

Shubhada S Kadam

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 946 OF 2018

Nitin Raghunath Bhoir

...Petitioner

Versus

The State of Maharashtra & Ors

...Respondents

Mr NV Bandiwadekar, i/b MG Bagkar, for the Petitioner.

Mrs PN Diwan, AGP, for the Respondent-State.

**CORAM G.S. Patel &
 S.G. Dige, JJ.**

DATED: 23rd January 2023

PC:-

1. The Writ Petition, when it was originally filed, assailed an order dated 17th April 2017 (page 45) issued by the 3rd Respondent, the Sudhagad Education Society, Pali, Taluka Sudhagad, District Raigad. This communication of 17th April 2017 declared the Petitioner to be a surplus teacher in the 4th Respondent School, the Sarvajanik Madhyamik Vidyamandir, Rawe, Taluka Pen, District Raigad.

2. On 22nd November 2021, a Division Bench of this Court (R.D. Dhanuka and Abhay Ahuja, JJ) passed the following order:

1. Mr. Bandiwadekar, learned counsel for the petitioner states that during the pendency of this petition, the

respondent no.3 has withdrawn the impugned order dated 17th April 2017 declaring the petitioner as surplus teacher in the respondent no.4 school and as a result thereof, prayer clauses (b) to (d) would not survive. He further states that prayer clause (e) still survives. Statement is accepted.

2. Issue notice upon the respondent nos.3 and 4, returnable on 13th December 2021. Humdast is permitted. Learned AGP waives service for the respondent nos.1 & 2. The respondent nos.3 and 4 to file affidavit on prayer clause (e) to the petition within two weeks from the date of service of papers and proceedings and shall serve a copy thereof upon the petitioner's advocate simultaneously. The respondent no.2 is also permitted to file affidavit-in-reply within two weeks from today and shall serve a copy thereof upon the petitioner's advocate simultaneously.

3. Thus, only prayer clause (e) now survives. It reads thus:

e) By a suitable writ, order of direction, this Hon'ble Court be pleased to direct the Respondent Nos. 2 to 4 to consider the Petitioner as having been appointed in the post of Assistant Teacher in the Respondent No.4 School carrying the pay scale of Trained Graduate post, and accordingly the Respondent No.2 may be directed to grant approval to the Petitioner as Trained Graduate Teacher with effect from 16.6.1997 together with sanction and release of grant-in-aid for payment of salary to the Petitioner in the pay scale of the said post after deducting the amount of salary received by the Petitioner in the pay scale of Trained Under Graduate Teacher [D.Ed. Scale].

4. Respondent Nos. 3 and 4, the society and the school, are absent though served. They have filed no reply.

5. So far as the State Government is concerned, it will act in accordance with a 2012 notification as also directions and orders of this Court. Ms Diwan, learned AGP, points out that once the society has withdrawn the impugned communication, there is no question of the Petitioner being “surplus”.

6. What remains is for the society/school to forward the necessary application to the 2nd Respondent, Education Officer (Secondary), Zilla Parishad Raigad at Alibaug.

7. In these circumstances, we issue Rule, make it returnable forthwith and, for the reasons set out above, make it absolute in terms of prayer clause (e) set out above. The Petition is disposed of in these terms. There shall be no orders as to costs.

8. Respondent Nos. 3 and 4 are to submit the application to the 2nd Respondent by 17th February 2023.

9. The 2nd Respondent is to process it by 10th March 2023.

10. List the matter on 15th March 2023 for compliance.

(S.G. Dige, J)

(G. S. Patel, J)