

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

WRIT PETITION NO.10120 OF 2018

Mrs. Dhanshree Eknath Patil

...Petitioner

vs.

The State of Maharashtra & Ors.

...Respondents

.....

Mr. Chetan Patil for the Petitioner.

Mr. Mandar Bagkar for Respondent No.4.

**CORAM : S.C. GUPTE AND
SURENDRA P. TAVADE, JJ.**

DATE : 12 JANUARY 2021

P.C. :

. Heard learned counsel for the Petitioner and Learned AGP for the Respondent State.

2. Rule. Rule taken up for hearing forthwith by consent of parties.

3. The subject matter of the present petition concerns approval to be granted by the Respondent-State to the appointment of the Petitioner as Shikshan Sevak in the school run by Respondent No.4. The Petitioner is an H.S.C D.Ed qualified and appointed as Shikshan Sevak in a High School. Due to increase in number of pupils, in accordance with the staffing pattern, there was one additional post of assistant teacher created in the school run by Respondent No.4. Respondent No.4 accordingly, by letter dated 12 May 2015, requested Respondent No.3 Education Officer to send a surplus teacher, if any, on or before 25 May 2015. There is no response to this requisition from the Education Officer. The Respondent No. 4 thereupon sent at least three reminders, namely, reminder dated 25 June 2015, 3 August 2015 and 18 August 2015. By these communications the Education Officer was informed that if there was no response from his side, the

management of the school shall proceed on the footing that there was no surplus teacher to be appointed in the post. There was no response to the reminders. By their appointment order dated 2 November 2015, Respondent No. 4 accordingly appointed the Petitioner as Shikshan Sevak for three years after purportedly following due procedure for such appointment. By communication dated 17 December 2015, Respondent No. 4 submitted its proposal to Respondent No. 3 for approval to the Petitioner's appointment. The Respondent has refused to accept the said proposal relying on the ban on recruitment under the Government Resolution dated 2 May 2012. The Government Resolution *inter alia* forbids educational institutions from appointing teachers in new posts, unless and until surplus teachers within the concerned region are fully absorbed in schools. This order is the subject matter of challenge in the present Petition.

4. As we have noted above, Respondent No. 4 Management not only communicated to Respondent No. 3 Education Officer of availability of an additional post in the Respondent-School, but also requisitioned the Education Officer to send a suitable candidate for appointment to the available post from amongst the surplus teachers in his record. The Education Officer did not respond to this requisition. There were as many as four reminders for sending a surplus teacher to the school run by Respondent No.4- Management. This Court has in a number of cases held that, in case of availability of a post in a school, the school is expected to communicate the vacancy to the Education Department requiring the latter to send a surplus teacher for appointment to that post. Having sent such requisition and having followed it by reminders, the Management is not expected to wait for an indefinite period for the Education Department to send the surplus teacher to it. If no surplus teacher is sent within a reasonable period and if there is no response from the Education Department to the Management's requisition, the Management would be well within its rights to appoint a teacher of its own choice to the available

post. The cases of ***Satish s/o Dnyaneshwar Ghodke V/s State of Maharashtra and others*** and ***Anant Kamlakar Joshi and others V/s. State of Maharashtra and others*** are cases in point.

5. In the present case, admittedly, the Respondent-Management waited for over five months after making a requisition and sending four reminders to the Education Department. If despite these requisition and reminders, no surplus teacher was forthcoming from the Education Department for appointment, the management was well within its rights to appoint a teacher of its own choice, subject of course to following due process for such appointment. In the present case, a surplus teacher was purportedly sent by the Education Department to the School run by Respondent No.4 much after the Petitioner's appointment. That, we are afraid, cannot change the position in law.

6. The rejection of the proposal for approval to the Petitioner's appointment purportedly on the ground of ban on recruitment pending absorption of surplus teacher (G.R of 2 May 2012) is thus clearly illegal and deserves to be interfered with in the writ jurisdiction of this Court.

7. Rule is accordingly made absolutely and the petition is allowed by directing Respondent Nos. 2 and 3 to accord approval to the appointment of the Petitioner without regard to the government resolution of 2 May 2012 in case, the Petitioner's appointment is otherwise found to be suitable and in accordance with law. The Respondents are directed to take a final decision in this behalf within a period of eight weeks from today. Respondent No.4 - Trust shall co-operate with the Education Department for processing the application within this period.

(SURENDRA P. TAVADE, J)

(S.C. GUPTE, J.)