

Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1835 OF 2019

1. **HARISHCHANDRA SADANAND
PENDURKAR,**
Aged Adult, Occ. Service,
2. **VIKRAM BABASAHEB PATIL,**
Aged Adult, Occ. Service,
3. **SUPRIYA GOPICHAND KAREKAR,**
Aged Adult, Occ. Service,
All R/o. Nanar, Tal. Rajapur,
Dist. Ratnagiri

... PETITIONERS

~ VERSUS ~

1. **THE STATE OF MAHARASHTRA,**
Through the Secretary,
School Education Department,
Mantralaya, Mumbai 400032
2. **THE EDUCATION OFFICER,**
[SECONDARY], ZILLA
PARISHAD,
Ratnagiri.
3. **NANAR PANCHKROSHI**
SHIKSHAN PRASARAK MANDAL,
NANAR,
Tal. Rajapur, Dist. Ratnagiri
Through its Chairman/Secretary

4. **LATE SN DESAI [TOPIWALE],**
Vidyamandir, Nanar,
Tal. Rajapur, Dist. Ratnagiri,
Through its Head Master

... **RESPONDENTS**

APPEARANCES

FOR THE PETITIONERS **Mr NV Bandiwadekar, Senior**
Advocate, with Vinayak
Kumbhar, i/b AN
Bandiwadekar.

FOR RESPONDENTS NO. 1 & 2-STATE **Mr Deelip Bankar Patil, Special**
Counsel, with MS Bane, AGP.

FOR RESPONDENTS NO. 3 & 4 **Mr Suresh Sabrad.**

CORAM : G.S.Patel &
Neela Gokhale, JJ.

RESERVED ON : 24th April 2023

PRONOUNCED ON : 27th April 2023

ORAL JUDGMENT (Per Neela Gokhale, J):-

1. **Rule.** The contesting 2nd Respondent has filed Affidavit in Reply. By consent, Rule made returnable forthwith.

2. The three Petitioners are teachers employed in the 4th Respondent secondary and fully aided school run by the 3rd Respondent Educational Institution. The 2nd Respondent is the

Education Officer (Secondary) of the Zilla Parishad, Ratnagiri and the 1st Respondent State Education Department.

3. The present proceeding has a chequered litigious history. In a series of proceedings before this Court, the Respondent Education Department was directed to send the requisite number of surplus teachers to the 4th Respondent school by 30th April 2018, failing which the Management was given liberty to fill in vacant posts of *Shikshan Sevaks* and permission of the Education Officer was specifically directed to be dispensed with. Paragraph 5 (a) and paragraph 5 (b) of the order dated 10th April 2018 passed by the Division Bench (Justice BR Gavai, as he then was and Justice Bharati H Dangre) reads as thus:

“(a) The respondents are directed to send the requisite number of surplus teachers to the petitioner’s institution by 30th April 2018. In the event the petitioner does not receive the names of any surplus teachers on or prior to 30th April 2018, the petitioner would be at liberty to fill in the vacant posts.

(b) Needless to state that if such posts are required to be filled, no permission of the Education Officer would be required inasmuch as the said would be done under the orders of this Court.”

4. Pursuant to the aforesaid order, the 2nd Respondent issued a letter to the school Management conveying that a surplus teacher namely one Smt Magdum was available for appointment as

Assistant Teacher and that she would join to fill the vacancy in the 4th Respondent school. However, since she failed to join for a considerable time, the school Management proceeded to appoint the 1st Petitioner as Shikshan Sevak on probation, as per Rules. Pertinent to note is that the appointment was made after following the due procedure of issuance of advertisement, followed by interview, recommendation of Selection Committee etc. Following the appointment, the school Management sought the approval of the Education Officer which was refused. The refusal was challenged by the Management in this Court, in Writ Petition No 8470 of 2018. Noticing the earlier order, the learned Single Judge of this Court (Justice Sadhana S Jadhav) by order dated 30th August 2018, reiterated and clarified that the appointment of the Petitioner No. 1 was deemed to be an appointment under the orders of this Court dated 10th April 2018.

5. Despite the various orders passed by this Court as mentioned herein above, the Respondents issued letter dated 3rd December 2018 granting only temporary approval to the appointment of the three Petitioners till the last date of the academic session or till a regular teacher was appointed through the Pavitra Portal or a surplus teacher was made available. It is this letter that has been challenged in the present Writ Petition.

6. The facts in the present matter reveal that since 2016-2017 despite vacancies being available of sanctioned post in the school, the Education Department failed and neglected to make available any surplus teacher nor did they grant permission to the Management to fill up the available vacancies. This compelled the school Management to approach this Court by way of filing Writ Petition No. 1299 of 2018 seeking direction to the Education Department to either make available surplus teachers or permit the school to initiate the appointment process. It was in this Petition that the order dated 10th April 2018 as mentioned above was passed followed by order dated 30th August 2018 by this Court

7. As evident from the previous Court orders and despite the said orders, no surplus teachers were made available to fill up the vacancies. The school Management thus proceeded to appoint the three Petitioners on the vacant posts after following the due process of law. The appointment of the Petitioners has been made in accordance with the relevant Rules.

8. After the filing of the present Petition on 31st January 2019, the Education Department by its letter dated 30th April 2019 placed on record along with the reply Affidavit of the 2nd Respondent approval of the appointment of the 1st Petitioner. However, the impugned order of rejection continues in respect of the other two Petitioners.

9. Mr Bandiwadekar appearing for the Petitioners points out the previous orders of this Court and contends that all three Petitioners possessed prescribed qualifications and were appointed as *Shikshan Sevaks* in the 4th Respondent school for the period of three years on a monthly honorarium. The appointments were made on duly sanctioned and vacant posts available in the school. He further submitted that despite representations made by the Management, the Education Officer failed to grant approval to the said appointment. He also stated that one surplus teacher Smt Magdum was seemingly made available for appointment, however, she failed to turn up to join the post. The Management thus proceeded to appoint the Petitioners. The Petitioners are working regularly and diligently and have now even completed the mandatory three year probation period and are eligible for appointment on a regular pay scale. He submits that the conditional and temporary approval granted by the impugned order is illegal and contrary to the previous orders passed by this Court.

10. Mr Suresh Sabrad appearing for the Respondents No.3 and 4 supported the case of the Petitioners. Per contra, Mr Dilip Bankar Patil, Special Counsel along with Mrs MS Bane learned AGP for the State conceded that approval was given to the appointment of the 1st Petitioner in view of order dated 30th August 2018 passed by this Court directing that the appointment of the 1st Petitioner is deemed to be an appointment under the orders of the Court. However, he puts forth a strange defence. He contends that in the absence of any

such specific order passed by the Court in respect of the Petitioners No. 2 and 3, their case is distinguishable from the case of the 1st Petitioner and thus the impugned order continues in respect of the other two Petitioners. We have referred to this explanation as 'strange' since one would expect the administration to apply the same principle of law to the case of the other two similarly placed Petitioners and not compel individual teachers to take a litigation route to seek similar relief. No other point of distinction has even been attempted to be canvassed except the order passed by this Court in relation to the 1st Petitioner and not the others.

11. Considering the facts of the case and in view of the previous orders of this Court as mentioned above, it is clear that the appointment of all three Petitioners has been made in pursuance of orders of this Court. It is an admitted position that all three Petitioners are qualified for the post and are appointed after following the due procedure of issuance of advertisement, interview etc., on regular posts. The case of all three Petitioners is on equal footing and all three are similarly placed. An attempt is made by the 2nd Respondent to canvas that there is a violation of Rule 9 (2A) and (2B) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 ("**MEPS Rules**") read with Government Resolution dated 23rd June 2017 and that there was some discrepancy in the roster whereby two advertisements were issued, one for filling up the vacancy of OBC category and another from the SC category. The said submission is recorded only to be

rejected. In any case, the 3rd Petitioner an OBC candidate was appointed on an OBC category vacancy and not on SC category vacancy. Thus no SC category vacancy has been usurped by any of the Petitioners.

12. It is clear that the Government has extracted work from the Petitioners for the past five years with a sword of uncertainty and termination hanging over their heads. It is not in dispute that the appointments were made after following the due process. The Management was compelled to initiate the appointment procedure after waiting for considerable time for the Education Department to make available surplus teachers. The provision of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 mandates the Management to fill up vacant posts at the earliest. It cannot be said that the Petitioners have got the employment through a back door entry. Although an attempt was made to distinguish the case of the 1st Petitioner from the other Petitioners, the difference seems to be only that the Court in order dated 30th August 2018 only dealt with the issue pertaining to the 1st Petitioner and not the others. There is no substantive point of distinction between the Petitioners *inter se*. We see no reason as to why the Petitioners, who are otherwise eligible and qualified for the posts and who are selected by a constituted committee and are appointed in sanctioned posts by following the due procedure and further in pursuance of previous orders of this Court should have to serve under pressure of the unreasonable conditions mentioned in

the impugned order. The conditional and temporary approval is unlawful and unsustainable. The Petitioners cannot be deprived of the right of the regular employment particularly when their entry can neither be termed as illegal nor back door.

13. In view of the above, the 2nd Respondent is directed to grant approval to the Petitioners No. 2 and 3 *sans* conditions No. 9 and 10 of the impugned order. The conditions No. 9 and 10 of the impugned order are quashed and set aside. The approval has already been granted in respect of the 1st Petitioner as stated by the 2nd Respondent on affidavit. At this stage, Mr Bandiwadekar brings to our attention that the Petitioners No. 2 and 3 have completed the probation period on 19th June 2021 and are entitled to a regular pay scale. We further direct the 2nd Respondent to fix regular pay scale in respect of the Petitioners No. 2 and 3.

14. Rule is thus made absolute in terms of prayer clause (b). There will be no orders as to costs.

(Neela Gokhale, J)

(G. S. Patel, J)

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signed by
RAJU
DATTATRAYA
GAIKWAD
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