

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

CIVIL APPLICATION NO. 2174 OF 2019

IN

WRIT PETITION NO. 6557 OF 2014

Sou. Nutan Nitin Thakare

... Applicant

In the matter between :

Sou. Nutan Nitin Thakare

... Petitioner

Vs

1 The State of Maharashtra & Ors.

... Respondents

IN CHAMBERS AT 2:45 P.M.:

Mr. N.V. Bandiwadekar for the Applicant/Petitioner.

Mrs. Reena Salunke, AGP, for the Respondent No.1-State.

Mr. G.B. Walawalkar i/b Mr. S.P. Thorat for the Respondent No.2.

Mr. Ajit M. Savagave for the Respondent No.5.

***CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.***

FRIDAY, 18TH OCTOBER, 2019

P.C. :

1 By this Civil Application, clarification / modification of the order of the Division Bench dated 22nd February, 2018, to which one of us (B.P. Colabawalla, J.) was a party, is sought by the applicant – original petitioner.

2 A perusal of the order passed by the Division Bench denotes that on 26th April, 2013, an order was passed rejecting the proposal of the Management to grant approval to the appointment of petitioner as assistant teacher.

3 The order of the Division Bench records that the petitioner was appointed on 15th February, 2010 with effect from 3rd November, 2009. The petitioner came to be appointed as Shikshan Sevak and she satisfactorily completed the three years' period. The proposal was submitted for grant of approval of the petitioner's service as assistant teacher. After completion of the three years period on 2nd November, 2012, a proposal was forwarded on 27th November, 2012, but by the order impugned in the writ petition, the same was rejected. The reason assigned was that since in the staffing pattern of 2012-2013, the number of students had reduced and three teachers were held to be surplus, the approval cannot be granted to the petitioner. The justification was given for this conclusion in the impugned order, but the Division Bench found that an identical issue was dealt with by another Division Bench in Writ Petition No.9027 of 2014 decided

on 15th June, 2016. In that, the Division Bench had before it an identical situation. Therefore, this Court allowed the writ petition and in the same terms as the earlier petition.

4 The order of the Division Bench directs grant of approval in the prescribed pay scale, thereafter declaring the petitioner surplus and taking action for absorption in some other school.

5 Now, the order of the Division Bench should be understood as dealing with an essential controversy. The same was that this Court was informed by the petitioner that the petitioner was appointed as Shikshan Sevak in the fourth respondent school. The fourth respondent school is a Government recognised and aided private primary school. The service of the petitioner was approved by an order of 15th February, 2010. The approval was granted for a period of thirty-six months from 3rd November, 2009 on payment of monthly honorarium of Rs.3,000/-. After the completion of three years as Shikshan Sevak, the petitioner had to be continued as an assistant teacher in the pay scale prescribed by the Government. That is with effect from 3rd November, 2012. The proposal in that

behalf was forwarded, but it came to be rejected. The reasons assigned are that three posts of teachers were reduced and they were treated to be surplus. The petitioner could not have been declared surplus because she had not completed three years until then. However, by the 26th April, 2013, even that period was over.

6 It is in these circumstances she filed firstly the writ petition and challenging the order dated 26th April, 2013. The writ petition was filed and was pending, but later on the above order was passed allowing it. The order of the Division Bench and the eventual direction could not have been understood by the authorities as denying the petitioner her valid appointment as assistant teacher, the regular pay scales and other benefits.

7 It is in these circumstances that we are of the opinion that the order of the Division Bench should be understood as granting the benefit to the petitioner in accordance with law. If the law does not contemplate a situation and particularly of denial of the benefit to the petitioner on account of excess staff, that does not mean that the petitioner is disentitled to all the reliefs. If an automatic disentitlement was to follow, then, the authorities were required to invoke the specific rules in that regard. A vague

assertion as is now being placed before us on an affidavit does not carry the case of the contesting respondent any further.

8 To our mind, therefore, the order of the Division Bench should be understood as not denying to the petitioner the necessary reliefs to which she was entitled in accordance with the MEPS Act and Rules and the policies of the Government in that behalf. The order of the Division Bench, therefore, be read accordingly. Needless to clarify that once we issue the above directions, it would mean that the petitioner shall not be deprived of the benefits which accrue to her from 3rd November, 2012. This order and direction be given effect to and implemented within a period of eight (8) weeks from today. We clarify that the order and direction of the Division Bench as also the clarification issued today has been issued in the peculiar facts and circumstances and shall not be treated as precedent in similar cases.

9 The Civil Application stands disposed of in the above terms.

B.P. COLABAWALLA, J.

S.C. DHARMADHIKARI, J.