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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1355 OF 2018

WITH

INTERIM APPLICATION NO.202 OF 2021

Smt. Sumati Sattikar

...Applicant /
Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Dr. Uday Warunjikar, with Ms. Sonali Chavan for Applicant /
Petitioner.

Mr. N.C. Walimbe, AGP for State – Respondent No.1.

Mr. Rajaram Deshmukh for Respondent Nos.4 to 6 –
Management.

CORAM : R.D. DHANUKA &
R.I. CHAGLA, JJ.

DATE : 12 July 2021

ORDER :

1. Rule. Rule made returnable forthwith.
2. Heard by consent of both the parties.

3. By this Petition filed under Article 226 of the Constitution of India, the Petitioner has prayed for quashing and setting aside the communication dated 25th September, 2017 issued by Respondent No.4 and seeks an order of appointment of the Petitioner on the compassionate basis on the post of teacher in the Respondent No.4 school run by Respondent No.4. By way of amendment, the Petitioner has also prayed for quashing and setting aside the order dated 13th January, 2020 issued by the Deputy Director of Education.

4. It is the case of the Petitioner that the father of the Petitioner who was working in a school run by Respondent No.4 expired on 2nd June, 2002. The Petitioner thus became entitled for appointment in the same school on compassionate ground. The management of the school applied for approval to appoint the Petitioner on compassionate ground. The said proposal was pending before the approving authority for quite some time. The Petitioner was ultimately appointed on the compassionate

ground in the school run by Respondent No.4.

5. It is the case of the Petitioner that the Petitioner was being paid salary of Rs.60,000/- p.m. for quite some time directly by the education department. However, in the Shalartha ID, the salary of about Rs.60,000/- paid to the Petitioner was reduced to Rs.8,000/-. The primary contention of the Petitioner is that the approval granted by the education officer to the appointment of the Petitioner w.e.f. 2002 and for granting pay scale accordingly cannot be unilaterally modified by sanctioning payment of Rs.8,000/- by making entry in the Shalarth ID.

6. By an order dated 31st March, 2021, this Court formulated the question for determination “ whether while updating the entry in this software / database, a view different than one taken while granting the approval can be taken”. Dr. Warunjikar learned Counsel for the Petitioner has invited our attention to various documents including the approval granted by the education officer for the

appointment of the Petitioner on the compassionate ground and also the correspondence exchanged between management and the approving authority for seeking approval of the appointment of the Petitioner on compassionate basis in place of her father. It is vehemently submitted that since the education officer had already granted approval on the post on compassionate ground and had approved the pay scale accordingly w.e.f. 2002 which came to around Rs.60,000/- p.m. approximately, the authority while preparing Shalarth ID had no power to reduce the said amount. He submits that no reasons are recorded while making such entry in the Shalarth ID. No hearing was rendered to the Petitioner. The Petitioner has not been paid @ Rs.60,000/- approximately for last 18 months on the basis of such illegal entry made by the authority.

7. Learned Counsel for the Management states that the Petitioner had not acquired qualification required for the purpose of appointing the Petitioner for the post of

Assistant Teacher.

8. Learned AGP for the State does not dispute that no opportunity was granted to the Petitioner, while making such entry in the Shalarth ID. Dr. Warunjikar invited our attention to the circular dated 29th March, 2019 and in particular clause 11 thereof and would submit that even if there was any alleged irregularity in the approval granted to the appointment of the Petitioner by the education officer, under clause 11 of the circular, the appropriate procedure was required to be followed. He submits that no such procedure is followed by the authority. Learned AGP is not in a position to controvert the said statement made by Dr. Warunjikar.

9. In such circumstances, we are of the opinion that Shalarth ID deserves to be quashed and set aside in so far as the Petitioner is concerned. The matter is remanded back to the Commissionairate of Education, Government of Maharashtra to decide the issue afresh in compliance with

circular dated 29th March, 2019 after giving an opportunity to the Petitioner as well as management. The Commissionairate of Education shall pass a fresh order without being influenced by the Shalarth ID and in accordance with law.

10. It is made clear that this Court has not expressed any views on the issue whether the approval granted by the education officer to the appointment of the Petitioner on the compassionate ground and a pay scale set out in the order for approval is valid or not.

11. The order that would be passed by the Commissionairate of Education shall be conveyed to the Petitioner within one week from passing of such order. Aggrieved party would be at liberty to file appropriate proceedings.

12. In view of the fact that the Education Officer has not paid salary of Rs.60,000/- p.m. for quite

some time, the Respondent No.4 shall pay the salary which was due to the Petitioner without prejudice to the rights and contentions of the parties and subject to outcome of the Shalarth ID being prepared by the Commissionairate of Education and any other order as may be passed according to law for the month of July, 2021. If any part amount is already paid by the management, the differential amount shall be paid by the management to the Petitioner for the month of July, 2021. The management shall be at liberty to seek reimbursement from the education officer. The Education Officer shall release the amount in respect of salary for the month of July, 2021 without prejudice to the rights and contentions of the State Government to adjust the amount i.e. already paid so far and that would be paid for the month of July, 2021 subject to the out come of the order which may be passed by Director of Education.

13. If the Petitioner succeeds, the Petitioner would be at liberty to seek consequential reliefs based on the order that would be passed by the Commissionairate of

Education by filing appropriate proceedings.

14. The Writ Petition is disposed of in aforesaid terms. There shall be no order as to costs. In view of the disposal of the Petition, the interim application does not survive and is accordingly disposed of.

[R.I. CHAGLA J.]

[R.D. DHANUKA, J.]