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

WRIT PETITION NO.1265 OF 2020

Sou. Sangita Hanumant KokitkarPetitioner
vs.
The State of Maharashtra & Ors. ...Respondents

.....

Mr. Satyajeet A. Rajeshirke for the Petitioner.

Mr. S. B. Kalel, 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: 2 FEBRUARY 2021

DATE ON WHICH JUDGMENT IS PRONOUNCED: 12 MARCH 2021

JUDGMENT (PER SURENDRA P. TAVADE, J.):

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

2. The Petitioner is having qualification of M.Com, B.Ed and she is from general category. After following due procedure of law prescribed under the Maharashtra Employees of Private Schools Act, 1977, Respondent No. 3 appointed the Petitioner as Shikshan Sevak on the post of Part Time Teacher in Respondent No. 4-School / Junior College, with effect from 1 July 2008. Since the date of appointment of the Petitioner has been teaching subject of Commerce. After completion of satisfactory probation period, Respondent No. 4 confirmed the Petitioner to regular pay scale post of Part time teacher. The said appointment was approved by Respondent No. 2 by

order dated 25 October 2012, in the regular pay scale with effect from 26 January 2012.

3. It is contended that there are various posts of Full Time Teachers for the same subjects became available with Respondent No. 4- Institute. It is contended that from time to time, the Petitioner made requests to the Respondent-Institute to grant up-gradation / absorption to the Petitioner on the post of Full Time Teacher. But on one or other reason Respondent No. 4 is not sending proposal of the Petitioner for the post of Full Time Teacher on the ground of ban on recruitment. It is contended that there are two posts of Commerce subject are available with Respondent No. 4. One teacher Mr. Anand Narke retired by superannuation in 2014 and one Smt. Urmila Indulkar retired in 2015, those posts are available for general candidates. The Petitioner entitled to consider for the post of Full Time Teacher.

4. 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.

5. It is contended that there are various Government Circulars and Government Resolutions provided for absorbing and upgrading the Part Time Teacher to the post of Full Time Teacher if the said post became available in the same Educational Institute governed by the same management. It is contended that Government Circulars dated 6 May 1983 and 27 November 1996 provide for up-gradation of Part Time Teacher to the post of Full Time Teacher when there is a post of Full Time Teacher and workload is available.

6. The Petitioner is relying on the Government Resolution dated 31 January 2001 and 10 June 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 10th 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.”

7. 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 Shikshan Sevak on the post of Part Time Teacher with effect from 2008. Respondent No.3-Institute contends that as per clause 3 of the GR dated 31.01.2001, the GR is applicable to teachers duly appointed and who were in the pay scale granted by the Government in the year 1999-2000.

8. 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.

9. A Division Bench of this Court while dealing with the same issue in ***Chhagan Natha Rajapure V/s. State of Maharashtra & Ors. { WP No. 6907 of 2011}*** by a judgment dated 19 December 2011 held that in view of the Government circular dated 31 January 2001, a Part Time Teacher will be required to be absorbed in the event of a vacancy of Full Time Teacher being available in the said institution. The rest of the judgment does not apply in the present case, as the Petitioner has the requisite period of service entitling her to the benefit of the circular dated 31 January 2001.

10. 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.

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

(SURENDRA P. TAVADE, J)

(S.C. GUPTE, J.)