

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 540 OF 2015

Mrs.Swati Satish Nazare
Hindu Adult, Indian Inhabitant
Aged : 47 years, Occ: Service
R/o 1/104 Kamal Sagar Society,
90 Feet Road, Bhandup East, Mumbai .. Petitioner

Vs.

1. The State of Maharashtra
Through the Secretary, School Education
Department, Mantralaya,
Mumbai 400 032.

2. The Education Officer (Primary)
Brihanmumbai Municipal Corporation,
Education Department, Hindu Colony,
Dadar, Mumbai – 400 014.

3. Shardashram Vidya Mandir,
Dr.Bhawani Shankar Dadarkar Marg,
Dadar, Mumbai 400 028.
Through its Chairman/Secretary

4. Shardashram Vidya Mandir
(Marathi) Primary School,
Dr. Bhawani Shankar Dadarkar Marg,
Dadar, Mumbai 400 028.
Through its Head Master

5. The Administrative Officer,
Education Department,
Brihanmumbai Municipal Corporation

(Schools), G/North Ward, Dadar,
Behind Plaza Cinema, Mumbai – 400 028. .. Respondents

Mr.N.V.Bandiwadekar I/b Mr.Sagar A. Mane, for the Petitioner.
Ms.Jyoti Chavan, AGP for Respondent No.1 – State.
Ms. Trupti Puranik, for Respondents No.2 and 5 – BMC.
Mr.A.G.Kothari, for Respondents No. 3 and 4.

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

**RESERVED ON : 24th JANUARY, 2019
PRONOUNCED ON : 13th FEBRUARY, 2019**

JUDGMENT (PER M.S.KARNIK, J) :

. Heard

2. Rule. The respondents waive service. By consent,
Rule made returnable forthwith.

3. By invoking the jurisdiction of this Court under
Article 226 of the Constitution of India, the petitioner prays for a
direction to respondent No.2 to grant approval to her
appointment as a Special Teacher/Drawing Teacher in
respondent No.4- School with effect from 16/07/1995 and to
release the grant-in-aid for payment of salary to the petitioner
from 10th June onwards i.e. from the stage the respondent No.4

– School started receiving grant-in-aid.

The brief facts of the case are as under:-

4. The Educational qualifications of the petitioner are B.Com (1991), Art Teachers Diploma ('ATD' for short) which she passed in 1993 and Art Master (AM) which she passed in 2012.

5. Pursuant to the advertisement dated 01/06/1995 issued by respondent No.3 inviting applications for the post of Art Teacher in respondent No. 4- School, the petitioner made an application as she fulfilled the eligibility criteria for appointment to the said post. The petitioner along with other candidates were called for interview. The petitioner was selected and was appointed as an Assistant Teacher with effect from 16/06/1995. The Managing Committee of respondent No.3 passed a Resolution and decided to pay salary to the petitioner in the pay-scale vide Resolution dated 30/11/1996 as prescribed by Mumbai Municipal Corporation Education Department.

6. By letter dated 17/03/1998, the Head Mistress of the respondent No.4 - School submitted a proposal to the respondent No.2 - Education Officer (Primary), Municipal Corporation Education Department seeking approval to the appointment of the petitioner in the post of Drawing Teacher. At the relevant time, the School was on no grant basis. Grant-in-aid was sanctioned to the School from the academic year 2010-11. From 01/04/2014 onwards School started receiving 100% grant-in-aid. In the list of employees eligible to be brought on grant-in-aid in respondent No.4 – School, the name of the petitioner was not included. The reason being she was a Special Teacher and as per policy of the Government, Special teacher i.e. Art or Drawing Teacher should not be appointed after 1993. In reply to this, respondent No.3 on 18/08/2011 pointed out that the petitioner was appointed on 01/08/1996 on permanent basis. She has completed 15 years of service and at the relevant time was 47 years of age and therefore it is difficult to obtain employment elsewhere. Her work in drawing subject is very good. A request was made to condone the deficiency and

for sanction of grant-in-aid to her post.

7. Learned Counsel for the petitioner invited our attention to the communication dated 12/08/2009 addressed by respondent No.2 to respondent No.4 - School. Paragraph 2 of the said communication reads thus :

“The appointment of Smt.Swati Nazare (Special Drawing Teacher) is of 1/8/96 and therefore it is seen that the appointment is not made as per rules.”

8. Learned Counsel submits, the reason why it is held that the petitioner is not eligible is the circular dated 04/09/1996 issued by the Education Department of Mumbai Municipal Corporation. The said circular dated 04/09/1996 mentions that the School Managements of the recognised private primary schools in Greater Mumbai are not allowed Special Teachers with effect from June 1993 as a policy which in accordance with the State Government's new educational policy. It is further mentioned that the School Management should not appoint Special Teachers either on full time or part time basis in

their Schools. At this juncture, it would be material to mention that learned Counsel for the Corporation vehemently submitted that in view of this circular dated 04/09/1996, the question of approval of appointment to the Special Teachers cannot be allowed with effect from June 1993, as the said circular is in accordance with the State Government's new education policy. According to the learned Counsel for the Corporation, the appointment of the petitioner is admittedly after June 1993 and therefore Corporation is not obliged to grant approval to the petitioner's appointment for the purpose of grant-in-aid and hence, the proposal has been rightly rejected on the ground that the appointment of the petitioner is not made as per Rules.

9. Respondent No.3 by this communication dated 18/08/2011 also informed the respondent No.2 that the G.R. on which rejection of approval is founded is dated 04/09/1996. That is received only after 04/09/1996 whereas the petitioner is appointed permanently on 01/08/1996 i.e. before the communication of the G.R.

10. It is thus the submission of the learned Counsel for the petitioner that as G.R. dated 04/09/1996 is admittedly issued after the appointment of the petitioner, and as petitioner is duly qualified, the same cannot form the basis for rejection of the approval as the petitioner who was already appointed prior to the issuance of the G.R. The policy of the State Government not to appoint Special Teachers from June 1993 onwards is communicated to the respondent No.3 for the first time only after 04/09/1996. He therefore submits that the circular dated 04/09/1996 cannot be the basis for rejecting the approval of the petitioner.

11. The next submission of learned Counsel is that the petitioner apart from holding qualification as B.Com, has also acquired the qualification of Art Teacher Diploma (ATD) in 1993.

12. Learned Counsel relies on the decisions of this Court referred in para 16 below, in which, after considering the

relevant provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, clearly hold that the candidate who possesses Art Teacher Diploma was qualified to teach drawing subject in primary school. It is held that such a candidate fulfills the definition of Drawing Teacher within the meaning of Rule 2(k) read with clause 1.2 Schedule B of the Rules.

13. Learned Counsel thus submits that the petitioner is duly qualified as B.Com ATD. Thus, the petitioner is qualified to teach drawing subject in the primary School and fulfills the definition of a Trained Teacher within the meaning of the rules. Learned Counsel submits that the petitioner has tendered her resignation in 2015 after serving for almost 20 years. He prays that her appointment be approved and she be held eligible for grant of pension.

14. Learned Counsel for the respondent – Corporation, as we have noted earlier, vehemently opposed the Petition. She

invited our attention to the circular dated 04/09/1996. She submits that in respect of a Special Teacher appointed after June 1993, the policy of the State Government is very clear. There are clear directions not to appoint Special Teacher from June 1993. The action of respondent cannot be called in question in the light of the circular. She places reliance on affidavit-in- rely filed by Shri Prakash P. Charhate, Deputy Education Officer of the respondent No.2. From the affidavit, it is pointed out that pursuant to the objection raised by the respondent No.2, the respondent No.3 School had deleted the name of petitioner from the list of their teachers who are entitled to get grant-in-aid. In these circumstances, grant was admissible to those teachers whose name was found in the list as submitted by the respondent No.3 - School. Learned Counsel for respondent No.2 submitted that the respondent No.3 has already paid the salary to the petitioner and this liability cannot be foisted on the respondent No.2.

15. We have heard learned Counsel for the parties and

considered the rival contentions. The issue as regards the eligibility for appointment as a Drawing Teacher in primary School is no more resintegra.

16. We find this issue is squarely covered by the decision of this Court in the following cases.

i) Ibrahim Ismail Tadkal Vs. Education Officer (Primary), Zilla Parishad, Solapur and others 2011(4) Mh.L.J. 649;

ii) Sanjay s/o Rakhamaji Jadhav and ors. Vs. The State of Maharashtra in Writ Petition No. 1042 of 2002, decision dated 28/09/2006 of Aurangabad Bench of this Court;

iii) Ankush S/o Pandurang Ambore & ors., Vs. The State of Maharashtra and ors. Decision dated 29/09/2006 of Aurangabad Bench of this Court;

iv) Ramesh Chandrakant Ware Vs. Head Master, Shri Sharada Vidyalaya and ors decision dated 17/03/2004 in Writ Petition No. 2865 of 1999;

v) Arun s/o Ratiram Patil Vs. State of Maharashtra decision dated 21/12/2018 in Writ Petition No. 10005 of 2013.

17. The petitioner is qualified as B.Com, ATD. This Court upon considering the relevant provisions of the said Act and Rules has already held that candidate possessing ATD is qualified to teach drawing subject in primary school and fulfilling the definition of Drawing Teacher within the meaning of Rule 2(k) read with clause 1.2 Schedule B of the Rules. For convenience, a profitable reference could be made to the following observations of this Court in the case of **Ibrahim Ismail Tadkal** (*surpa*) paragraph 2, 3 4

"2. It is common ground that at the relevant time when the petitioner was appointed in the respondent No.5 School on 8th June, 1994, he possessed Art Teachers Diploma, which qualified him to teach subject Drawing in a Primary School. Whether the petitioner can be, therefore, considered as trained or untrained teacher, will have to be examined in the context of the provisions in the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. Rule 2(k) defines the term "trained teacher". It reads thus:

"2. Definitions - (1) In these rules, unless the context otherwise requires,

(a) to (j)

(k) "trained teacher" means a teacher who has secured a professional certificate, a diploma or a degree recognised by the Department which qualifies him for a teaching post in a school."

The expression "teaching post in a school" has not been defined. Going by the plain meaning of the above provision, it would mean that a teacher who possesses requisite qualification, may qualify himself/herself for the post of

teacher in a school. Be it for a general subject or a special subject (to wit, arts, drawing, etc.). Further, it is beyond the pale of doubt that drawing is one of the compulsory subject in primary school. A teacher who possesses specified qualification will be competent to impart knowledge in the given subject. Suffice it to observe that the definition of "trained teacher" is wide enough to encompass such teachers who possess the specified qualification.

3. The qualification of primary teachers is specified in Schedule 'B' to the Rules. Insofar as Drawing teacher is concerned, clause 1.2 provides as under:

"I. Qualification for Primary Teachers :

2. Appointment to the post of Special Teacher (Drawing Teacher) in Primary Schools shall be made by nomination from amongst candidates who have passed S.S.C. Examination and possess Art Teachers Diploma or Drawing Teachers Certificate or Drawing Masters Certificate."

4. Considering the fact that the petitioner possessed Art Teachers Diploma, before he was appointed in a permanent post of the Drawing Teacher of respondent No.4 School on 8th June, 1994 after following necessary procedure, by no stretch of imagination, it can be said that the petitioner was an untrained teacher. As that is the sole reason stated in the decision of the Education Officer dated 23rd November, 1994 qua the proposal of the petitioner, the same cannot stand the test of judicial scrutiny. Accordingly, the same is set-aside.

18. Thus, we have no hesitation in holding that the petitioner was qualified to teach drawing subject in the primary School and fulfilled the definition of the Drawing Teacher.

19. Let us now deal with the objection of the learned

Counsel for the Corporation that as the appointment of the petitioner was after June 1993, her appointment being not in conformity with the G.R. dated 04/09/1996, approval is rightly rejected. A plain reading of G.R. dated 04/09/1996 would reveal that Special Teachers are not allowed with effect from June 1993 as of policy in accordance with the State Government's new education policy. The School Management was therefore informed not to appoint a Special teacher either a full time or part time basis in their Schools. The G.R is dated 04/09/1996. Admittedly, the information is passed on to the Schools regarding the policy only after 04/09/1996. It is not even the case of respondent - Corporation that the Schools were aware about the applicability of the State Government policy. It is only after 04/09/1996 that Schools were informed about the State Government's new educational policy not to appoint Special Teacher from June 1993. The respondent No.2 is not justified in giving retrospective effect to the G.R.dated 04/09/1996.

20. We find that after following the prescribed procedure and upon issuance of advertisement, the petitioner was duly selected as a Drawing Teacher. The petitioner was appointed as a Drawing Teacher on permanent basis prior to the issuance of circular dated 04/09/1996. The regular salary as per pay-scale prescribed under the Rules for Drawing Teacher was paid to the petitioner by respondent No.3- School. Respondent No.3- School started receiving grant-in-aid from 2010 and was in receipt of 100% grant-in-aid from the academic year 2014.

21. It is informed that during the pendency of this Petition, the petitioner has tendered her resignation after 20 years of service. Learned Counsel for the petitioner requested that having worked as a Drawing Teacher for 20 years, her resignation be treated as voluntary retirement in case this Petition is allowed.

22. The respondent No.2 has taken a stand that the

name of petitioner was not included in the list of teachers entitled for grant-in-aid. We also find that the School started receiving grant-in-aid from 2010 onwards. By then the respondent No.2 had already taken a stand that appointment of the petitioner is not in accordance with the Rules. Therefore, there was no question of respondent No.3 including the petitioner's name in the list of teachers who are entitled to receive grant-in-aid. Respondent No.3 nonetheless time and again requested the respondent No.2 to grant approval as the petitioner is duly qualified and her performance as a drawing teacher has been excellent. There thus was no question of non-inclusion of petitioner's name in the list of eligible teachers. This stand is without any basis and is accordingly rejected.

23. In our opinion, therefore, the petitioner was duly qualified to be appointed as a Drawing Teacher. The respondent No.2 -Corporation is not justified in taking a stand that the petitioner's appointment is not in accordance with the Rules as she is appointed after June 1993. The present Petition therefore

deserves to succeed. The petitioner was working continuously with the Respondent No.3- School since the date of her appointment. The respondent No.3 has already paid the salary as per the pay-scale to the petitioner. The petitioner has tendered resignation with effect from 2015, which shall be treated as a voluntary retirement. This is an exception carved out only in the facts peculiar to the petitioner. The order shall not be treated as a precedent in future cases of present nature. There is no reason to wipe out the services, which are otherwise meritorious and continuous by upholding a legally untenable stand of the respondents.

24. In our opinion, therefore, this is a fit case to direct the respondent No.2 to grant approval to the appointment of the petitioner as a Drawing Teacher. The salary as per the pay-scale has already been paid to the petitioner by the respondent No.3 - School. We are not inclined to direct the respondent No.2 to reimburse to the respondent No.3 salary already paid to the petitioner in a Petition filed by the teacher.

25. The respondent No.2 is directed to grant approval to the appointment of the petitioner. We hold that the petitioner has retired voluntarily from the services of the School after rendering the qualifying service and is entitled to receive the pensionary benefits and other retirement dues for the service rendered by her with the respondent No.3 – School. The pension entitlement of the petitioner be calculated and processed as expeditiously as possible. Regular pension and arrears thereof be paid within a period of 4 months from today. The Petition is allowed. Rule made absolute in the above terms with no order as to costs.

26. Learned Counsel for the respondent No.2 Corporation requested for stay of this order. We are not inclined to accept her request. Hence, rejected.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)