

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

WRIT PETITION NO.3231 OF 2019

Mrunal Mandar Joshi

Age 38 years

Residing at Om Agatya Society

B-9, RX 16/17 Sudarshan Nagar

Dombivli (East)

Thane.

..... Petitioner

Vs.

1. The State of Maharashtra

through the Principal Secretary

Ministry of School Education and

Sports

Having Office at Mantralaya Annexe

Madam Cama Marg,

Hutatma Rajguru Chowk,

Mumbai-400 032

2. Director of Education, Maharashtra

Central Building Camp,

Near Sassoon Hospital,

Pune 411 001

3. Deputy Director of Educational

Mumbai Region

Having office at-Netaji Subhash Marg,

Jawahar Bal Bhawan,

Charni Road, Mumbai 400 004

4. Tilak Nagar Shikshan Prasarak Mandal

Through its Secretary

Having Office at Tilak School

Road, Tilak Nagar,

Dombivli East, Dombivli,

Maharashtra 421 201
5. Tilak Nagar Vidya Mandir School,
Through its Head Master having
office at -Tilak School
Road, Talak Nagar,
Dombivli East, Dombivli
Maharashtra 421 201

..... Respondents

Ms. Devyani Kulkarni for the Petitioner.

Mrs. S. S. Bhende, AGP for Respondent Nos. 1 to 3-State.

Mr. N. V. Bandiwadekar i/b Mrs. A. N. Bandiwadekar for
Respondent Nos. 4 and 5.

**CORAM : S. B. SHUKRE &
G. A. SANAP, JJ.
RESERVED ON : 11th MARCH, 2022.
PRONOUNCED ON : 13th APRIL, 2022.**

JUDGMENT: (Per G. A. Sanap, J.)

Heard. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. Initially this petition was filed seeking direction in the nature of mandamus to respondent No.3 to regularize the services of the petitioner as Assistant teacher with effect from 15/6/2016 and grant approval to the services of the petitioner as full time Assistant Teacher with effect from 15/6/2016. During the pendency of the petition, respondent No.3 vide order dated 10/9/2019 rejected the approval to the appointment as full time Teacher and therefore, the petitioner by amending the petition prayed for quashing this order.

3. It is the case of the petitioner that she was initially appointed on 13/8/2012 as part time shikshan sevak by following the required selection procedure with effect from 14/8/2012 to 13/8/2015. This part time appointment was approved in the year 2016. One Shri S. B. Pardeshi superannuated on 31/5/2016. The workload of part time Assistant Teacher for the subject of Chemistry which was handled by Shri S. B. Pardeshi became available. The petitioner was already appointed and was handling the workload of part time teacher for the subject of chemistry. The petitioner was appointed/absorbed as full time shikshan sevak for chemistry subject vide appointment letter dated 15/6/2016. A resolution was passed by respondent No.4 to that effect on 31/3/2018. It is stated that the petitioner was appointed as full time teacher to the open category post. The proposal for approval was submitted and till the date of filing of the petition it was not decided.

4. It is stated that on 10/9/2019 respondent No.3 rejected the proposal for granting approval to the appointment of the petitioner on the ground that in accordance with Government Resolution dated 31/1/2001, appointment/upgradation of teacher from part time to full time post has to be done as per the roster and reservation policy. According to the roster checked on 6/2/2019 there was backlog of two posts (V.J-1 and N. T.-1) and there was no open category post available. On this ground, respondent No.3 refused approval to the appointment. In this regard it is the case of the petitioner that at the time of upgradation of the petitioner from

part time post to full time post, the post of full time teacher had fallen vacant due to superannuation of Shri Pardeshi, who belonged to the open category. It is further stated that as per the roster for the year 2016 there were in all 7 vacant posts out of which one post was for open category candidate. In September 2016, certain surplus teachers were absorbed in respondent-school. One Mr. Pathak was absorbed under the open category. He took voluntary retirement in 2018, following which again one post for open category fell vacant. It is stated that right from the appointment of the petitioner in 2016 open category post was always available. There was no violation of reservation policy. Even if it is so assumed, there was no fault on the part of the petitioner. The petitioner cannot be made to suffer for the mistake of management of respondent No.4. On this averment the petitioner has prayed for relief as stated above.

5. Respondent No.3 has filed an affidavit and opposed the petition. It is contended that the resolution for appointment of the petitioner on full time post is dated 31/3/2018, whereas appointment letter is dated 15/6/2016. No decision was taken in 2016 to appoint the petitioner on full time post. The School Committee took the decision to appoint the petitioner on full time course in 2018 and thereby rectified the appointment made with effect from 15th June, 2016. The ground for rejection of the approval has been reiterated in the reply. In short, it is contended that the proper procedure was not followed in the year 2016 for upgradation of the petitioner to full time Assistant Teacher. Prior

approval was not obtained for initiation of the process of appointment. The roster was not properly maintained and got verified. There was no vacancy in the open category. There was backlog of reserved category viz VJNT.

6. Respondent Nos. 4 and 5 filed a reply and supported the case of the petitioner. It is case of respondent Nos.4 and 5 that the open category post was available and therefore, the petitioner was upgraded to the post of full time Teacher for chemistry subject. There was no illegality. The management was under a belief that for upgradation of the petitioner to the full time Teacher's post, decision was not required. When respondent No.4 came to know about it in 2018, Management passed a resolution and decided to appoint petitioner from June 2016.

7. We have heard learned Advocate for the petitioner and learned AGP for respondent No.3 and learned Advocate for respondent Nos. 4 and 5. We have perused the record and proceedings. Certain undisputed facts can be stated at the outset. Approval to the appointment of the petitioner as full time Teacher from 15/6/2016 was sought. During pendency of this petition, the decision was taken by Respondent No.3 and as per the said decision approval to the appointment was refused. In the reply filed by respondent no.3, it is stated that on the basis of decision taken in 2018, appointment which was made admittedly, on 15/6/2016 cannot be validated. Admittedly, the decision taken in the year 2016 to appoint petitioner on full time post with effect from

15/6/2016 has not been placed on record. Respondent Nos.4 and 5 have stated that since the proposal was not rejected on this ground, this ground cannot be made available to respondent No.3 to oppose the prayer. It is pertinent to note that in order to justify the appointment with effect from 15/6/2016 reliance has been placed on the said resolution passed by the management on 21/4/2018.

8. According to the petitioner and respondent Nos. 4 and 5, in the year 2016 vacancy in the open category was available as per the roster. Perusal of the record shows that roster verified from Backward Class Cell for the year 2015, 2016, 2017 and 2018 has not been placed on record. No reason has been stated in the petition in this regard. It is to be noted that it is duty of the management to prepare the roster and to get it approved from the Backward Class Cell. It is to be noted that approved roster if produced on record can clearly establish the vacancy position at a particular point. Whether this roster was produced before respondent No.3 or not is not clear. The roster verified on 6/2/2019 produced on record with reply of respondent No.3 at page No.62 indicate that in the year 2019 the post for open category was not lying vacant and available. Perusal of the record shows that duly verified roster from the Backward Class Cell for the year 2015, 2016, 2017 and 2018 has not been placed on record by Respondent Nos.4 and 5. It is not the case of petitioner and respondent Nos.4 and 5 that the said roster verified from Backward Class Cell is not available with them. While assailing the

legality of the order it has been stated that at the time of appointment of the petitioner a full time open category post was available and she was appointed to the said post. This fact has been seriously disputed in the affidavit in reply. One more fact disputed by respondent No.3 is that appointment was not made following the due procedure inasmuch, for rectifying the appointment of 2015, resolution was passed in 2018. Documents placed on record do not indicate that the entire material sought to be relied upon by the petitioner and Respondent Nos. 4 and 5 in this petition was produced before respondent No.3 or not. The contention raised in the reply that in the year 2019 open category post was not available has been substantiated on the basis of verified roster dated 6/2/2019. It is case of the petitioner that 6 extra scheduled caste candidates have been recruited/absorbed. In the normal course, these posts would have been available to the open category candidates.

9. The up-gradation from part time post to full time post of Assistant Teacher is allowed as per the Government Resolution dated 31/1/2001. It is to be noted that for up-gradation of Shikshan Sevak appointed on part time basis to the full time post of Assistant Teacher, compliance of the directions contained in the Government Resolution are mandatory. The Government Resolution specifically provides that while making such upgradation if there is backlog of the reserved category candidate then the reserved category candidate must be upgraded to the said full time post. It is stated that in such cases, open category

candidate cannot be upgraded side tracking the reserved category candidate. In our opinion, this point can be resolved only on the basis of the roster duly verified by the Backward Class Cell. In our opinion, this would be one of the reasons in the backdrop of the case placed on record to set aside the order passed by respondent No.3 dated 10/9/2019 and to direct respondent No.3 to decide the issue afresh in view of the observations made in this order.

10. In our view all these points have not been properly gone into and dealt with while rejecting the approval. In our view, therefore, in order to bring on record correct factual position inquiry would be required to be made by respondent No.3. Petitioner and respondent Nos.4 and 5 would be required to place on record before respondent No.3 verified roster for the year 2015-2016-2017 and 2018 to establish that as per the roster open category post was vacant and available for giving full time appointment as Assistant Teacher to the petitioner. Similarly, respondent No.3 would be required to deal with the contention of the petitioner and respondent Nos. 4 and 5 with regard to the appointment/absorption of 6 extra scheduled tribes candidates on the open posts. Respondent No.3 would be required to verify whether open category post was available in the year 2015-2016-2017 and 2018 on the basis of the roster maintained by respondent Nos.4 and 5 albeit duly verified by Backward Class Cell. On considering the entire material placed on record by the petitioner and available material relied upon by respondent Nos.4 and 5, respondent No.3 would be required to take a decision as to the

approval to the appointment of the petitioner.

11. In our view rejection or grant of the relief in the above situation would meet the ends of justice. In order to do complete justice in our view it would be necessary to set aside the impugned order. We accordingly pass the following order:

: **ORDER** :

- i) The Petition is allowed;
- ii) The impugned order dated 10/9/2019 rejecting approval to the appointment of the petitioner as full time Teacher with effect from 15/6/2016 is set aside;
- iii) Respondent No.3 shall decide the proposal submitted by Respondent Nos.4 and 5 seeking approval to the appointment of the petitioner afresh;
- iv) The petitioner and respondent Nos.4 and 5 are at liberty to produce documents including duly verified roster of the year 2015-2016-2017 and 2018 before respondent No.3;
- v) Respondent No.3 on the basis of material shall decide the proposal submitted by respondent Nos. 4 and 5 seeking approval to the appointment of the petitioner in accordance with law;
- vi) Respondent No.3 shall dispose of the proposal

expeditiously and in any case within 3 weeks from the date of receipt of the copy of this order by granting an opportunity of hearing to the petitioner and respondent Nos.4 and 5;

vii) Rule is made absolute in the above terms. No costs.

(G. A. SANAP, J.)

(S. B. SHUKRE, J.)