

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10516 OF 2018

Sadanand Krishnarao Bhosale	 Petitioner
VERSUS	
The State of Maharashtra & Ors.	 Respondents

ALONGWITH
WRIT PETITION NO. 10520 OF 2018

Rajendra Sopan Pol	 Petitioner
VERSUS	
The State of Maharashtra & Ors.	 Respondents

Mr.Chetan Patil, a/w. Mr.Mandar G. Bagkar for the Petitioners.

Mr.N.K.Rajpurohit, A.G.P. for the State – Respondent nos.1 to 3.

Mr.Milind Deshmukh for the Respondent nos. 4 and 5.

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

DATE : 9th JULY, 2021
(THROUGH VIDEO CONFERENCE)

P.C:-

Rule. Learned A.G.P. waives service for the respondent nos. 1 to 3. Mr.Deshmukh, learned counsel for the respondent nos. 4 and 5 waives service.

2. By consent of parties, matters are heard finally.

3. By these writ petitions filed under Article 226 of the Constitution

of India, the petitioners have impugned the order dated 19th March, 2018 passed by the respondent no.3 thereby rejecting the approval to the post of the full time teacher and seeks further order and direction against the respondent no.4 to absorb the petitioners to the post of the assistant teacher in the school run by the respondent no.4 and further direction against the respondent no.3 for the appointment of the petitioner from 10th June, 2005 and grant all further benefits.

4. The petitioners were appointed as teachers in the school run by the respondent no.4 on 28th December, 1996. It is the case of the petitioners that though several full time posts were available in the school run by the respondent no.4 and the petitioners were having work load of a full time teacher, the petitioners were not appointed as full time teacher to the said posts.

5. Both these petitioners filed two separate writ petitions before this Court bearing Writ Petition No. 1587 of 2016 and Writ Petition No.2258 of 2016 respectively. After hearing the parties, this Court by a judgment dated 24th November, 2017 directed the respondent no.3 to decide the claim within two months from the date of the said judgment. This Court clarified that if the respondent no.3 comes to the conclusion that the petitioners are entitled for absorption as full time

teachers/shikshan sevaks, the respondent nos. 4 and 5 shall appoint such of the petitioners who are found eligible and submit a proposal for grant of approval for the said appointment to the respondent no.3 within a period of one month from the date of the decision of the respondent no.3. The respondent no.3 thereafter shall take necessary steps and pass appropriate orders with regard to grant of approval with regard to such of the petitioners who are found eligible.

6. Pursuant to the said judgment delivered by this Court, respondent no.3 passed an order on 19th March, 2018 refusing to grant approval on the ground that the Government Resolution dated 23rd June, 2017 was not followed by the management while making fresh appointment. Both the petitioners have impugned the said judgment delivered by the respondent no.3.

7. Mr.Patil, learned counsel for the petitioners invited our attention to various exhibits annexed to the petitions and also the judgment delivered by this Court on 24th November, 2017 in the earlier writ petitions filed by the petitioners and also the findings rendered by the respondent no.3 in the impugned order. It is submitted that the petitioners were already appointed as a part time teachers which appointment were duly approved by the Education Officer.

8. It is submitted that though the full time post was available, the management did not absorb the petitioners to such post. He strongly relied upon the judgment delivered by a Division Bench of this Court on 25th January, 2021 in ***Writ Petition (L) No. 1934 of 2019*** filed by ***Sandip Gajanan Kulkarni vs. the State of Maharashtra and others*** and would submit that this Court has construed the Government Resolution dated 23rd June, 2017 and has categorically held that the said Government Resolution applies to the new appointments in full time posts and does not apply to upgradation of already appointed part time teachers as full time appointees.

9. Mr.Rajpurohit, learned A.G.P. for the State on the other hand states that the management did not send any proposal for appointment of the petitioners on full time basis. He strongly placed reliance on the Government Resolution dated 23rd June, 2017 and would submit that even otherwise under the said Government Resolution, the management cannot appoint any teacher on the full time basis by way of new recruitment. He tried to distinguish the judgment delivered by this Court on 25th January, 2021 passed by a Division Bench of this Court in ***Writ Petition (L) No. 1934 of 2019*** filed by ***Sandip Gajanan Kulkarni vs. the State of Maharashtra and others*** and would submit that in the said judgment, the respondent no.2 therein was directed to

grant approval to the petitioner's appointment, in case nothing is found against the propriety of the appointment.

10. Mr.Patil, learned counsel for the petitioner in rejoinder would submit that there is no question of raising any other issue in respect of the propriety of the appointment since the appointment of the petitioners as part time teachers has been already appointed by the education officer in past and the said approval cannot be reconsidered.

11. It is not in dispute that the petitioners were appointed as a part time teachers in the school run by the respondent nos. 4 and 5. Those appointments of the petitioners as part time teachers were already approved by the education officer. The petitioners were entitled to be absorbed as full time teachers in the vacancy occurred for such post with the respondent nos. 4 and 5. The respondent nos. 4 and 5 however did not forward the proposal of the petitioners for the vacant post of the full time teachers to the authority for approval.

12. By a detailed judgment delivered by this Court on 24th November, 2017 in the earlier writ petitions filed by the petitioners, this Court after referring to the judgment of the Division Bench of this Court in batch of writ petitions i.e. ***Sanjay Sarangdhar Gaikwad vs.***

State of Maharashtra & Ors. in Writ Petition No. 12275 of 2016

decided on 19th April, 2017 directed the authority to pass an appropriate order in the light of the observations made by the Division Bench of this Court in the said judgment and to decide the claims of the petitioners.

13. In our view contrary to the said directions issued by Division Bench of this Court on 24th November, 2017, the authority rejected the claims of the petitioners on the ground that the appointment of the petitioners on the full time teacher's post would be contrary to the Government Resolution dated 23rd June, 2017.

14. The contentions raised by the learned Assistant Government Pleader are contrary to the principles laid down by this Court in the judgment delivered in the case of ***Sandip Gajanan Kulkarni (supra)***. This Court in the said judgment has categorically held that the Government Resolution dated 23rd June, 2017 applies to the new appointments in the full time posts and does not apply to upgradation of already appointed part time teachers as full time appointees. This Court adverted to the judgment in case of ***Purshottam H. Shirsekar vs. State of Maharashtra*** in ***Writ Petition No. 4120 of 2016*** decided on 28th February, 2017 and allowed the said writ petition by directing the

authority to take the decision on the application for approval of the petitioner's post as a full time Assistant Teacher having completed his probationary period as Shikshan Sevak with regard to the ban on appointments contained in the Government Resolution dated 23rd June, 2017. This Court also directed the respondent no.2 to record his approval to the petitioner's case in case nothing is found against the propriety of the appointment. In our view, the said judgments squarely applies to the facts of this case.

15. The petitioners are not seeking any appointment to the post of full time teachers as and by way of new appointment but by way of upgradation of already appointed as part time teachers. The Government Resolution dated 23rd June, 2017 pressed in service by the authority thus does not apply. The learned A.G.P. could not point out any other issue against the propriety of the appointment for the said full time post claimed by the petitioners as and by way of upgradation.

16. A perusal of the impugned order passed by the authority clearly indicates that the impugned order is contrary to the principles laid down by this Court and thus deserves to be quashed and set aside.

17. We, therefore, pass the following order :-

(a) Impugned order dated 19th March, 2018 passed by the respondent no.3 is quashed and set aside.

(b) The respondent nos. 4 and 5 are directed to absorb the petitioners to the post of Assistant Teacher in the school run by the respondent no.4 from 27th November, 2015 i.e. the last date of the appointment and are further directed to send the application for approval to the respondent no.3 for grant of approval to the said appointment w.e.f. 27th November, 2015 within two weeks from today.

(c) The respondent no.3 shall grant approval to the said appointments to the post of Assistant Teacher to the petitioners in the school run by the respondent no.4 within four weeks from the date of the receipt of the said application.

(d) It is made clear that the petitioners would be entitled to the benefits and salary and other

perquisite payable to the Assistant Teacher in the school run by the respondent no.4 from the date of such approval.

(e) Rule is made absolute in the aforesaid terms.

(f) The parties to act on the authenticated copy of this order.

(g) No order as to costs.

[R.I.CHAGLA, J.]

[R. D. DHANUKA, J.]