

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2460 OF 2013

Razia Azad Attar Petitioner
Vs.
C.T.I. Primary School & Others Respondents

Mr. Sariputta Pramod Sarnath for the Petitioner.
Mr. Nitesh V. Bhutekar for Respondent No.1.
Mr. M.A. Sayyed, AGP, for Respondent No.4.

CORAM: S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.

DATE : FEBRUARY 22, 2019

P.C:

1. By this writ petition under Article 226 of the Constitution of India, the petitioner claims a deemed date, in the sense she says that the order of the 3rd respondent, copy of which is at Exhibit-P, should be quashed and set aside partly and it be declared that the petitioner is deemed to be confirmed as Full Time Assistant Teacher from the year 2000 instead of 2012.

2. The petitioner says that the 3rd respondent is in-charge of the primary education in the City of Mumbai and its suburbs. The 1st respondent is a primary school and the 4th respondent to this petition is the State of Maharashtra. The Municipal Corporation of Greater Mumbai acts through its Education Department and respondent Nos.2 & 3 are its officers. The petitioner was appointed as a Part Time Teacher in the 1st respondent/primary school to teach Craft, Drawing and Physical Training. The interview is stated to have been held on 20/21-7-1988. The appointment, according to the petitioner, takes effect from 1-8-1988.

3. Though the appointment order mentions that she is on probation, the petitioner was never given the benefit of permanency and continuously treated as a part time employee. The petitioner's appointment was approved on 28-3-1990 by the Superintendent of Aided Schools.

4. Then it is stated that some guidance was sought by the Management with regard to the salary to be paid to the

petitioner and acting on that advice/guidance in-writing, which came in the form of a letter dated 20-12-1989, a paltry amount was paid to the petitioner ever since 1993 till the date of filing of this petition, which is 13-8-2013.

5. It is stated then that the petitioner is entitled to a salary of Rs.12,000/- per month if not Rs.24,000/-, which is admissible to a Full Time Assistant Teacher. Though there was enough workload, the Management did not confirm the petitioner in the services and it was only during the course of an inspection that the Education Officer discovered that the petitioner can be confirmed and her services can be approved. Then from para 7 onwards the petitioner narrates as to how the advertisements were issued to fill-up a vacant post but despite the recommendation of the Selection Committee, no appointment order was issued in favour of the petitioner. Once again an advertisement was issued in the month of July, 2000 in which the petitioner found that there is another candidate who was stated to be selected. The petitioner found that she has been unfairly treated and because the Bombay Municipal Corporation

is excluded from the purview of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, she approached the Civil Court by filing Civil Suit No.4452 of 2000. On 14-8-2000, an interim order staying approval to the appointment of one Miss Manisha Satpute was passed. It appears that Miss Satpute left the job as her services could not be approved. This did not, however, redress the injustice to the petitioner and she continued to be treated as a temporary appointee. The petitioner found that respondent No.3 passed an order and which did not redress her grievance. Then, the petitioner filed an Appeal against that order and by a further order of this Court, eventually, that Appeal came to be taken up. There was a representation as well pending but that was also not attended to. It is in these circumstances, the petitioner challenges the order dated 16-4-2013. It is clear from a perusal of this order that the petitioner was held to be a part time employee/Special Teacher and has worked in such capacity from 1-8-1988 till 10-12-2009. The petitioner can only be confirmed and her appointment can be approved as a Full Time Teacher

with effect from 11-12-2009. That order of the Education Inspector/Officer was confirmed by the 3rd respondent.

6. The direction is that the petitioner shall be granted regular pay-scale after satisfactory completion of her probationary period. In the circumstances, that scale is released with effect from 11-12-2012.

7. The argument of the petitioner's Advocate is that this does not redress the injustice caused to her fully, but partially. The petitioner should be granted regular pay-scale from the time she was called upon to discharge full time work. That she has been discharging and throughout and in such circumstance the argument is that the said order should be set aside, in part.

8. The respondents, on the other hand, have invited our attention to their affidavit and it is stated that though the petitioner was appointed as temporary Part Time Teacher, as mentioned in the appointment letter dated 28-7-1988 and another letter of 28-3-1990, the Management says that it sought the guidance of the Superintendent of Schools of the Bombay

Municipal Corporation who gave advice and guidance based on which the salary was paid. The petitioner was not selected after the interviews for the post of Full Time Teacher were held and it is the other lady Miss Manisha Satpute who qualified and was thus selected. The Management says that it has never caused any prejudice to the petitioner.

9. The statutory authorities in supporting their stand and the impugned order, filed an affidavit. It is stated that the petitioner filed this petition seeking a direction that she should be held to be confirmed as a Full Time Assistant Teacher from the year 2000 instead of 2012. It is claimed that the grievance of the petitioner has been redressed and there is a reasoned order passed. That reasoned order also requires compliance with certain conditions. Yet, this petition is filed. Apart therefrom, the petitioner was working as a Part Time Special Teacher since 1988. The 1st respondent is an English medium primary aided school. The petitioner accepted the terms and conditions of the appointment and it is categorically mentioned therein that she is appointed in the pay-scale of Rs.600/- p.m. with no other

allowances as per the B.M.C. Rules. The appointment was subject to termination at any time and by either side. The service condition that would be governing the appointment are thus mentioned in Appendix-VII of the Grant-in-Aid Code. It is, therefore, clear that as a teacher was to retire in June, 2000, on 24-4-2000 an advertisement was published. Prior to that advertisement inviting application and pursuant to that advertisement even the petitioner was called for interview, as she applied. The petitioner attended the interview along with other candidates on 22-6-2000 but she could not be selected. She made an application on 5-7-2000 levelling serious allegations but finding that the petitioner did not qualify and the Management had selected another candidate, the petitioner filed a Civil Suit. She claimed in this Civil Suit that one Gracy Thomas retired and the post of Full-Time Teacher was thus vacant after 22-7-2000 and the petitioner should have been appointed therein. However, once the other teacher was selected and she was appointed, all that the Civil Court directed was to grant a relief in favour of the petitioner by which the authorities were

directed not to take any decision with regard to the services of Smt. Manisha Satpute. Subsequently, the Suit was taken up but during its pendency, it was found that Manisha Satpute resigned from service with effect from 31-5-2004 as her services could not be approved. The Management was paying salary to Satpute. After her resignation, two other teachers were appointed and their salaries were also borne by the Management.

10. The Civil Suit filed by the petitioner came to be finally decided on 23-11-2009 under which the Education Officer was directed to pass an order on the petitioner's representation and in accordance with law. That order was passed by the Education Officer and which, in fact, has been confirmed by the impugned order. There is a justification given that the petitioner could never have been held to be a confirmed teacher for she was not appointed on a full time post or a post with full time workload. Her appointment was always as a part time or temporary teacher. In the circumstances, the Municipal Corporation says it will not be in a position to bear the expenses of the salary to be paid to a teacher like the petitioner who is not

a permanent Full Time Teacher.

11. In the circumstances of this case and when there is no contra material placed on record, we are of the opinion that the view taken by respondent Nos.2 & 3 cannot be said to be perverse. The Management also has not forwarded any proposal seeking approval to the appointment and advisedly. The petitioner was not appointed in terms of the Rules and Regulations. There may a confusion and prevailing amongst the officers of the Mumbai Municipal Corporation and particularly its Education Department, when it refers to the petitioner as Shikshan Sevak. That concept is found exhaustively in the MEPS Act and the Rules framed thereunder. If that is not applicable, then, there was no reason for these authorities to refer the petitioner as Shikshan Sevak. Be that as it may, the petitioner was appointed as a temporary teacher and on probation and after she completed the probationary period, she was confirmed in the services. It is from that date the authorities have taken a decision to grant her the salary and as per the regular pay-scale. The authorities have also taken a decision to release the salary

grant so that the amounts are paid to be petitioner.

12. To our mind, therefore, the grievance of the petitioner has been redressed by the authorities in accordance with law. We do not think that any other relief can be granted. In our view, though the petitioner claims interim relief by this petition and the same having been granted, what we notice is that from the date of her appointment as a Full Time Teacher she has been paid a regular salary. It is only the past entitlement which was the issue in this petition and based on her request to give her deemed date. Therefore, the relief in terms of prayer clause (e) was really unnecessary. The petitioner having been found to be rightly classified and categorised as Full Time Teacher and with effect from the date mentioned in the impugned order, we do not think that the petition deserves to be allowed. In fact, the relief to set aside the impugned order in part is thoroughly misconceived and in the facts peculiar to the case of the petitioner that relief cannot be granted. The writ petition is, therefore, dismissed with no order as to costs.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)