

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

WRIT PETITION NO. 11064 OF 2014.

Ms.Sweta Harishchandra Pawar. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents

Mr.Vinayak Kumbhar i/b. Mr.Sagar A. Mane for the Petitioner.
Ms.Nisha Mehta, AGP for Respondent Nos.1 and 2.
Mr.Ramesh A. Karale for Respondent No.3.

**CORAM : PRADEEP NANDRAJOG, C.J.
AND N.M.JAMDAR, J.**

DATE : 10th July 2019.

P.C. :

The Petitioner was appointed as Shikshan Sevak in Respondent No.4 school run by Respondent No.3 institution on 20 September 2011. She has been relieved from services on the ground that there was a drop in the workload and services were not required. The dispute in this petition centers around whether the Petitioner had completed three years at that time and whether she is entitled to be treated as permanent and to be absorbed in some other school.

2. The Respondent No.3- educational institute is registered under the Bombay Public Trust Act, 1950 and Societies Registration

Act, 1860. The Respondent No.4- school is a recognized fully aided private secondary school having classes from standards 5 to 10. A vacancy arose in the Respondent No.4- school on 31 May 2011. Respondent No.3 initiated procedure for selection to fill up the vacancy by issuing advertisement in local newspapers. The Petitioner and other candidates applied. The vacancy was not reserved for any category. Selection process was held on 17 September 2011 and the Petitioner was selected. The management of Respondent No.4 passed a resolution of 19 September 2011 and decided to appoint the Petitioner as Shikshan Sevak from 21 September 2011. The appointment of the Petitioner as Shikshan Sevak was for three years from 21 September 2011 to 20th September 2014. The Petitioner accepted the appointment order and joined the school. The Respondent No.4 submitted proposal to Respondent No.2 for approval and Respondent No.2 granted approval to the appointment of the Petitioner as Shikshan Sevak for three years from 21 September 2011.

3. What transpired around this period has given rise to the present dispute. According to the Petitioner, the Petitioner had completed three years of service upto 20 September 2014 and continued to work as Shikshan Sevak till that date, however, on 22 September 2014, the Respondent management sought to issue a back-dated letter to the Petitioner stating therein that the post held by the Petitioner has been declared surplus and, therefore, his

services have been terminated. The Petitioner refused to accept the said letter. According to the Deputy Education Officer, Zilla Parishad, Ratnagiri, the Petitioner's services were terminated on 19 September 2014 by an order dated 18 September 2014 before completion of three years, then he had not become permanent, and therefore, no relief can be granted to the Petitioner.

4. It is vehemently contended by the learned Additional GP that the Petitioner being terminated, her remedy to appeal is before the School Tribunal under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("Act of 1977" for short). The Petitioner's services have not been terminated, per se but her services have been dispensed with because she was rendered surplus. The Petitioner is also not challenging discontinuance and is seeking benefit of absorption as surplus.

5. As per section 5 of the Act of 1977, the Petitioner upon completion of a period of three years is entitled to be treated as permanent. As per rule 25A, of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("Rules of 1981" for short), a permanent employee is entitled to be declared as surplus and is to be placed on waiting list and recommended for being absorbed in some other institution. Thus, the position is that if the Petitioner had completed three years of service as Shikshan Sevak, he would be entitled to the benefit of absorption upon being declared as

surplus. The Petitioner asserts that till 20th September 2014, the Petitioner had discharged his duties and no order of termination was ever given to the Petitioner prior to 20th September 2014. The order relieving the Petitioner dated 18th September 2014 is on record. There is no endorsement of the Petitioner as on 18th September 2014 or 19th September 2014. The Petitioner is sought to be informed for the first time on 22nd September 2014 when the Petitioner has refused to accept the said letter. No reply is filed by the Respondent No.3. There is no categorical denial to the factual assertion that the Petitioner had actually worked till 20th September 2014. In view of absence of denial of factual position by the Respondent management and in absence of any denial of the fact that he actually worked till 20th September 2014, we are inclined to accept the case of the Petitioner that she had worked till 20th September 2014 i.e. for the period of three years. The stand of the Education Officer is only this that since the Petitioner's services were terminated on 18/19 September 2014, she could not work till 20 September 2014. But the fact that the Petitioner actually worked till 20 September 2014 is not disputed.

6. Having completed the period of three years, the Petitioner as a permanent employee would be entitled to be considered as surplus for being absorbed as per rules. We dispose of the petition declaring that the Petitioner had completed three years period as Shikshan Sevak by working till 20th September 2014 and

had become a permanent teacher as on that day and, in view of the fact that there is reduction in workload, she will be entitled to be treated as surplus. We direct the Respondent- Education Officer to take necessary steps in this regard in respect of the Petitioner to place the Petitioner on the waiting list of surplus teachers within a period of six weeks from today. Writ petition is accordingly disposed of.

N.M.JAMDAR, J.

CHIEF JUSTICE