

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8960 OF 2014

Smt. Jyoti Kalidas Jagtap & Others Petitioners
Vs.
The State of Maharashtra & Others Respondents

Mr. Narendra V. Bandiwadekar for the Petitioners.
Mr. S.S. Panchpor, Assistant Government Pleader,
for the Respondent-State.
Mr. Sushil Inamdar i/by Mr. Vijay Killedar for
Respondent No.2.

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

DATE : FEBRUARY 11, 2019

P.C:

1. The petitioners claim that respondent No.2 should grant approval to the appointment of petitioner Nos.1 & 2 as Shikshan Sevaks with effect from 17-6-2013 in New Marathi School, Barshi, District Solapur. That School is administered and managed by petitioner No.3.

2. A further relief is sought in terms of a direction to the Authority to release the grant-in-aid for payment of the monthly honorarium.

3. The petitioners claim that in the school of this 3rd petitioner, which is a private primary school recognised by the Barshi Municipal School Board under the provisions of The Bombay Primary Education Act, 1947 and Rules, 1949 made thereunder, in the situation that it was placed and the impending retirement of two teachers, the Headmaster of the School requested respondent No.2 to issue a No Objection Certificate (“NOC” for short) to fill-up the two posts.

4. It is stated that this request was made on 20-4-2012 but finding no response thereto, the matter was pursued and eventually in the month of November, 2012, the Deputy Director of Education, Pune Region, Pune, informed the 2nd respondent that a teacher by name Smt. Jayshree Navnath Wagaj, working in another primary school in Solapur District, is rendered surplus and she should be absorbed in a distinct primary school

but in Solapur District. That is how the 2nd respondent informed the Headmaster and the Management that this teacher should be absorbed in their primary school and be allowed to join duty. The communications in that behalf are stated to be dated 20-11-2012 and 2-5-2012.

5. The petitioners claim in this writ petition and very solemnly that they did not receive the letter of 2-5-2012 till June, 2013 and they *bona fide* went ahead and published an advertisement in the local newspaper Daily Sanchar. The advertisement invited applications, *inter alia*, for three posts of Shikshan Sevaks, out of which one was reserved for the Nomadic Tribe (C) category. The remaining two posts were open.

6. Then it is stated that petitioner Nos.1 & 2 belong to the category referred above and that is how they were appointed, the Resolution was passed by the School Committee on 15-6-2013 and as the appointment orders were issued in their favour on 28-6-2013, a proposal was forwarded to the 2nd

respondent through the 3rd respondent for approval of their appointments. However, the 2nd respondent inquired as to how this proposal was submitted and when there is no permission and the Government Resolution of 2-5-2012 imposing a ban on recruitment is in force. That is how the appointments were not taken to be approved and the salary grants were thus not released.

7. The 2nd respondent insisted that the absorption orders (Exhibit-K collectively) be given effect to.

8. Hence, aggrieved by this inaction or the insistence noted above, this petition is filed.

9. Mr. Bandiwadekar submitted that in the writ petition a specific ground is raised and that is, that though the Management might have complied with the communications of the authorities under The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the MEPS Act" for short) and The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("MEPS Rules" for

short), but both of them are inapplicable to a School which is recognised by the School Board under The Bombay Primary Education Act, 1947 and the Rules framed thereunder.

10. We at once clarified that we are not impressed by this argument of Mr. Bandiwadekar and his reliance on a Division Bench Judgment of this Court.

11. This writ petition is filed jointly by the teachers and the Management. All of them have throughout acted on the footing and basis that the applicable law is the MEPS Act and the Rules framed thereunder. They have, therefore, forwarded the proposal for approval of the appointments. All this is warranted in terms of this law and the scheme thereunder. We find that such a turnaround now is not at all acceptable. This is not a pure issue of law but a mixed question. If throughout the parties have proceeded on the above lines, then, it is futile to urge that the MEPS Act itself was inapplicable and, therefore, there was no obligation to absorb the teachers referred in Exhibit-K (collectively) in service.

12. Once we clear this ground, we now note the stand of the School Board/Administrator.

13. Mr. Sanjaykumar Rathod, Education Officer (Primary), Zilla Parishad, Solapur, the 2nd respondent, has filed a detailed affidavit and in this affidavit alleged in paras 4 & 5 as under:-

“4. I state that, the Petitioners have claimed that by virtue of communication dated 24.04.2012 bearing Outward No.11 (annexed at Page No.19 of the Writ Petition), request was made and permission was sought to fill two posts of Assistant Teachers in the Navin Marathi School, Barshi, to be rendered vacant on account of retirement of Shri Govardhan and Shri Ramdasi. I state that, from the inward register maintained by the present Respondent, it is evident that no such proposal / communication dated 24.04.2012 was served upon the office of the present Respondent. I state that, the Petitioners have annexed the Order dated 02.05.2012 bearing Outward No.ZPS/EDU/PPS/1/195/12 at Page No.29 of the Writ Petition, purportedly passed by then Education Officer (Primary), Zilla Parishad, Solapur. I state that, the said order dated 02.05.2012 bearing Outward No.ZPS/EDU/PPS/1/195/12 annexed at Page No.29 of the Writ Petition, mentions and refers to proposal/communication dated 24.04.2012 bearing outward No.11 (annexed at Page No.19 of the Writ Petition). I state that, the said document dated 02.05.2012 bearing Outward No.ZPS/EDU/PPS/1/195/12 annexed at Page 29 of the Writ Petition was never issued by the present Respondent and then Education Officer (Primary), Zilla Parishad, Solapur, by

virtue of communication dated 11.04.2018, had informed that he had not issued document dated 02.05.2012 bearing Outward No.ZPS/EDU/PPS/1/195/12 annexed at Page No.29 of the Writ Petition, since at the relevant time there were numerous surplus teachers, in the Solapur District and without their absorption the permission for recruitment was not being granted at the relevant time. I state that, thus from the inward register as mentioned above and the communication dated 11.04.2018 issued by then Education Officer (Primary), Zilla Parishad, Solapur, it is evident that the Petitioners have forged the document dated 02.05.2012 bearing Outward No.ZPS/EDU/PPS/1/195/12 annexed at Page No.29 of the Writ Petition. Hereto annexed and marked as **Exhibit-'1' Collectively** are the copies of the relevant pages of inward register and communication dated 11.04.2018.

5. I state that, from the documents annexed by the Petitioners to their Writ Petition at Page Nos.21, 22, 23, 24, 25 and 26. It is clear that, the document dated 02.05.2012 bearing Outward No.ZPS/EDU/PPS/1/195/12 annexed at Page No.29 of the Writ Petition is forged and never issued by the present Respondent, inasmuch as, in the aforesaid documents annexed by the Petitioners to their Writ Petition at Page Nos.21, 22, 23, 24, 25 and 26, it is categorically admitted that no order granting permission to appoint teachers on the posts rendered vacant on account of retirement of Shri Govardhan and Shri Ramdasi, was granted till 15.04.2013. I state that, the documents dated 06.09.2012, 17.12.2012 and 26.02.2013 (annexed by the Petitioners at Page Nos.22, 24 and 25 of the Writ Petition) categorically state in unequivocal terms that permission to appoint teachers was not granted by the present Respondent and therefore, from the said document it is clear that the document dated 02.05.2012 bearing Outward No.ZPS/EDU/PPS/1/195/12 annexed at Page No.29 of the Writ Petition is forged and never issued by the present Respondent.”

14. Thus the clear stand is that, there is a forgery. A letter of 2-5-2012 was never issued by the Education Officer. It is in these circumstances that it is claimed, in para 6, that the proposals forwarded seeking approval to the appointments of petitioner Nos.1 & 2 were rejected on 2-6-2014. Thus the orders passed on 26-5-2014 and 2-6-2014 declining approval have not been challenged. These orders have been accepted.

15. Now relying upon a false record, the relief is sought.

16. In the affidavit in rejoinder, the petitioners purported to say that they have committed no wrong. All the documents relied upon are genuine and not forged or fabricated. In fact by a letter of 24-4-2012, Exhibit-A, the Headmaster of the School had requested the 2nd respondent/Education Officer to grant NOC to fill up two posts of teachers which were to fall vacant. On 2-5-2012, permission was granted to make appointments in the vacant posts after absorbing one surplus teacher in the School. It is claimed that the letter of 24-4-2012 has been referred in the subsequent letter of 15-4-2013 which

was also addressed to the 2nd respondent. If the 2nd respondent does not deny the receipt of the second letter of 15-4-2013, then, it cannot say nor it lies in its mouth to say that the first letter is non-existent, namely, of 24-4-2012. Equally, the order of 2-5-2012 was received in June, 2013. Thus the respondents addressed some letters later on but made no reference to the communication dated 2-5-2012.

17. After having carefully perused this petition and the annexures thereto, we find that the categorical stand of the 2nd respondent is that, the letter/proposal dated 24-4-2012 was served upon the office of the Education Officer. The petitioners have annexed the order dated 2-5-2012, copy of which is at page 29 to the writ petition, purportedly issued by the then Education Officer. The order bears a reference number of the proposal. However, this document of 2-5-2012 was never issued either by the present Education Officer or by the then Education Officer. The Inward Register, as maintained for the above period, also proves the point that such a letter or communication of 2-5-2012 is not on record. In fact, according to them, this

letter is forged.

18. The 2nd respondent granted no permission, as is now falsely claimed.

19. In fact, the proposal has been rejected.

20. We have on record a clarification of 11-4-2018 (page 91) by one Aabasaheb Suryawanshi, the then Education Officer (Primary), Zilla Parishad, Solapur. He has very clearly said that in the year 2012, in Solapur District, there were many surplus teachers. These teachers were rendered surplus after their services in private primary schools came to an end. During his tenure he had not granted permission to fill-up any vacant post in such private primary schools and, therefore, he has not signed any letter, much less on 2-5-2012.

21. Then it is stated that on 22-5-2014, the proposal, which had been forwarded seeking approval to the appointments of petitioner Nos.1 & 2, was rejected. The proposal was in writing and dated 6-8-2013. It is thus claimed

that there was never any permission granted to the School/Management to appoint petitioner Nos.1 & 2 as teachers.

22. Once this is the assertion of the 2nd respondent in writing and on record, then, it is not for this Court to turn it down on the basis of some contrary oral submissions. On 24-4-2012, a communication is said to have been addressed by petitioner No.3 and copy of which is at page 19. That was followed up by another communication on page 20, which makes no reference to the earlier communication at page 19. Similar is the position with regard to the third communication of page 21. Equally, the communication of 6-9-2012, copy of which is at page 22, makes a reference to a letter of 7-5-2012 and stated to be addressed by the Headmaster of the New Marathi School. Throughout there is no reliance placed by the petitioners on the communication of 20-4-2012, but the communications of 7-5-2012 and 6-9-2012, from the Headmaster, are referred in the further letters at pages 22 and 23.

23. On 17-12-2012, a hand-written letter was forwarded

in which as well no reference has been made to the earlier communications. Similar is the position with regard to the letter at page 25.

24. Now we find on page 26 that a letter is addressed to the Education Officer and in which it is stated that the institution sent four letters, commencing from April, 2012 but though it has complied with the other terms of the Education Officer, it has still not received the approval or permission to fill up these posts.

25. At page 27, the then Deputy Director of Education brought to the notice of the Education Officer that there is a surplus teacher and who has not been absorbed. That is how the Education Officer, on 28-11-2012, directed the School and particularly petitioner No.3 to absorb this surplus teacher in its school. A copy of this letter was addressed to petitioner No.3's School and that it is received is clear from page 28 itself.

26. The letter, which is heavily relied upon by the petitioners, is at page 29, Exhibit-D. If it was indeed addressed,

as claimed by the Education Officer, and makes a reference to the School's letter of 24-4-2012, we do not see how the petitioner/Management maintained silence throughout the year 2012 and then in April, 2013, addressed a communication but did not make any reference to this permission granted in its favour on 2-5-2012, or the communication of November, 2012. The petitioners never challenged the stand of the Education Department and particularly the 2nd respondent. A reference to Exhibit-D is to be found in the memo of this petition but that reference at page 5, para 4, is very curious. The petitioners claim in the earlier paragraphs and in this paragraph that what they received was a letter of 20-11-2012, addressed by the Deputy Director to the 2nd respondent stating that there is a surplus teacher who should be absorbed in a primary school in Solapur District. Then there is a reference made to the communication at Exhibit-C, dated 28-11-2012, directing the Management/Headmaster of New Marathi School to allow the surplus teacher to resume duty at their primary school. Then, surprisingly a reference is made to the disputed communication

in para 4, by urging “In the meanwhile, by a letter dated 02.05.2012, a copy of which is annexed hereto and marked Exhibit-D, the respondent No.2 informed the Headmaster of the school that the permission was granted.”

27. Thus, the Headmaster's request which was not granted from 24-4-2012 and for a good one year suddenly seems to have been granted on the eve of the School's receipt of the November, 2012 communication from the Education Department. Thus, as an afterthought a favourable letter of 2-5-2012, allegedly received in June, 2013, is relied upon. Equally, it is urged that the petitioners allowed the surplus teachers to join their school. If the teachers joined the aided section and we are not concerned with that section is the answer given by Mr. Bandiwadekar, then, how in the unaided section the two open posts came to be filled in by the appointment of petitioner Nos.1 & 2, is not clarified to us by producing all the details. Whether the staff strength and the workload commensurate with the student strength permitted these appointments ought to have been proved by the petitioners. The

petition and the affidavit in rejoinder are silent on this vital aspect. If the permission was indeed received in June, 2013, then one cannot accept the stand of the petitioners and to be found in para 5 of the petition. Having already inserted an advertisement and thereafter issued the appointment orders, and in June, 2013, now a convenient stand is taken that the School/Management received a favourable letter of 2-5-2012, but in June, 2013. That it is received after one-year-and-two-months would then support the petitioners' assertions in paras 5, 6 and 7, which we say are an afterthought. To get over the objection to the appointments this plea is raised.

28. It is evident that if the Headmaster of the School or the Management had forwarded the proposal after appointing petitioner Nos.1 & 2 and that proposal was stated to have been rejected by the communication of 2-6-2014, then, it is clear that the School/Management, in responding to it, has now discovered that it had a favourable order and dating back to May, 2012. Thus, this is all to support the action of not complying with the directions of the Education Department to

absorb surplus teachers but trying to overreach that Department by seeking approval to the appointments of petitioner Nos.1 & 2.

29. The argument that the School/Management did not permit the surplus teacher to join the School is a reason for not accepting their salary bills must, therefore, be stated only to be rejected.

30. It is clear that if the surplus teacher is already absorbed and still there were vacancies and in which petitioner Nos.1 & 2 came to be appointed, then, the communications from the School ought to have been worded accordingly. What we find is that the School addressed a letter to the authorities pursuant to School Committee's Resolution of 15-6-2013. This Resolution is for the year 2013-2014. If the surplus teacher was indeed absorbed, then, should not the School indicate that there are three posts of Shikshan Sevaks and which are vacant in aided section and there are four posts of teachers vacant in the non-aided section. It is, therefore, evident that when the advertisement dated 3-6-2013 was published, the Resolution

appointing petitioner Nos.1 & 2 was passed, the surplus teacher was not absorbed. It is only on 28-6-2013 that the School purported to comply with the order/communication dated 28-11-2012 of respondent No.2. It is stated that the School has allowed such surplus teachers to resume duties on 17-6-2013. In the circumstances, the School makes the appointments of petitioner Nos.1 & 2 for the Academic Year 2013-2014 till 2015-2016 and on this very date. We are surprised that if the alleged permission is granted by page 29, then, that permission from the Education Officer and allowing the School to appoint two teachers in terms of the school's communication of 24-4-2012, on the eve of his direction to absorb a surplus teacher, is irreconcilable. That is not in consonance with the 2nd respondent's stand noted above. In fact on 29-4-2014, the School sought approval to the appointments of petitioner Nos.1 & 2. It purports to annex a copy of the letter of 2-5-2012 to this communication of 29-4-2014. If the School is informed on 3-5-2014 by the Education Officer that there is a surplus teacher Smt. Varsha Bhosale, who was working in Pragati Vidya Mandir,

Barshi and she should be absorbed in petitioner No.3's School, then, it is that order together with the orders of absorption issued in favour of the other teachers, namely, Smt. Chaitali Andalkar, Shri S.R. Kandi and Smt. Rajshree Vilas Kulkarni denote that several surplus teachers were still awaiting absorption. These surplus teachers were rendered as such in Solapur District. They were eligible for absorption in primary schools and petitioner No.3's School was identified and chosen for accommodating them. It is in these circumstances that we find enough support to the stand of the respondents that they have refused permission to insert any advertisement and therefore, disapproved the appointments of petitioner Nos.1 & 2.

31. We do not, therefore, find any merit in this writ petition.

32. Everything that the petitioners allege is a clear afterthought and to get over the binding directions to absorb the surplus teachers. That direction having not been abided by and complied with, that the petitioners have moved this petition. We

do not think that we can grant any relief in a joint petition of the Management and the teachers and when everybody was aware of the factual position then prevailing. In the circumstances, this writ petition is dismissed with no order as to costs.

33. The ad-interim relief stands vacated forthwith.

34. The petitioners' counsel, Mr. Bandiwadekar, had tendered one communication stated to be the original of the document of 2-5-2012.

35. With Mr. Bandiwadekar's assistance, we have carefully perused this letter. At page 29 of the paper-book is a photocopy of this letter. The portion, where the date is entered, reflects a clear overwriting. Since Exhibit-D is a photocopy of the same and annexed to the petition, after we dismissed this writ petition, we return this purported original document to the petitioners' counsel but by keeping a photocopy thereof on record.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)