

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

WRIT PETITION NO.13635 OF 2018

Sadhana Sunil Patil	... Petitioner
Versus	
The State of Maharashtra and others	... Respondents

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Mr. S. A. Sawant i/b Mr. Samir M. Suryawanshi for the Petitioner.
Mrs V. S. Nimbalkar, AGP for Respondent No.1.
Mr. Ajit M. Savagave for Respondent Nos. 3 and 4.

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CORAM : M. S. KARNIK, J.

DATE : 14th MARCH, 2019.

P. C.:

1. Rule. By consent of the parties, Rule is made returnable forthwith and heard finally.

2. By this petition under Article 227 of the Constitution of India, the petitioner who was working as a Voluntary Teacher is challenging the impugned order dated 25th July, 2017 passed by respondent No.3 holding her ineligible to be appointed as Para Teacher.

3. By the impugned order dated 25th July, 2017, respondent No.3 stated that the petitioner is ineligible to be appointed as Para-Teacher for the reason that the petitioner had

resigned/voluntarily abandoned the services with the Vasti-School.

4. I am not referring to all the facts in detail. Suffice it is observe that the issue in respect of the claim of Voluntary Teachers to be appointed as Para-Teachers on closure of the Vasti-School was considered by the Aurangabad Bench of this Court in the case of Shri Mathaji s/o Mukunda Kakade Vs. The State of Maharashtra and others in Writ Petition No. 2254 of 2010 and other connected writ petitions in the context of various Government Resolutions issued by the State Government.

5. In the present case, the learned Counsel for the petitioner contended that the controversy involved in this petition is squarely covered by the decision of Division Bench of this Court noted above, as well as the one rendered by the learned Single Judge of this Court in the case of Mr. Sitaram Lahanya Wangad Vs. The State of Maharashtra and another in Writ Petition No. 7735 of 2018 following the Division Bench. In the submission of the learned Counsel for the petitioner, the petitioner is similarly situate as the Teacher who was petitioner in Writ Petition No. 7735 of 2018.

6. Learned Counsel for respondent Nos. 3 and 4 on the other hand submitted that the petitioner's case is not covered by the decision of Division Bench of this Court. According to him the petitioner had tendered her resignation and thus this is a case of voluntarily abandonment of service. In his submission the Government Resolution relied upon would apply only in respect of a case where the Voluntary Teachers are in employment of the Vasti Schools on the date when the said school is closed. He submits that the Division Bench did not take into consideration the Government Resolution dated 1st March, 2014 . He submits that the petitioner's case has to be considered in the light of Government Resolution dated 1st March, 2014. He invited my attention to the Government Resolution dated 1st March, 2014 to contend that as the petitioner does not fulfill the eligibility as provided in the said Government Resolution, therefore is not entitled for the relief. He would submit that the petitioner also does not even fulfill the requirements of the Government Resolution dated 27th September, 2011.

7. I have heard learned Counsel for the parties. I have gone through the order passed by the Division Bench of this Court in Mathaji's case. The relevant portion, which reads thus;

“7. We find that the stand taken by the respondent/Zilla Parishad, that since the petitioners were not in the employment on 27th March 2008 i.e. the date on which Vasti Schools were converted into Primary Schools, they cannot be absorbed, is not in consonance with the Government Resolution dated 31st July 2009. Perusal of the said Government Resolution would reveal that the said Government Resolution is applicable to all such teachers who were working in Vasti Schools and who have been rendered jobless on account of closure of Vasti Schools. It is not in dispute, that the petitioners were, in fact, working in the Vasti Schools prior to their closure. In that view of the matter, we are unable to accept the contention raised by the respondent /Zilla Parishad, in this behalf.

8. In the result, the petitions are allowed.

It is held that the petitioners are entitled to the benefit of Government Resolution dated 31st July 2009, and the respondents / Zilla Parishads shall appoint the petitioners as Para-Teachers, in accordance with the guidelines laid down in the said Government Resolution.”

8. It would also be relevant to refer the decision of the learned Single Judge of this Court in Writ Petition No. 7735 of 2018. In paragraph 7, this Court considered the objection of the Zilla Parishad that Voluntary Teachers who have resigned or abandoned their services are not eligible for the benefit of the Government Resolution Dated 31st July 2009 and 27th September 2011. Learned Single Judge also took into consideration this plea of the respondents which was specifically raised in the affidavit filed by the respondents.

9. Thus, the learned Single Judge of this Court after dealing with the very same objections raised by respondent Nos.3 and 4 now canvassed before me turned down the contentions so raised. This Court has also taken into consideration the stand of the respondent Nos. 3 and 4 about the applicability of the Government Resolution dated 1st March, 2014. Further more, in paragraph 11 the learned Single Judge observed thus;

“11. The benefits were given to the Para-Teachers, irrespective of the fact that they were not in employment of Vasti School on 27th March 2008 i.e. the date on which Vasti Schools were converted into the Primary Schools.”

10. On reading of the impugned order, which is annexed at page 99, and the reasons recorded therein would indicate that the petitioner is held ineligible on account of the petitioner having resigned/voluntarily left the school. I am in agreement with the submissions of the learned Counsel for the petitioner that the case of the petitioner is similar to the one in Writ Petition No.7735 of 2018. In view of the order passed by the learned Single Judge of this Court in Writ Petition No. 7735 of 2018, I find the submissions of learned Counsel for respondent Nos. 3 and 4 as untenable.

11. In this view of the matter, the writ petition deserves to be allowed and is accordingly allowed. The impugned orders dated 25th July, 2017 at page 99 and dated 28th September, 2017 at page 100 are quashed and set aside. The petitioner be appointed as a Para-Teacher at the earliest.

12. Rule is made absolute with no order as to costs.

(M. S. KARNIK, J.)