

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1824 OF 2021

Minakshi Gajanan Murtule & Anr ...Petitioners
Versus
The State of Maharashtra through the Secretary ...Respondents
& Anr

Mr NV Bandiwadekar, with Vinayak Kumbhar, i/b AN
Bandiwadekar, for the Petitioners.
Mr VM Mali, AGP, for the State.

CORAM G.S. Patel &
Neela Gokhale, JJ.
DATED: 30th March 2023

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PC:-

1. Rule. There is an Affidavit in Reply and an Affidavit in Rejoinder. By consent, Rule is made returnable forthwith and the Petition is taken up for hearing and final disposal.

2. The 1st Petitioner, Minakshi Murtule, is a full-time teacher at the 2nd Petitioner's school at Ichalkaranji in Taluka Hatkanagale in Kolhapur District. Both Ms Murtule and the school challenge an order dated 7th December 2020 issued by the 2nd Respondent, the Deputy Director of Education, Kolhapur Region, refusing to approve Ms Murtule's appointment as a full-time teacher of history

in the 2nd Petitioner's junior college. Ms Murtule does not seek any preference on the basis of caste. At the head of the Petition, she states that she had always been in the open category. She holds a Masters degree in History and a B.Ed. (History/Hindi). There is no dispute about these qualifications. The 2nd Petitioner is a registered educational trust. It is registered both under the Maharashtra Public Trusts Act 1950 and the Societies Registration Act 1860. It has two schools. The first is the Govindrao High School and Junior College at Ichalkaranji. This junior college has faculties in arts, commerce and science. The second institution is the Shrimant Gangamai Girls High School and Junior College, also at Ichalkaranji. This has classes from Standard V to Standard XII with faculties in arts and commerce.

3. The Govindrao High School and Junior College has three divisions each of Standard XI and XII in the arts stream. There are thus total of six divisions in arts and these are sanctioned to the Govindrao Junior College on an aided basis. The strength of the student body in a college is a factor that determines the number of posts that will be approved. With this student strength, one post of a principal and one post of Vice Principal were sanctioned to the Junior College. Similarly, because there were thus six divisions in the arts stream, there was one sanctioned post of a full-time teacher for History. The workload, another factor, was of six periods of 40 minutes each for each division. This makes a total of 36 periods. The requirement is that a full-time teacher must have a workload of 17.20 clock hours. This is based on an order dated 3rd January 2011 issued by the 2nd Respondent, the Deputy Director of Education. By that order, he sanctioned a staff schedule for the Govindrao High

School and Junior College. This specifically showed the sanctioned post of one principal, one vice principal and one full time post for history for six divisions with a total of 24 clock hours.

4. To the one sanctioned post of full time history teacher, the management appointed one Jaypal Mahadeo Kolhapure with effect from 10th July 1989. He was assigned a workload of 17.2 clock hours. Mr Kolhapure's appointment was approved by the 2nd Respondent, and he was thus permanent. The post of vice principal in Govindrao High School and Junior College was vacant. Mr Kolhapure was the seniormost teacher in the 2nd Petitioner's two schools taken together and he thus came to be promoted as the vice principal of the Govindrao High School and Junior College with effect from 15th June 2011.

5. That appointment was submitted for approval and an approval was received on 1st November 2011 with effect from 15th June 2011.

6. The rules stipulate that a teacher who works as a vice principal is required to only handle a workload of eight clock hours in the subject in question. Consequently, from his assigned workload of 17.2 clock hours as a teacher of History, Mr Kolhapure was allotted eight clock hours. There remained thus 9.20 clock hours unallotted for teaching history.

7. By an order of 22nd October 2011, the 2nd Respondent approved the appointment of Mr Kolhapure as a Vice Principal with

a workload of eight clock hours. This very order showed the balance workload of 16 clock hours in History and 1.20 clock hours in Environmental Sciences. Thus, two factors came to play. The first was that the post of full-time teacher in History was available and second, there was an available workload as well, as noted by the 2nd Respondent himself. This made it obligatory for the management to take steps to appoint a qualified teacher for History to take up the balance workload of 16 clock hours. But for the appointment as a full-time teacher, the workload must be 17.20 clock hours and therefore, the workload of 1.20 clock hours of Environmental Education were added to the available History balance workload of 16 clock hours. Thus, the requirement of an aggregate workload of 17.20 clock hours was met.

8. It is in this background that the 2nd Petitioner's management initiated the selection procedure to fill up the post of full-time teacher in history. There was a backlog or a deficit in the open category and it was decided that the post should be filled in by open category candidate. The 2nd Petitioner published an advertisement in the newspaper, *Daily Mahasatta*, on 13th November 2011. It invited applications to fill up the teaching posts on an aided basis. The posts advertised included one post of a shikshan sevak in history. The 1st Petitioner forwarded her application for the post of full time shikshan sevak in history and earmarked for the open category. She fulfilled the eligibility criteria regarding education. The management received 15 applications for that post. The candidates were called to an interview. All 15 candidates appeared. Based on the performance and marks, the 1st Petitioner was selected and recommended for appointment. Then the management

coordination committee of the 2nd Petitioner passed a resolution on 23rd December 2011 resolving to appoint the 1st Petitioner as a full time shikshan sevak in the open category post at the Govindrao High School and Junior College. This was for a three-year period from 26th December 2011 to 25th December 2014 on a monthly honorarium. The 1st Petitioner was issued an appointment order dated 23rd December 2011. She thus took up the post as a full time shikshan sevak in history in the Junior College.

9. The Junior College's Principal submitted a proposal to the 2nd Respondent for sanctioning a staff schedule for the next Academic Year 2012-2013 and for approval to the appointment of the 1st Petitioner along with an approval for other teachers also in the Junior College. On 18th September 2012, the 2nd Respondent sanctioned the staff schedule and thus sanctioned two full-time posts for history which included the full-time post held by the 1st Petitioner. Another post had become full time because there was now an increased workload. Mr Kolhapure's appointment as the Vice Principal was also approved. However, the submission for approval in regard to the 1st Petitioner was rejected on the ground that it was a full-time 'proposed' post and that appointment did not have sanction from the Government.

10. The then Principal, Mr Rajaram Chavan, retired from service and that post fell vacant. The management promoted the Vice Principal Mr Kolhapure. That proposal was submitted for approval. The 2nd Respondent approved the promotion of Mr Kolhapure as a Principal. This again reduced his clock hours to 04 in history. By

now the total workload sanctioned for History was 24 clock hours of which 04 stood allotted to Mr Kolhapure. The remainder, 20 clock hours, remained available for the academic year 2013–2014.

11. By an order of 10th September 2013, the 2nd Respondent sanctioned the staff strength for that academic year. One full time post for history came to be sanctioned. The order in question also stated that for history, with a workload of 17.2 clock hours, the post remained a proposed post on account of the appointment of Mr Kolhapure as a Vice Principal. Again, the approval for the 1st Petitioner's appointment to the full-time post of history was denied on the ground that it was a 'proposed' post and that Government approval was necessary. For the academic year 2014–2015, the services of the Petitioner were continued. Once again, a proposal went to the 2nd Respondent and once again it was refused on the same ground.

12. Now Mr Kolhapure himself retired from service on 31st December 2016. Even the workload for 04 clock hours assigned to him fell vacant. The Junior College continued the 1st Petitioner in the sanctioned full-time post and submitted a proposal to the 2nd Respondent for approval. All documents were annexed. Yet by an order of 3rd December 2016, a copy of which is annexed, while the 2nd Respondent approved other teachers, the appointment of the 1st Petitioner was refused for same reason. Nonetheless the 2nd Petitioner continued the service of the 1st Petitioner. There was, as we have seen, more than enough workload. Every time an approval was submitted, it was approved for other posts but rejected for the

1st Petitioner on the same ground. Strangely, although the 2nd Respondent sanctioned one full-time post in history, the orders continued to show that the full-time post was only a ‘proposed’ post. Such orders were issued on 17th November 2017 for the academic year 2017–2018, 11th December 2018 for the academic year 2018–2019 and on 7th December 2020 for the academic year 2019–2020. It is in this background that the Petitioners have come to Court.

13. Paragraph 15 of the Petition at page 16 reads thus:

“15. The Petitioners state that from the facts stated hereinabove, it can be seen that the initial appointment of the Petitioner No.1 was made as a Full Time Teacher [History] with the workload of 16 Clock Hours [History] and 1.20 Clock Hours [Environment Education] i.e. total 17.20 Clock Hours. This workload was duly sanctioned and available in the Junior College, as per the order issued by the Respondent No.2 for sanctioning the Sanch Manyata and workload of the said subject. The details as to how the workload became available are already mentioned hereinabove. The appointment of the Petitioner No.1 came to be made by following the prescribed selection procedure of publishing advertisement and conducting interview.”

14. It is also clear that the only ground of rejection of the 1st Petitioner’s appointment approval application was that the post was a ‘proposed’ post and had not been approved by the State Government. It is difficult to see how that post should be treated as ‘proposed’ post without doing very considerable violence to the language and without completely inverting the historical narrative. To put it another way: to accept the 2nd Respondent’s argument

would mean that what Mr Kolhapure first occupied as a full-time teacher of history was only a ‘proposed’ post and yet his appointment to that very post was *approved* — without saying that the post was a proposed post. It is difficult to see how an approved post can revert to being a proposed post merely because the person holding the post changes. None of the documents annexed to the Petition satisfy us even remotely that there is any justification for saying that the 1st Petitioner’s appointment was to a proposed post. Indeed, the only appointment was to a duly sanctioned post. Initially there was one duly sanctioned post and later a second was added because of the increased workload.

15. This leads to yet another incongruity because we cannot understand how the second (and subsequent) post got approved while the first post remained proposed post. This does not even stand to reason.

16. The relief is directed against a last of this series of orders. Prayer clauses (b) and (c) of the Petition read thus:

“(b) By a suitable writ, order or direction, this Hon’ble Court may be pleased to quash and set aside the impugned order dated 07.12.2020 [Exhibit-L] issued by the Respondent No.2 so far as it pertains to the Petitioner No.1, and accordingly the Respondent No.2 may be directed to grant the approval to the appointment of the Petitioner No.1 as a Full Time Shikshan Sevak [History] in the aided Junior College of the Petitioner No.2 Management for the period 26.12.2011 to 25.12.2014 and thereafter further approval as Full Time Teacher [History] w.e.f. 26.12.2014, together with release of grant-in-aid for payment of monthly

honorarium as Shikshan Sevak for 3 years and thereafter payment of salary in pay scale of Assistant Teacher w.e.f. 26.12.2014 onwards, together with all arrears.

(c) By a suitable writ, order or direction, this Hon'ble Court may be pleased to hold and declare that since the appointment of the Petitioner No.1 has been made in the full time post [History] on the sanctioned and available workload in the aided Junior College of the Petitioner No.2 Management, that the Respondent No.2 is liable to grant approval to the said appointment of the Petitioner No.1 w.e.f. 26.12.2011 to 25.12.2014 as Full Time Shikshan Sevak, and thereafter as Full Time Teacher in pay scale from 26.12.2014, with further directions to the Respondent No.2 to release the grant-in-aid for payment of monthly honorarium as Shikshan Sevak and thereafter monthly salary as Full Time Assistant Teacher to the Petitioner No.1."

17. Indeed, prayer clause (b) is actually a compact tracing of the entire history of the matter. We note that the Affidavit in Reply does not address the question at all.

18. Paragraph 6 at page 85 claims that for the academic year 2011-2012, the Junior College made a proposal for an additional post and appointed the 1st Petitioner without permission and without that post being approved.

19. This is not borne out by the documents annexed to the Affidavit in Reply including at page 92 which shows the workload of 17.20 clock hours and shows the availability of the posts since Mr Kolhapure had been promoted to the post of the Vice Principal.

20. Finally, it is incomprehensible how the workload that is to be allotted to a full-time post of 17.20 clock hours can ever be said to be taken up by only a proposed post, i.e., something is on a temporarily and an uncertain basis.

21. We do not believe that the order can be sustained. Rule is made absolute in terms of prayer clause (b) and (c).

22. In the facts and circumstances of the case there will be no order as to costs.

23. It follows, necessarily, that all consequential steps including the issuance of Shalarcha ID must now being followed at the earliest possible and in any case no later than within two weeks of the 2nd Petitioner's submitting an appropriate application or the necessary documents to the 2nd Respondent.

(Neela Gokhale, J)

(G. S. Patel, J)