

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

WRIT PETITION NO. 3500 OF 2021

Kum. Bharati Birdar Basagonda

... Petitioner

Versus

State of Maharashtra and Ors.

... Respondents

Mr. V. S. Deokar for the Petitioner.

Mrs. P. J. Gavhane, AGP for the State-Respondent Nos. 1 and 2.

Mr. Ajit V. Alange for the Respondent No.3-School Management.

**CORAM: R. D. DHANUKA AND
R. I. CHAGLA, JJ.**

**DATE : 30th JULY, 2021.
(Through Video Conference)**

P.C. :-

. Rule. Learned AGP appearing for respondent nos. 1 and 2 and learned counsel appearing for respondent no.3 waive services. Heard finally by consent of parties.

2. By this writ petition filed under Article 226 of the Constitution of India, the petitioner is seeking order and directions in the nature of certiorari for quashing and setting aside the impugned rejection order dated 30th March, 2019 and to direct the respondent no.2-Education Officer (Secondary) Sangli Zilla Parishad to grant the approval to the petitioner's post for special subject viz. Maths w.e.f. 1st September, 2014. Permission was sought by the respondent no.3-School for filling up vacancies as per Roster Point from different category including Maths subject. Petitioner being qualified as M.Sc., B.Ed. made

application along with other candidates. The petitioner was appointed by following due process as Shikshan Sevak for three years from 1st September, 2014 to 31st August, 2017. The petitioner joined the service in the year 2014. The proposal for appointment of the petitioner for the special subject viz. Maths was submitted to the respondent no.2-Education Officer in the year 2014 by the respondent no.3-school. The approval was rejected by the respondent no.2-Education Officer vide order dated 30th March, 2019 and impugned show cause notice for termination was issued upon the petitioner. Being aggrieved by the impugned order, the petitioner filed present writ petition.

3. Learned counsel for the petitioner states that the petitioner has not been heard prior to the proposal for approval of the petitioner's post in the special subject viz. Maths had been rejected by the respondent no.2-Education Officer. He has referred to the averments in the petition where the grounds on the basis of which the impugned order dated 30th March, 2019 had been passed and which rejected the approval of the petitioner's post for special subject viz. Maths have been dealt with. These are set out at pages 10 and 11 of the petitioner and it is submitted that these ground were not considered by the respondent no.2-Education Officer prior to passing of the impugned order.

4. The learned AGP appearing for the respondent nos.1 and 2 has conceded that the hearing was not granted prior to the passing of the impugned order. However, she has supported the rejection order dated 30th March, 2019.

5. Learned counsel appearing for the respondent no.3 has relied upon the affidavit-in-reply dated June, 2021 notarized on 20th June, 2021 which supports the petition.

6. Having considered the submissions and particularly the fact that the petitioner was not heard prior to the date of passing the impugned order dated 30th March, 2019, it would be appropriate to set aside the impugned order by granting an opportunity to the petitioner to be heard by the respondent no.2 prior to the passing of the order on the proposal for approval of the petitioner's post in the special subject viz. Maths w.e.f. 1st September, 2014.

7. Hence, we pass the following order :-

- (i) Impugned order dated 30th March, 2019 is quashed and set aside.
- (ii) The respondent no.2 is directed to grant hearing to the petitioner, at which hearing the petitioner is at liberty to make legal submission including the grounds set out at pages 10 and 11 of the petition as well as further grounds including placing reliance upon the decision of this Court dated 10th July, 2017 in Writ Petition No. 8587 of 2016 and connected writ petitions in case of ***Smt. Munoli Rajashri Karabasappa v/s. State of Maharashtra and Ors.***

- (iii) The respondent no.2 shall grant hearing to the petitioner on 9th August, 2021 at 11:00 a.m.
- (iv) The respondent no.2 shall make decision after granting hearing to the petitioner within a period of four weeks from 10th August, 2021 and shall communicate the said decision to the petitioner within a period of one week thereafter.
- (v) The respondent no.3 shall continue to pay the petitioner at the pay scale as per Schedule 'C' of the MEPS Rules, 1981 till the order is passed by the respondent no.2 and for a period of four weeks from the date of communication of such decision passed by the respondent no.2-Education Officer.
- (vi) Writ Petition is disposed of in aforesaid terms. Rule is made absolute accordingly. No order as to costs.

[R. I. CHAGLA, J.]

[R. D. DHANUKA, J.]