

Gaikwad Rd

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4174 OF 2022

1. **DINESH SUDAM PATIL,**
Aged 33 years, Occupation: Service,
Resident of Digashi, Taluka Bhiwandi,
District Thane 421 302.
2. **MAJI AAMDAR SHRI BHAI PATIL**
SAMAJ UNNATI MANDAL,
Dugadphata, Taluka Bhiwandi, District
Thane 421 302, Through its
Chairman/Secretary.

...PETITIONERS

~ versus ~

1. **THE STATE OF MAHARASHTRA,**
Through the Secretary, School
Education Department, Mantralaya,
Mumbai 400 032.
2. **THE EDUCATION OFFICER,**
(Secondary), Zilla Parishad, Thane.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONERS	Mr NV Bandiwadekar, Senior <i>Advocate, with Vinayak</i> <i>Kumbhar, i/b AN</i> <i>Bandiwadekar.</i>
FOR RESPONDENTS- STATE	Mr NC Walimbe, AGP.

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

RESERVED ON : 14th June 2023

PRONOUNCED ON : 3rd July 2023

JUDGMENT (Per Neela Gokhale J):-

1. Rule. Respondent-State has filed its Reply Affidavit. Heard by consent of both the parties. Rule made returnable forthwith.
2. The Petitioners assail order dated 20th December 2020 passed by the 2nd Respondent, Education Officer of the 1st Respondent-State. The impugned order pertains to a refusal by the Respondents to grant approval for continuity of service of the 1st Petitioner as Assistant Teacher. The 1st Petitioner is an employee of the 2nd Petitioner-Management.
3. The facts of the case reveal an unreasonable approach of the Respondents in refusing approval to the continuity of service of the 1st Petitioner despite him having successfully completed the mandated probationary period of three years as Shikshan Sevak (trained graduate teacher) in the school run by the Management. The 1st Petitioner's father was permanently employed in the school of the 2nd Petitioner as Peon. Upon his death, the 1st Petitioner was eligible to be appointed as trained under-graduate teacher and hence sought compassionate employment as such. There was no vacancy in the teaching cadre at the relevant time and hence, the 1st Petitioner accepted the post of junior clerk which was available in

the School. He completed three years as Shikshan Sevak followed by continuing as Junior Clerk on a regular basis upon grant of approval by the Education Officer.

4. In the meantime, the 1st Petitioner acquired the qualification of B.A. (Marathi) and B.Ed. and became eligible for a teaching post. In consonance with Government Resolution (“**GR**”) dated 20th January 2016, the 1st Petitioner was appointed as Shikshan Sevak for a further period of three years as a lateral appointment from non-teaching to teaching, upon vacancy being available. The Education Officer gave his approval to the said appointment and allotted a Shalartha ID to the 1st Petitioner. The 1st Petitioner successfully completed the probation period and the Management applied for approval for continuity of his services as Assistant Teacher on a regular basis. The Education Officer, Zilla Parishad, Thane as well as the Deputy Director of Education, Mumbai Region also recommended the grant of approval and sought guidance from each other. Finally, the Education Officer, Zilla Parishad, Thane communicated the rejection of approval by order dated 28th December 2020. This is the impugned order.

5. Mr Bandiwadekar, learned Senior Counsel appearing for the Petitioners relies upon a GR dated 20th January 2016 prescribing that if an employee is given compassionate appointment in Group-D post despite being qualified for Group-C post, then such candidate will be eligible for his appointment in the latter post once a vacancy arises. Mr Bandiwadekar contends that the 1st Petitioner was qualified for the post of teacher at the time of his initial appointment

itself and only due to unavailability of a vacant post of teacher in the school at the relevant period, he was appointed on a non-teaching post. He further submits that since it was merely a change in cadre, there was no requirement of a separate selection procedure. He further submits that the Education Department itself has approved his appointment as Shikshan Sevak and allowed him to change the cadre and hence refusal to grant approval in continuity in service is illegal and cannot be sustained.

6. Mr Walimbe learned AGP appears for the State and contests the claim of 1st Petitioner by taking recourse to Clause 10 of Annexure-A to the GR dated 31st December 2002. The GR relates to appointment of employees on compassionate grounds. Clause 10 provides that once an employee accepts compassionate employment in Class-IV post and acquires a higher qualification, he is eligible to be appointed to the next post by following Rules. Mr Walimbe contends that since the initial appointment of 1st Petitioner as Shikshan Sevak (teaching) was made without following the selection procedure contemplated by Rule 9 of the Maharashtra Employees of Private Schools Conditions of Service) Rules, 1981 (“**the MEPS Rules**”), his services cannot be continued and liability of paying his salary is upon the Management.

7. Mr Walimbe further points out that at the time of his initial appointment on compassionate basis, the 1st Petitioner did not have the basic qualification of B.A., B.Ed. and had only passed HSC examination. Thus, he was not eligible to be appointed on a teaching post at that time itself. The Education officer has not interpreted

GR of 20th April 2016 correctly and thus wrongly approved the 1st Petitioner's appointment as a Shikshan Sevak (Teaching post) by changing the cadre from clerk to teacher, which was done without following the due procedure under the MEPS Rules.

8. Heard the parties and perused the documents placed on record.

9. Admittedly, the 1st Petitioner has served the school as Shikshan sevak in Group C post from 1st April 2010 to 31st March 2013. Upon completion of the probationary period, his services were confirmed by the Management upon approval of the education officer. He improved his educational qualifications and became eligible for appointment as graduate trained teacher.

10. GR dated 20th January 2016 *inter alia* provides that if a concerned candidate at the time of initial appointment could not be appointed in Group-C post although he possessed the educational qualifications, for want of a vacancy and he was compelled to accept a Group-D post, upon availability of a vacancy of a Group-C post, his cadre could be changed provided he was willing to work in the post of Shikshan Sevak first. The 1st Petitioner was willing, and he was so appointed. The Education officer has admittedly granted approval. Now the 1st Petitioner has successfully completed the probationary period and is eligible to be granted continuity in the teaching post. Having approved the appointment of the 1st Petitioner on probationary basis on teaching post, after examining his records, now the Education officer, misinterpreting the

provisions of the GR cannot be permitted to renege from his earlier approval and refuse to grant continuity to the 1st Petitioner's appointment.

11. Section 5 of The Maharashtra Employees Of Private Schools (Conditions of Service) Regulation Act, 1977 (**"the MEPS Act"**) provides for certain obligations cast upon the Management of private schools, relating to filling up every permanent vacancy by the appointment of a person duly qualified to fill up the vacancy. The scheme of section 5 also broadly outlines the procedure to be followed prior to filling up such posts. It further provides that a person appointed to fill a permanent vacancy of an Assistant Teacher (Probationary) shall be on probation for a period of three years. Section 5(2A) reads as thus:

"5(2A) Subject to the provisions of sub-sections (3) and (4), Assistant Teacher (Probationary) shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher."

12. From the bare provision of the statute, it is sufficiently clear that the 1st Petitioner shall be deemed to have been appointed and confirmed as a teacher, having successfully completed the probation period. The only exception to the deemed appointment is if the Management finds the work or performance of the employee to be unsatisfactory during the probation period. The Management itself has sought approval of the continuity of service of the 1st Petitioner and hence we can fairly presume that his services are found to be satisfactory and without blemish.

13. Mr Walimbe seeks to rely on Clause 10 of Annexure-A to the GR dated 31st December 2022. Clause 10 provides that if an employee appointed on compassionate ground in a Group-D post acquires higher qualification, he shall be eligible for his appointment to the next post as per rules. Thus, this clause does not provide any exception to the enabling provision in the GR dated 20th January 2016. It does not indicate any restriction on a change in cadre at all. In fact, Clause 10 itself is an enabling provision and cannot be interpreted to be restrictive. Once the Education officer has approved the appointment of the 1st Petitioner in the teaching post for a mandated probation period, upon successful completion of the same, the approval for continuity cannot be withheld by the Education Officer at this stage, on any other ground save and except that provided in the statute. GR dated 20th January 2016 and 31st December 2022 must be read in aid of each other and their interpretation must be given harmonious construction. The former permits change of cadre in case the employee appointed on compassionate ground is compelled to accept a Group-D post in the absence of Group-C vacancy, despite being qualified for Group-D and the latter permits promotion of the employee to the next post upon acquiring higher qualifications as per the rules. Successive Education officers cannot render selective interpretation to provisions of the GR to grant or refuse approval to deserving employees.

14. Once the Education Officer having examined the necessary record of the 1st Petitioner and approved his appointment in the teaching post for the probation period, save and except as provided by law, cannot refuse approval of continuity in service.

15. Strangely, documents on record also indicate that the Education Officer himself, by his letter dated 17th December 2019 expressed an opinion holding the 1st Petitioner eligible for continuity. In reply to this opinion, the Deputy Director of Education, Mumbai Region by letter dated 4th February 2020 also accepted the recommendation and confirmed eligibility of the 1st Petitioner. What happens next is unfathomable. For no justifiable reason the same Education Officer, overturns his own opinion and that of the Deputy Director and refuses approval. The sole ground of refusal is that his initial appointment was not made by following the procedure in Rule 9 of the MEPS Rules read with GR dated 31st December 2022. We have already held that the Education Officer has misinterpreted the GR and refusal of approval on this ground cannot be sustained.

16. As per the law laid down in a catena of decisions of this Court as well as the Apex Court, equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norm. It is true that compassionate appointment is a concession and not a right. But in the present case, the 1st Petitioner was granted compassionate appointment in the year 2010 itself. He was regularized in the Group-D post. Acting in aid of the GR dated 20th January 2016, a change of his cadre to the teaching post was approved. His eligibility is not in dispute. Now having successfully completed his probation period, refusal to grant approval to continued service is a grave travesty of justice. The 1st Petitioner

has served the institute for as many as 23 years. No purpose will be served by depriving him of means of livelihood.

17. Another important fact that cannot be lost sight of is that no Authority, neither the Management nor the Education Department, on their own cancelled the 1st Petitioner's appointment. It is only when the 1st Petitioner successfully completed his probation period that the Education Officer galvanized into action. Even then the Education Officer and the Deputy Director of Education, Mumbai Region opined in favor of granting approval and suddenly for no justifiable reason oscillated in interpreting the GR selectively, to the detriment of the 1st Petitioner. This is wholly unacceptable.

18. For all the above reasons, the Writ Petition deserves to be allowed. The order impugned dated 28th December 2020 is quashed and set aside. The Education Officer concerned is directed to grant approval to the continuity of service of the 1st Petitioner in the post of Assistant Teacher on regular basis within a period of 4 weeks from the date of this order. The grant in aid for payment of monthly salary as applicable is also to be released.

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

(Neela Gokhale, J)

(G. S. Patel, J)