

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2600 OF 2020

Sou. Jyoti Laxmikant Deshpande
vs.
The State of Maharashtra & Ors.

....Petitioner
...Respondents

Mr. Satyajeet A. Rajeshirke for the Petitioner.
Mr. A.B. Kadam, AGP for Respondent Nos.1 and 2.
Mr. Shrishal Sakhare for Respondent Nos.3 and 4.

CORAM : S. C. GUPTA AND SURENDRA P. TAVADE, JJ.
DATE ON WHICH JUDGMENT IS RESERVED: FEBRUARY 2, 2021
DATE ON WHICH JUDGMENT IS PRONOUNCED: 12 FEBRUARY, 2021
JUDGMENT (PER SURENDRA P. TAVADE, J.) :

. Rule. Rule made returnable forthwith, by consent of both counsels, the Writ Petition is taken up for final hearing.

2. The Petitioner has filed this petition seeking implementation of the Government Resolutions dated 31.01.2001 and 10.06.2015, thereby directing Respondent No.3 to upgrade/absorb the Petitioner to the post of Full Time Teacher from the post of Part Time Teacher and also directing Respondent No.3 to submit the proposal of the Petitioner for approval for the post of Full Time Teacher to Respondent No.2.

3. It is contended that the Petitioner was appointed as a Part Time Teacher in Respondent No.4 school run by Respondent No.3 on 13.07.1998. In the year 2000, the Petitioner was confirmed as a Part Time

Assistant Teacher. Respondent No.2 has given approval to the appointment of the Petitioner as a Part Time Teacher as well as Part Time Assistant Teacher. It is contended that there is a vacant post of Full Time Teacher in the establishment of Respondent No.4; but Respondent No.3 has not submitted proposal of the Petitioner for the said post to Respondent No.2 on the ground that there is a ban on recruitment.

4. The Petitioner states that he completed M.A., B.Ed. (English). Since 1998 he is continuously working as a Part Time Teacher without any break. He states that since then he has been teaching the subject of English language. In the year 2009, one post of English subject became vacant on account of resignation of one teacher. He further states that though the Respondents were granted order of a full time post, but on account of backlog of reservation, at that time, approval was not granted to the proposal of the Petitioner and he continued on part time post though he is conducting the workload of a full time teacher. He also states that there are various posts of Full Time Teacher for the same subject available with the Respondent-Institution. The Petitioner from time to time made requests to Respondent No.3 to grant upgradation/absorption on the post of Full Time Teacher, but on one or the other ground, Respondent No.3 has deferred grant of such benefit to the Petitioner. He states that he is working with Respondent No.4 School/Junior College as a Full Time Teacher continuously till today. It is contended that the post of Full Time Teacher is available in General Category Candidates with Respondent No.4 and the Petitioner is eligible for the post of Full Time Teacher.

5. It is contended that this Court in ***Writ Petition No.9398 of 2012 (Uddhav Trimbak Umbare V/s. The State of Maharashtra)***, by the ***Judgment and Order dated 01.02.2013*** directed the Respondents therein to absorb the Petitioner in the post of Full Time Teacher and the aforesaid order is confirmed by the Supreme Court by dismissing Appeal (CC)

No.12716 of 2013 by order dated 15.07.2013. It is contended that the Respondents may be directed to upgrade or absorb the Petitioner in the cadre of Full Time Teacher.

6. The notice was issued to the Respondents. Heard learned counsel for the Petitioner and learned counsel for the Respondents. Admittedly, the Petitioner was appointed as a Part Time Teacher on 13.07.1998. He was confirmed in the post of Part Time Assistant Teacher in the year 2000. Respondent No.2 has already granted approval to the appointment of the Petitioner as a Part Time Teacher as well as Part Time Assistant Teacher. One post of Full Time Teacher is vacant in the establishment of Respondent No.4 since long. The Petitioner has been duly appointed in the said post, but Respondent No.4 has not submitted the proposal of the Petitioner to Respondent No.2 on the ground that there was a ban on recruitment. On this point, learned counsel for the Petitioner submits that the Petitioner is merely claiming upgradation or absorption in the post of Full Time Teacher; he cannot be said to be claiming a fresh appointment on the said post.

7. The Petitioner is relying on the Government Resolution dated 31.01.2001 and 10.01.2005, which provide as follows:

G.R. dated 31st January, 2001.

“The issue of appointing the Part Time Teacher working at Junior College level as Full Time Teacher if the full time post becomes available, was under consideration of the Govt. Now, subject to the conditions mentioned hereunder, the Part time teacher working in the post should be appointed as full time teacher if the post of full time teacher is created due to increase in work load.

(1) While working under one Management if the full time post is created in the same management, then observing the principles of need of subjects and reservation for backward classes, the “Part Time Teacher” working in that Post should be appointed as “Full Time Teacher”.

(2) If the newly created post in the Management is reserved as per reservation and the Part-Time teacher is from upon category, he cannot be upgraded to the post of full time teacher. However, if the part time teacher is from category as per reservation, he can be appointed in the post of full time teacher.

(3) The part time teacher who has been appointed by the Management in the Govt. recognized pay scale and has obtained salary with Govt. approval in the year 1999-2000, such part time teacher will be entitled to receive pay scale of full time teacher from the date of appointment in the post of full time teacher.”

G.R. dated 10 th June, 2005

“(9) If the teacher working on part time teacher gets the work load of full time teacher and if he is complying with the other terms and conditions applicable to that post, in such cases he should be given appointment as Shikshan Sevak. However, while giving such appointment and while granting approval to the same, it would be necessary to implement the reservation policy for the backward classes. If the part-time teacher is to be appointed as Shikshan Sevak, the service rendered by him as part time Shikshan Sevak should be counted as half (Six months) for Shikshan Sevak. Thereafter if he complies with the prevailing terms and conditions, he should be appointed in regular pay scale. If the part time Shikshan Sevak has worked as part time Shikshan Sevak for 6 years and if he is to be given appointment in the post of full time teacher, he should not be given appointment as Shikshan Sevak but he should be given appointment in regular pay scale subject to compliance of the prevailing terms and conditions.”

8. The Petitioner is entitled to be appointed as a Full Time Teacher in view of Paragraph 1 of the GR dated 31.01.2001. He possesses the requisite qualification for the said post and has been working as an Assistant Teacher since 2000. Respondent No.3-Institute contends that as per clause 3 of the GR dated 31.01.2001, the GR is applicable to the teachers duly appointed and who were in the pay scale granted by the Government in the year 1999-2000.

9. Clause 3 of the GR dated 31.01.2001 deals with a separate class of teachers who were duly appointed in the year 1999-2000 and in the pay scale approved by the Government.

10. A Division Bench of this Court while dealing with the same issue in the following cases held that in view of the Government circular dated 31.01.2001, part time teachers were required to be absorbed in the event of a vacancy of full time teachers being available in the same institution.

1. Uddhav Trimbak Umbare V/s. The State of Maharashtra) in Writ Petition No.9398 of 2012.

2. Chhagan Natha Rajapure Vs. State of Maharashtra in Writ Petition No.6907 of 2011.

3. Kalbhairav Shikshan Sanstha & Anr. Vs. The State of Maharashtra & Anr. in Writ Petition No.10510 of 2014.

4. Sanjay Sarangdhar Gaikwad Vs. The State of Maharashtra & Ors. In Writ Petition No.12275 of 2016 and other connected petitions.

5. Sadanand Krishnarao Bhosale Vs. State of Maharashtra through Secretary & Ors. In Writ Petition No.1587 of 2016 and other connected petitions.

11. Keeping in view of the orders passed by this Court in the case of ***Uddhav Trimbak Umbare (supra)*** and others, and having gone through the aforesaid GR, we are inclined to dispose of this petition by directing Respondent No.3 to examine the Petitioner's claim and submit a proposal of the Petitioner for the post of Full Time Teacher to Respondent No.2, if the Petitioner is otherwise found to be eligible for such proposal. Respondent No.2 is directed to take a decision within a period of two months from the date of receipt of the proposal from Respondent No.3.

12. The Petition is disposed of in the above terms.

(SURENDRA P. TAVADE, J)

(S.C. GUPTE, J.)