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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5257 OF 2019

Mrs. Harshada Pankaj Naik .. Petitioner

v/s.

The State of Maharashtra Through the
Secretary, School Edu. Dept. And Ors. .. Respondents

....

Mr. Narendra V. Bandiwadekar, a/w. Mr. Vinayak Kumbhar, i/b. A.N.
Bandiwadekar, for the Petitioner.

Mr. V.M. Mali, AGP, for State/Respondent Nos. 1 and 2.

Mr. Nasir Masih Shaikh, a/w. Moinuddin Chowdhari, for Respondent
Nos. 3 and 4.

....

CORAM: SUNIL B. SHUKRE &
AMIT BORKAR JJ.

DATE : 22 FEBRUARY 2022

P.C:-

Heard.

2. Rule. Rule made returnable forthwith by consent of
parties.

3. Upon considering the rival contentions and the documents

placed on record, we find that the appointment of the Petitioner as full-time Assistant Teacher for Commerce subject made in Respondent No.4 Junior College was following the advertisement duly issued in that regard by Respondent Nos. 3 and 4. We further find that even though the appointment letter initially issued on 29 June 2015 indicated that the appointment was purely on temporary basis in the Junior College for a period from 1 July 2015 to 7 November 2015, for all practical purposes, the appointment was treated by Respondent Nos. 3 and 4 to be on regular and permanent basis. This could be seen from the issuance of further appointment letters from time to time, assigning the Petitioner with various responsibilities with Respondent No.4 Junior College, such as responsibility of Class Teacher, Cultural/Extra Curricular Activities, Sports Committee, Examiner for H.S.C. Examination conducted by the Mumbai Divisional Board of the Maharashtra State Board of Secondary and Higher Secondary Education, Pune and allotting of full work-load to the Petitioner as per the time-table filed on record. Such being the position, Respondent Nos. 3 and 4 ought to have prepared a proposal and sent it to Respondent No.2 seeking his approval for such appointment of the Petitioner. Respondent Nos. 3 and 4 have not done so and when this petition was filed for compelling Respondent Nos. 3 and 4 to send the proposal, the Petitioner's services were also terminated, following which, this Court, by passing an order of maintenance of status-quo, has granted interim protection to the

Petitioner but, the result of these developments is also of denial of salary to the Petitioner.

4. Considering the facts noted above and also the fact that the appointment of the Petitioner having been made in the year 2015, Pavitra Portal System has no application to her appointment and with her appointment being for teaching Commerce subject, the ban on recruitment would also have no application and so it would be necessary that appropriate directions are issued in the matter.

5. Accordingly, partly allowing the petition, we direct Respondent Nos. 3 and 4 to prepare appropriate proposal for seeking approval to the appointment of the Petitioner and forward it to Respondent No.2 for his decision in accordance with law.

6. We also direct Respondent Nos. 3 and 4 to pay differential amount of salary to the Petitioner. The proposal be forwarded by Respondent Nos. 3 and 4 to Respondent No.2 within a period of four weeks from the date of the order. Respondent No.2 shall take a decision on the proposal so received by Respondent Nos. 3 and 4 in accordance with law, as expeditiously as possible, and in any case, within a period of eight weeks from the date of receipt of the proposal. Differential salary shall be paid to the Petitioner by Respondent Nos. 3 and 4 within a period of four weeks from the date of the order. Such

payment of salary shall be subject to the right of Respondent Nos. 3 and 4 to seek reimbursement from the Government, if any. In case the approval is granted, needless to say, consequential benefits, including re-in-statement, shall flow therefrom in favour of the Petitioner.

7. Rule made absolute in the above terms and the writ petition is disposed of. No costs.

(AMIT BORKAR J.)

(SUNIL B. SHUKRE, J.)