifting.

17. To our mind, the Petitioner has been working diligently and honestly and in addition to her regular workload, she was assigned duties in relation to extra-curricular and academic activities. The activities included important, responsible academic assignments. She was on the Committees constituted by Respondent Nos.1 and 2, as per the directives of the University of Pune. The Petitioner is requesting all concerned to place her on the 'Pay Roll' of the Aided Section, but her request has been ignored. Now it is likely to affect her seniority and post-retirement benefits. Petitioner has yet to serve for 11 years; meaning thereby, 11 years service has to be rendered before attaining the age of superannuation.

18. In the aforesaid facts and circumstances and peculiar to this Petitioner, we direct that she should be accommodated and shifted to the vacant post in the Aided Section and with effect from the date the vacancy arose in that Section and particularly on the post of the 'Lecturer of Commerce'. That vacancy, according to the Petitioner, arose when Mr. S.M. Jagtap retired on attaining the age of superannuation on 31st August 2010.

19. Let the Petitioner, therefore, be appointed in the Aided Section and her appointment shall take effect from 1st September 2010. She shall be granted all the benefits, including salary payable to the Teachers in the Aided Section as per the prescribed Pay-Scales from that date.

20. This order is passed in the case peculiar to the Petitioner and shall not operate as a precedent in future cases of the present nature.

21. We are constrained to observe that, for want of proper assistance rendered by the State Officials, the financial burden, if any, falling on the State on account of the direction issued by us shall be squarely placed at the door of such erring official, including the Director and the Joint Director of the Higher Education, Pune Region, Pune. Let the disciplinary proceedings be initiated in that behalf.

22. Writ Petition is allowed and stands disposed off in the above terms.

[M.S.KARNIK, J.]

[S.C. DHARMADHIKARI, J.]