

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 644 OF 2019

Deepmala H. Patil	.. Petitioner
Vs.	
State of Maharashtra and ors.	.. Respondents

Mr.Mihir Joshi, for the Petitioner.
Mr.Kedar Dighe, AGP for State – Respondents No.1 to 4.
Mr.Shantaram D.Londhe – Law Officer, Deputy Director of Education.
Mr.R.S.Naikwadi, Deputy Education Inspector, West Zone.

CORAM : M.S.KARNIK, J.

DATE : 11th MARCH, 2019

P.C. :

. Rule. Rule is made returnable forthwith and heard finally by consent of the parties.

2. By this Petition filed under Articles 226 & 227 of the Constitution of India, the petitioner is challenging the order dated 22/11/2018 passed by the respondent No.2 – Deputy Director of Education, Mumbai cancelling the petitioner's

approval of appointment dated 31/12/2013 to the post of an Assistant Teacher.

The brief facts are as under.

3. The petitioner applied for the post of Shikshan Sevak pursuant to an advertisement on 27/09/2010. The petitioner was appointed as Shikshan Sevak/Assistant Teacher (probationary) on 22/11/2010 for the period from 22/11/2010 to 21/11/2013 with Seth D.J. High School. Respondent No.3 granted approval to the petitioner's appointment on the post of Assistant Teacher (probationary) / Shikshan Sevak for the period from 22/11/2010 to 21/11/2013 for a period of 3 years. The petitioner was rendered surplus in view of reduction of students strength at the Seth D.J. High School on 30/06/2013.

4. The petitioner was appointed to the post of an Assistant Teacher (probationary) at respondent No. 6 -School on 16/09/2013 and thus, the petitioner came to be absorbed in

the said School. Respondent No.3 also granted approval vide approval order dated 31/12/2013 to the appointment of the petitioner for remainder of the unserved period between 22/11/2010 and 21/11/2013. She completed the probation period on 06/03/2014. Respondent No.3 granted approval to the petitioner's appointment as an Assistant Teacher vide approval order dated 02/05/2014.

5. The dispute arose when the approval order dated 31/12/2013 to the petitioner's appointment as an Assistant Teacher came to be cancelled by respondent No.3 on 30/06/2017. The petitioner filed Writ Petition challenging this cancellation of the approved order in this Court by way of Writ Petition No. 2790 of 2017. As the respondent No.3 has no power to review his own order, order dated 30/06/2017 was withdrawn on 03/11/2017.

6. Thereafter, respondent No.2 issued show cause notice dated 10/11/2017 to the petitioner as to why her

approval dated 21/12/2013 should not be cancelled. The petitioner filed her reply to the said show cause notice on 15/11/2017. It was specifically pointed out whether she was appointed with Seth D.J. High School, Malad pursuant to an advertisement. Even her original appointment was approved by respondent No.3 by an approval order dated 15/01/2011 for a period of 3 years. In view of reduction in student's strength, the petitioner was declared surplus and thereafter, was absorbed as an Assistant Teacher with effect from 16/09/2013 with the respondent No. 6- School. Therefore, though there was approval order of the respondent No. 3 dated 15/01/2011 to the initial appointment of the petitioner, for the remainder period of 6 months with respondent No. 6 -School, even this was approved by the respondent No.3.

7. Respondent No.2 by the impugned order dated 22/11/2018 cancelled the approval dated 31/12/2013 principally on the ground that the procedure as contemplated by sub-clause 8 of Rule 9 of the Maharashtra Employees of Private

Schools (Conditions of Service) Rules, 1981 (for short 'MEPS' rules) was not followed. According to the respondent No.2, the appointment of the petitioner with effect from 16/09/2013 was without issuing any advertisement and therefore, on all these grounds ,the approval dated 31/12/2013 came to be cancelled.

8. Heard learned Counsel for the parties. Shri Dighe, learned AGP vehemently opposed this Petition. It is not in dispute that the petitioner was appointed as an Assistant Teacher with effect from 22/11/2010. It is the specific contention of the petitioner that this appointment was pursuant to an advertisement. In fact, by approval order dated 15/01/2011, respondent No.3 granted approval to the appointment of the petitioner as an Assistant Teacher (probationary)/ Shikshan sevak for a period of 3 years i.e. 22/11/2010 to 21/11/2013. It is only on the ground of reduction in student's strength that the petitioner was declared surplus and therefore she came to be appointed as an Assistant Teacher (probationary) at the respondent No. 6 - School, with

effect from 16/09/2013. The appointment of the petitioner for the remainder period of 6 months was granted approval by order dated 31/12/2013.

9. Once the initial appointment of the petitioner was pursuant to the advertisement and as the petitioner is declared surplus on reduction of student strength, pursuant to which she is absorbed with respondent No.6 -School, the impugned order proceeding on the footing that the appointment of the petitioner from 16/09/2013 is a fresh appointment cannot be sustained.

10. In reply to the show cause notice issued to the petitioner, it is the specific case of the petitioner that her initial appointment as an Assistant Teacher with effect from 22/11/2010 was pursuant to the advertisement dated 27/09/2010. In fact, respondent No.3 has already granted an approval on 15/01/2011 to the said appointment for a period of 3 years. The approval order dated 15/01/2011 therefore stands as no show cause notice whatsoever has been issued for

cancelling the approval order dated 15/01/2011 initially granted. It is just that as the petitioner was declared as surplus in view of the reduction of student strength that she came to be absorbed with respondent No. 6- School with effect from 30/06/2013. In this view of the matter, respondent No.2 was not justified in regarding this absorption of the petitioner as a fresh appointment. The impugned order cancelling the approval is only on the ground that while granting approval to the appointment of the petitioner with respondent No. 6 -School in the remainder of the unserved period vide order dated 31/02/2013, the procedure laid down by sub-clause 8 of rule 9 of the Rules was not followed. As the initial appointment of the petitioner was already approved, which appointment was pursuant to an advertisement, the impugned order passed by respondent No.2 cannot be sustained.

11. In this view of the matter, the impugned order passed by the respondent No.2 is quashed and set aside.

12. Rule is made absolute in terms of prayer clause

(a) with no order as to costs.

(M.S.KARNIK, J.)