

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1358 OF 2014

Siddhi Santosh Chaulkar .. Petitioner
Versus
Aryan Education Society & Ors. .. Respondents

Mr. Mihir Desai, Senior Advocate with Mr. Sarnath Sariputta for petitioner

Mr. M.S.Bhandari I/b. Mangesh Madhav Deshmukh for respondent No.1

Ms. Uma Palsule Desai, AGP for State – respondent Nos. 3 and 4.

CORAM : B.R.GAVAI &
DAMA SESHADRI NAIDU, JJ.

DATE : 13th March 2019.

P.C.

Rule. Rule made returnable forthwith. Heard by consent.

2] The petitioner has approached this Court praying for a writ directing respondents to grant approval and confirmation to the petitioner's services from her absorption to the aided post of Junior Clerk from 1st July 2006 and pay salary as full time Junior Clerk with arrears and interest from 1st July 2006.

3] The facts in this case are not in dispute. The petitioner

initially was appointed by the respondent No.1 management as Junior Clerk in Teachers' Education College on 22nd October 1996. The said appointment was on unaided section. Subsequently, on retirement of one Sahadev Mate on 30th June 2006, the petitioner came to be appointed on 1st July 2006 on the said post which fell vacant and which was in aided section. The proposal for grant of approval was submitted by the management to the respondent No.2. However, initially the proposal came to be rejected on the ground that the petitioner's appointment on aided section was done without following the procedure of advertisement etc and as such the approval cannot be granted. The respondent No.1 again issued advertisement and in response thereto the petitioner applied and was selected after following due selection process. Thereafter, again the proposal was sent by the respondent No.1 to respondent No.3. The proposal was for grant of approval and came to be rejected on the ground that backlog of reservation was not fulfilled by respondent No.1 and as such the petitioner who came to be appointed against open category post could not be granted approval. There has been series of correspondence between respondent No.1 and respondent No.3, whereby the respondent

No.1 had explained the position that since number of non teaching posts was 9 and since already four posts were filled in from reserved category, the fifth post cannot be granted to the reserved category candidate. It was also submitted that merely because there was a backlog of reserved category candidates, the approval cannot be rejected to a candidate who was appointed against an open category post.

4] In this background the petitioner has approached this Court seeking writ of mandamus directing the respondents to grant approval to the appointment of petitioner from 1st July 2006.

5] The petition is vehemently opposed by learned A.G.P. Mrs. Palsule-desai learned A.G.P. submitted that the petitioner's appointment is not after following due selection process. She further submitted that the proposal for approval of petitioner has been rightly rejected since there is a backlog in the reserved category.

6] From the factual position as it emerges, it is clear that

the petitioner was appointed by respondent No.1 on a post which was unaided and in view of retirement of one employee the post became available in aided section from 1st July 2006 and respondent No.1 initially appointed petitioner on the said post. On the objection being taken by respondent No.3, the selection process was followed and again after following due selection process, the petitioner came to be selected and appointed on 20th May 2018.

7] We find that the stand taken by the respondents would not be sustainable. The Division Bench of this Court consisting of {Dr. D.Y.Chandrachud, (as His Lordship then was) and Justice A.A.Sayed}, passed an order in a group of Petitions being W.P.No. 5258 of 2012 with 5260 of 2012 with 5261 of 2012 concerning a similar issue, on 12th September 2012 . It is relevant to refer to para 4 of the said judgement and order. It would thus be seen that the Division Bench has clearly held that the petitioner if initially appointed in unaided school and has been transferred to aided school, then, the approval to his appointment in the aided school cannot be rejected.

8] It would further be relevant to refer to the judgement of learned Single Judge of this Court in the case of The President, Sudhagad Education Society Vs. Dy. Director of Education, Writ Petition No.4635 of 2009 and Writ Petition No.4637 of 2009 dated July 16, 2009. It would be relevant to refer to para 10 of the said judgement.

9] It could thus be seen that this Court has taken a consistent view that merely because the backlog is not filled in cannot be a ground for rejecting the proposal for appointment of a candidate selected from open category.

10] In the present case, the petitioner stands on a better pedestal. The Government Resolution dated 29th March 1997 has provided for a maximum number of seats to be reserved as against sanctioned posts. It would reveal that if the sanctioned posts are (9) then, the reserved category posts can only be (4) and five seats are to be kept for open category candidates. Admittedly, the respondent No.1 has already filled in four posts in a non-teaching cadre and the appointment of petitioner would be in the five posts available from

open category.

11] In that view of the matter, refusal to grant approval as a junior clerk with effect from July 2006 is not justifiable. It is not even the case of respondent No.3 that they are required to give salary to any other person who was working on the fifth post available with the respondent No.1 and that too from reserved category. In the result, the petition deserves to be allowed.

12] Respondent No.3 is directed to grant approval and confirmation to the appointment of petitioner's services as junior clerk from 1st July 2006 against an aided post of junior clerk on the establishment of respondent Nos. 1 and 2.. The regular salary be made applicable to the petitioner from the month of April 2019. Arrears on the basis of this order shall be paid to the petitioner within a period of three months from today. In the facts and circumstances, we are not inclined to award interest as well as costs.

(DAMA SESHADRI NAIDU, J)

(B.R.GAVAI, J)