

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13039 OF 2016

Genesh Vyankatesh Shinde,]
R/o. Punaruthan Samrasana Gurukulam,]
Near Gawade Jalatarang Talav,]
Chinchwadgaon, Pune- - 33.] ... Petitioner

Versus

1. The State of Maharashtra,]
School Education Department,]
Mantralaya, Mumbai, through The]
Secretary.]
2. Dy. Director (Education),]
17, Dr. Ababasaheb Ambedkar Road,]
In front of Lal Mandir, Pune – 411]
001.]
3. The Commissioner of Education,]
Bal Bharati Campus, Senapati Bapat]
Marg, Pune – 411 004.]
4. The Administrative Officer,]
Pimpri Chinchwad Mahanagar Palika,]
Pimpri, Pune – 411 018.]
5. Girishji Prabhune]
President & Administrative Officer,]
Krantiveer Chapekar Samiti,]
Krantithirtha, Chapekarwada, Near]
Ram Mandir, Chinchwadgaon, Pune –]
411 033.]
6. The Headmistress,]
Khivsara Patil Vidyamandir, Ganesh]
Nagar, Thalegaon, Pune – 411 033.] ... Respondents

Mr. Bhushan U. Tayade for the Petitioner.

Mr. P.P. Kakade, Government Pleader with Mr. M.M. Pabale, A.G.P. for the State.

Mr. R.S. Apte, Sr. Counsel i/b Mr. D.R. More for Respondent No.4.

Mr. S.A. Sawant for Respondent No.5.

CORAM: PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.

DATED : 22nd AUGUST, 2019.

ORAL JUDGMENT:- [Per: Smt. Bharati Dangre, J.]

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The present Writ Petition, which we are called upon to adjudicate is one of the many, which depicts a muddle up with the Education System, on account of the approach of those who are in the helm of affairs of the Education Department, thereby putting the careers of the teacher as well as the students at stake.

3. Before we proceed to adjudicate, we deem it appropriate to delve into certain necessary facts. The Petitioner – Ganesh Shinde came to be appointed as Shikshan Sevak in a school run by Krantiveer Chapekar Smarak Samiti (hereinafter referred to as “**the Society**”), Chinchwadgaon,

Pune pursuant to a Resolution passed by the Society after being subjected to a selection procedure. He was issued an order of appointment dated 14th January, 2011 and resumed his post with effect from 18th January, 2015 in Khivsara Patil Vidyamandir, Ganesh Nagar, Talegaon, Pune - a primary school run by the Society. The Petitioner belongs to Scheduled Tribe category and, at the time of his appointment, he did not possess the necessary qualification for being appointed as a Primary Teacher and, therefore, his appointment order contained a stipulation that he should acquire the same i.e. Diploma in Education (D.Ed.) within a period of three years. Accordingly, the Petitioner acquired the necessary qualification within the stipulated time and continued to work as Shikshan Sevak for the Academic Years 2011-12, 2012-13 and 2013-14. A Resolution was passed by the Society to absorb the Petitioner as a permanent employee on the post of Primary Teacher subject to the stipulation of the post being vacant and then we have before us the chronology of dates transpiring exchange of communication between the Society and the Education Authorities at the helm of the affairs relating to primary education viz. the Deputy Director of Education, Pune; the Commissioner; Office of the Education, Pune and the Administrative Officer of Pimpri Chinchwad Mahanagar Palika, Pimpri, Pune. At the end, by Order dated 20th January, 2015, Respondent No.4 granted approval to the appointment of the Petitioner with effect from 01st January, 2014 on the post of the Assistant Teacher (no grant basis) in the Pay Scale of 5200-20200 with Grade Pay 2800.

4. The Petitioner approached this court by instituting the present Writ Petition in the year 2016 thereby seeking a relief of continuing him on the permanent post of Assistant Teacher on completion of satisfactory service of three years as Shikshan Sevak and for conferring on him regular pay scale and all benefits applicable to an Assistant Teacher.

5. During the pendency of the Writ Petition, certain subsequent events occurred which have been brought on record by filing additional affidavit by the Petitioner. The management of the Society passed Resolution dated 9th September, 2017 thereby transferring the Petitioner from Khivsara Patil Vidyamandir to Krantiveer Chapekar Vidyamandir in Primary Division in vacant aided post and the necessary proposal for approval came to be forwarded to the State Government which came to be rejected by Order dated 12th March, 2018. By the said communication, the Administrative Officer, Education Board, Pimpri Chinchwad Municipal Corporation was informed that in terms of the Maharashtra Employees of Private Schools (Terms and Conditions of Service) Regulation Act, 1977 (for short, “**MEPS Act**”), the transfer of the Petitioner from an unaided post to the aided post cannot be permitted and reference is made to a Circular dated 28th June, 2016, by which, it is directed that if the surplus teachers are available, such transfers to the grant-in-aid post should not be approved. Resultantly, the permission sought for transfer of the Petitioner has been refused.

6. With the assistance of learned counsel for the Petitioner and the

Respondents, we have perused the Writ Petition as well as the Affidavit on record. Respondent No.5 has placed on record an Affidavit in Reply and it is categorically admitted in the said Affidavit that there was a backlog of one post of Scheduled Caste and one post of Scheduled Tribe in the year 2008 and the Administrative Officer of the Education Board, Pimpri-Chinchwad Municipal Council had communicated to the Society about the said backlog being in existence when the proposal for approval of four teachers appointed between the years 2002 to 2008 was forwarded. The Society was intimated that the approval cannot be granted against the post reserved for Scheduled Caste and Scheduled Tribe unless and until the said backlog is cleared.

The Affidavit admits that the Petitioner came to be appointed as untrained teacher and by an order dated 20th January, 2015, Respondent No.4 has granted approval to the appointment of the Petitioner with effect from 01st January, 2014 as Assistant Teacher in the Pay Scale of 5200-20200 with Grade Pay 2800. The said order of approval is also placed on record.

7. On perusal of the order dated 20th January, 2015, it becomes clear that the approval was granted to the Petitioner on a post which was a non grant-in-aid post. The perusal of the facts disclose that the Society addressed a letter to the Deputy Director of Education, Pune, seeking approval for the Petitioner and for accommodating him on a permanent post which is in receipt of grant. Instead of considering the claim of the Petitioner, the Education Officer (Primary) addressed a letter dated 19th

October, 2016 recommending one Mr. Naresh Mahadeo Kamble in place of the Petitioner as according to him, he was the candidate approved by the State Government. However, the management protested since the Petitioner was already working on the said post and his appointment as Assistant Teacher was already approved by the Education Department and, in particular when the Petitioner belongs to Scheduled Tribe category and there is a backlog of Scheduled Tribe category, Mr. Naresh Mahadeo Kamble was not permitted to join.

8. The stand of Respondent No.5 is very clear that as there is no vacant post for appointment of additional teachers in terms of the policy of the State Government and as such, it is not possible to absorb the surplus teachers. Respondent No.5 also set out that it had passed a Resolution dated 9th September, 2017 transferring the Petitioner from Khivsara Patil Vidyamandir to Krantiveer Chapekar Vidyamandir in Primary Division in vacant aided post. On 20th November, 2017, Respondent No.4 forwarded a proposal based on the recommendation of the management to the Secretary, School Education Department for granting approval to the transfer of the Petitioner on the grant-in-aid post. The said communication addressed to the Secretary, School Education Department on 20th November, 2017 sets out the approved strength of the teachers in the schools run by the Society and the position of backlog at the time of appointment of the Petitioner and the latest position of backlog. The State Government was apprised of the fact that from the year 2013-14 when the Petitioner was granted approval, one

post of graduate teacher was vacant in Krantiveer Chapekar Vidyamandir and one post of non-graduate teacher in Khivsara Patil Vidyamandir has become vacant since the year 2015-16. It is, therefore, recommended that since on the appointment of the Petitioner, the backlog for Scheduled Tribe category stand filled up, the other three appointees – two from the Scheduled Tribe category and one from the open category have received their approval. It is, therefore, recommended that the Petitioner should be considered for appointment as a trained teacher on the grant-in-aid post in view of the existing vacancies. This request is rejected by the State Government by Communication dated 12th March, 2018 to which we have referred to above and which has been placed on record along with Affidavit dated 12th March, 2018 filed by the Deputy Secretary, School Education and Sports Department, Mantralaya. The stand of the State Government is that it had passed a Resolution dated 4th October, 2017 directing that all the surplus teachers should be absorbed and when the Petitioner's proposal was considered in light of the said policy decision, it was found that there were surplus teachers and in terms of the policy of the State Government, the transfer of teachers from unaided school to aided school is prohibited and, therefore, the State Government refused to approve the Petitioner's transfer.

9. The position that emerges from the pleadings placed before us discloses that the Respondent-Society runs two primary schools viz. Krantiveer Chapekar Vidyamandir and Khivsara Patil Vidyamandir, which comprised of some posts which are admissible to grant from State

and remaining which are not admissible for grant. A communication placed on record by the Society disclosed that there are 20 grant-in-aid posts and 4 non grant-in-aid posts. Communication dated 11th January, 2011 from the Society further discloses that as on the said date, there was a backlog of one post of Scheduled Caste and one post of Scheduled Tribe along with two posts of VJNT-A and one post of OBC. The communication also brings forth that in terms of roster, the Petitioner came to be appointed against Scheduled Tribe category on a permanent non-grant basis since no candidate from the said category was available and he was appointed as untrained teacher in absence of he possessing the requisite qualification and posted in Khivsara Patil Primary School. The Petitioner acquired the necessary qualification on 03rd January, 2014 and complied with the condition stipulated in the order of appointment. The State Government itself has granted approval to his appointment by Order dated 20th January, 2015 with effect from 1st January, 2014. The management has taken a categoric and clear stand that the Petitioner was appointed on a post reserved for Scheduled Tribe category and he has completed his three years of service as Shikshan Sevak. It has also come on record that from the year 2000, there was existing backlog of Scheduled Tribe category and that the Petitioner belongs to Scheduled Tribe.

10. We are of the express opinion that there is no illegality in the said Order dated 20th January, 2015 as on satisfactory completion of three years as Shikshan Sevak, the Petitioner is absorbed as an Assistant

Teacher with effect from 01st January, 2014 in the Pay Scale of 5200-20200. However, the management has transferred him from a non grant-in-aid post to the grant-in-aid post and this transfer has not been approved by the Department on the ground that in terms of the policy of the Government, the surplus teachers are to be absorbed. We fail to understand the rational behind the said decision since on one hand the Education Department fails to grant approval to the teachers on the ground that there exist backlog and when a candidate from such category is appointed, the Government is keen and insistent that the surplus teachers should be absorbed. No data has been placed before us to point out that there is already a candidate in respect of Scheduled Tribe, who can fill the existing backlog of Scheduled Tribe category which existed since year 2000. This depicts the sorry state of affairs and a complete non application of mind on behalf of the Education Authorities. The reason cited for not considering the Petitioner on the grant-in-aid post is also not germane since it is the management's specific stand and which is not disputed by the State Government that there was an existing backlog for Scheduled Tribe category and by the Petitioner's appointment, it has been cleared.

11. The objection of the State Government to the transfer of the Petitioner from unaided to the aided post is that it is not legally tenable. In a series of judgments based on a lead judgment of this Court in the case of Ms. Sandhya Laxman Ghosalkar v. The State of Maharashtra & Ors. (Writ Petition No.5258 of 2012 and other

connected writ petitions), a Division Bench of this Court on 12th September, 2012 was pleased to observe thus:

“3. The grievance of the Petitioners is that they have now been granted approval on 29 March 2012 as Shikshan Sevaks with the result that they would be required to put in another three years of service before they are confirmed as Assistant Teachers, leading to a loss of seniority. To the other Assistant Teachers who were appointed with the petitioners and to whom the approval was granted by the same order dated 25 January 2006 on an unaided basis, the Education Officer has granted his approval as Assistant Teachers.

4. In our view, there was no justification whatsoever for the Education Officer (Secondary) to grant his approval only as Shikshan Sevaks to the three Petitioners. If the Petitioners had been appointed as Assistant Teachers in the aided school by transfer from the unaided school on the basis of seniority, the approval ought to have been granted to them as Assistant Teachers. This is especially so having due regard to the fact that they were similarly circumstanced with other Teachers in whose case approval was granted as Assistant Teachers.

5. In the circumstances, we quash and set aside the order of the Second Respondent dated 29 March 2012 and direct the Second Respondent to grant approval to the appointments of the Petitioners as Assistant Teachers with effect from 1 August 2011 (the date as mentioned in the approval order dated 29 March 2011). The Education Officer (Secondary) shall pass consequential orders within a period of two weeks from the date on which an authenticated copy of this order is produced on his record.”

12. This Court has taken a consistent view that where the Petitioners were appointed on no grant-in-aid section and subsequently on being transferred to an aided school run by the same management, they are entitled to be conferred with approval as Assistant Teachers from the date of their initial appointment. In this circumstances, we direct that the Petitioner, who has been granted approval as an Assistant Teacher on completion of three years as Shikshan Sevak is entitled to be absorbed in the grant-in-aid post to clear the backlog of Scheduled Tribe category and we direct the Respondents to grant approval to the appointment of the Petitioner as an Assistant Teacher with effect from 14th January, 2011 by treating the appointment of the Petitioner on grant-in-aid post. The Respondents are directed to pay the regular salary to the Petitioner from 01st January, 2014 on the grant in aid post.

12. With the aforesaid observations, the writ petition is allowed. No order as to costs.

(SMT. BHARATI DANGRE, J.)

(CHIEF JUSTICE)