



Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7363 OF 2022

GHOUSIYA SALIM SHAIKH,
Age: 39 years, Occupation: Housewife, R/o
Shipai Mohalla, Junnar, District Pune.

... PETITIONER

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA,**
Through its Secretary, Ministry of
Primary and Secondary Education,
Mantralaya, Mumbai 400 032.
- 2. THE EDUCATION OFFICER,**
(Section Education), Pune Zilla
Parishad, 17, Ambedkar Marg, Pune-1.
- 3. THE HEAD MASTER,**
Anjuman High School & Junior
College, At post Junnar, Taluka Junnar,
District Pune.

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Mr Hanif Shaikh.
FOR RESPONDENTS NO.1 AND 2-STATE.	Ms PN Diwan, AGP.
FOR RESPONDENT NO.3.	Mr Rahul Kadam.

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

RESERVED ON : 9th August 2023

PRONOUNCED ON : 11th August 2023

JUDGMENT (Per Neela Gokhale J):-

1. **Rule.** Affidavit in Reply has been filed by the Respondents. By consent, rule made returnable forthwith.
2. The Petitioner seeks directions to the Respondent-Zilla Parishad to disburse arrears of remuneration alleged to be outstanding from 17th June 2013 to 11th February 2016.
3. The Petitioner was a teacher appointed on a temporary vacancy in the Anjuman High School and Junior College, Junnar. The 1st Respondent is the State and the 2nd Respondent is the Education Officer of the Pune Zilla Parishad. The 3rd Respondent is the Headmaster of the Anjuman High School.
4. Briefly, the facts of the case are that one Shaikh Riyaz Ahmed, Assistant Teacher was on medical leave from 1st October 2011 up to 30th September 2014. The Petitioner was appointed on the leave vacancy on a contract basis. Her appointment letter indicates the period of her engagement to be from 17th June 2013 till 30th September 2014 for a remuneration of Rs. 8,000/- per month. The Petitioner, however, has worked in the school from 17th June 2013 till 11th February 2016 which is seen from the muster roll record maintained by the school.

5. The Management claims to have submitted a proposal to the Education Officer for approval of the Petitioner's appointment for the first time on 9th September 2014. Thereafter, a number of reminders were sent to the Education Officer by communications dated 16th May 2018, 27th February 2021, 5th July 2021 and 11th October 2021. There was no response from the Education Officer and finally by letter dated 16th November 2021, the Education Officer rejected the proposal of appointment of the Petitioner on the grounds that there was a delay in making the proposal and it is the responsibility of the Management as employer to pay the salary of the Petitioner. The Petitioner has assailed this communication dated 16th November 2021 in the present Petition.

6. Mr Hanif Shaikh, learned counsel for the Petitioner, contends that the Petitioner has worked as teacher from 17th June 2013 to 11th February 2016 on the leave vacancy of Riyaz Shaikh. He has drawn our attention to the communication dated 9th November 2015 of the Petitioner addressed to the Education Officer complaining that the Management had forwarded a proposal for approval of her appointment but the same was defective and the Management had failed to remove the defects. She thus pleaded with the Education Officer to redress her grievance.

7. Mr Kadam, counsel appearing for the Management, contends that the Management had submitted the proposal in September 2014 itself and till date there was no response from the Department. He relies upon some representations made by the Management, copies of which are placed on record. There is an additional affidavit

filed on behalf of the school stating that the former teacher, Shaikh Riyaz Ahmed, was on medical leave from 1st October 2011 till 30th September 2014 and the Petitioner was appointed in his place. The Management admits that the Petitioner has thus, worked for 29 months, 18 days and the arrears of her salary are Rs.2,36,800/-. Mr Kadam further says that the Education Officer had asked the Management to submit proposal for every three months for the period from 17th June 2013 till 11th February 2016 for approval of the services of the Petitioner. Accordingly, the same has been made to the Education Officer. However, the proposal has been rejected by a letter dated 16th November 2021 on the ground of delay.

8. Ms Diwan, learned AGP, contests the prayer of the Petitioner and justifies rejection of the proposal on the ground that *firstly*, there was a long delay in making the same; *secondly*, the responsibility of paying salary to the temporary employee appointed without approval is wholly on the Management; and *thirdly*, the Department has never received any proposal from the period from 17th June 2013 to 11th February 2016. The learned AGP vehemently refutes that the honorarium of Shikshan Sevak is increased to Rs. 17,500/- per month as claimed by the Petitioner.

9. We have considered the submissions of all the parties and the documents on record. The office order of the Management clearly shows that Shaikh Riyaz Ahmed was on medical leave from 17th October 2011 till 30th September 2014. The Petitioner has sought reimbursement of salary for a period from 17th June 2013 till 11th February 2016. However, the contract of employment is from 17th

June 2013 only till 30th September 2014. There is a muster roll placed on record and shows the attendance of the Petitioner till 11th February 2016. This clearly shows that the Petitioner has worked in the School for that period and is entitled to receive commensurate remuneration. Mr Hanif has sought salary at an enhanced amount of Rs.17,500/- per month which according to him was the Petitioner's increased salary. There is nothing on record to indicate the said increase and contract clearly shows the salary to be Rs.8,000/- per month.

10. The Management appears to have sought approval for the Petitioner's appointment from the Department only on 9th September 2014. There are five additional letters dated 11th October 2021 placed on record requesting the Department to grant approval. Strangely, the letters show overlapping dates of service. The Management is unable to explain why letters with distinct outward numbers with overlapping periods of service were sent to the Department and were all of the same date.

11. The letter seeking approval is admittedly dated September 2014 while the employment contract commenced in June 2014. The contention of the Department that there was considerable delay in seeking approval is thus justified. The approval ought to have been sought at the time of appointment, even if not prior to it. Be that as it may, the Petitioner has admittedly worked for the period claimed by her. Neither the Management nor the Department is able to show anything contrary to that claim. It is unclear as to whether the Department has paid 50% salary to the absentee teacher Riyaz Ahmed as per the leave Rules. In any case, that issue is entirely

between the Government and Riyaz Ahmed and the Petitioner is in no way to be affected adversely by it. We agree, however, that the Department cannot be saddled with making payment to the Petitioner as well as the absentee teacher for the same post. Thus, if such a payment is made to Riyaz Ahmed, the Department is entitled to recover such payment from him.

12. As seen from the record, the Management is far from being blameless for the entire disarray of the situation. Ms Diwan cannot be faulted for resisting the claim of disbursement of salary to the Petitioner on account of the laxity and carelessness on the part of the Management in making the proposal for her appointment in time and as per Rules. For this reason, we also leave it open for the Department to take steps to recover salary paid to the Petitioner for the period prior to submission of the proposal for approval.

13. In view of the foregoing, the Department is directed to disburse salary to the Petitioner from 17th June 2013 to 11th February 2016 at the rate of Rs.8,000/- per month within a period of four weeks from the date of the order.

14. As observed above, the Department is at liberty to recover amounts paid by it to Shaikh Riyaz Ahmed, which are over and above his legitimate entitlement.

15. Rule is made partly absolute in terms of prayer clause (a) and (b) as per directions above. There will be no order as to costs.

(Neela Gokhale, J)

(G. S. Patel, J)