

Gaikwad RD

REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10765 OF 2022**

HARSHADA PANKAJ NAIK,
Aged 35 years, Occ: Nil,
R/o Niranjana Bungalow, Patil Aali,
Bolinj, Virar [W], Tal. Vasai,
Dist. Palghar-401 303.

...PETITIONER

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA,**
Through the Secretary,
School Education Department,
Mantralaya, Mumbai-400 032.
- 2. THE DEPUTY DIRECTOR OF
EDUCATION,**
Mumbai Region, Mumbai
- 3. VIDYAVARDHINI,**
Vasai Road [W], Dist. Palghar,
Through its Chairman/Secretary.
- 4. ANNASAHEB VARTAK COLLEGE
OF ARTS,**
Kedarnath Malhotra College of

Commerce & E.S. Andrades College of
Science & Junior College,
Vasai Road [W], Dist. Palghar
Through its Principal

... **RESPONDENTS**

APPEARANCES

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

FOR RESPONDENT- **Mrs PJ Gavhane, AGP.**
STATE

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

RESERVED ON : **26th June 2023**

PRONOUNCED ON : **11th July 2023**

JUDGMENT (Per Neela Gokhale J):-

1. **Rule.** The 2nd Respondent has filed its Affidavit in Reply. By consent of parties, rule is made returnable forthwith.

2. The Petitioner is an employee of the 4th Respondent Junior College run by the 3rd Respondent Educational Trust. The 2nd Respondent is the Deputy Director of Education of the 1st Respondent, State of Maharashtra.

3. The case has a chequered history and has suffered previous rounds of litigation in this very Court. The Petitioner, responding to

an advertisement dated 19th June 2015 published in newspaper, “Daily Loksatta”, applied for the post of Commerce teacher in the same college. Following a selection procedure, the Petitioner was issued an appointment letter as full time Commerce Teacher on a temporary basis from 1st July 2015 to 7th November 2015, on the payment of a consolidated monthly salary of Rs. 10,000/-.

4. The Petitioner’s contract was renewed annually with breaks of few days in between successive appointments. This continued till 30th April 2018. Tenure appointment letters have been placed on record. The Petitioner discharged her work regularly which included in the Junior College Staff List each year while discharging her work regularly which included Time-table assigning duties in the classes of Std. 11 and 12 of the Junior College, participating in prize distribution ceremonies, conducting cultural and extra-curricular activities, working on sports committee, working as an examiner for the H.S.C. examination conducted by the State and other such work ordinarily performed by full time permanent teachers of an educational institution. Despite this, her services were not made permanent as the Management failed to submit the necessary proposal to the Education Department for approval of the Petitioner’s services.

5. The Petitioner filed Writ Petition No.5257 of 2019 in this Court seeking directions to the Management to send a proposal for approval of the Petitioner’s services to the State Education Department and further direct the Education Department to grant approval to their appointment and release grant-in-aid for payment

of salary to the teachers. During the pendency of the Writ Petition, the Management terminated the Petitioner's services leading to this Court passing protective orders restraining the Management from filling up the posts occupied by the Petitioner and paying salary to the Petitioner, etc.

6. There were other similarly placed teachers of the same college suffering similar fate and they too filed separate Writ Petitions in this Court seeking similar relief. In its Order of 22nd February 2022, this Court made specific observations such as *firstly*, even though the appointment letters indicate the appointment to be purely on temporary basis, for all practical purposes, the appointment was treated by the Management as regular and permanent appointment; *secondly*, the Pavitra Portal had no application to the Petitioner's appointment, it being made in the year 2015, i.e., prior to the introduction of the Pavitra Portal; and *thirdly*, the ban on recruitment also had no application since the appointment was that of a commerce subject, which was an exception to the general ban on recruitment. Thus, this Court directed the Management to submit a proposal for approval of the Petitioner's services to the Education Department within a period of four weeks from the date of that order and further directed the Education Department to decide the proposal at the earliest. The Management was also directed to pay differential salary to the Petitioner within a specified time.

7. The Management thereafter submitted the proposal. However on 12th May 2022, the proposal was rejected by the

Education Department on the grounds that the provisions of Government Resolution (“**GR**”) dated 23rd June 2017 pertaining to making appointment via Pavitra Portal was contravened, the procedure provided under Section 5 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 (“**MEPS Act**”) pertaining to seeking permission prior to publishing advertisement was not followed, provision of probation period was not fulfilled, the procedure detailed by Rule 9 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1981 (“**MEPS Rules**”) was contravened, and necessary supporting documents were not submitted along with the proposal. It is this order of 12th May 2022 which is assailed by the Petitioner.

8. Mr Bandiwadekar, learned Senior Counsel, appears for the Petitioner. He relies heavily on the earlier order of 22nd February 2022 passed by this Court to canvass his case that there was no applicability of Pavitra Portal or the ban on recruitment process to refuse approval. The Petitioner cannot be faulted for the negligence of the Management in failing to ascertain availability of surplus teachers from the Education Department. This Court had already directed the Petitioner to be treated as being in regular and permanent service. Hence, there was no question of the Education Department refusing approval to her services.

9. Mrs Gavhane, learned Additional Government Pleader, appears for the State. She relies upon various GRs laying down the procedure to be followed by educational institutions in the selection procedure. She points to the appointment letters of the Petitioner to

indicate the temporary nature of her appointment. She also points out that the Management has failed to ensure reservations for adequate number of posts for members of the backward class as mandated by Section 4 of the MEPS Act. She further says that the Management has also not submitted the roster for verification and not sought nomination of surplus employees. Referring to the provisions of the MEPS Act and the Rules, she contends that the date of advertisement and its contents indicate that the advertisement did not contain all the mandatory information and the appointments were made in haste, within ten days of publishing the advertisement. Mrs Gavhane therefore vehemently resists the Petition by strongly indicating substantial lapses in the selection procedure employed by the Management.

10. Respondents No.3 and 4 have not filed any Reply Affidavit. The Management has clearly shirked its responsibility and is expecting to be absolved of its duties to act in aid of the MEPS Act and Rules made thereunder as well as various GRs issued by the Education Department from time to time.

11. The Order of 22nd February 2022 is clear and clearly casts the responsibility of paying differential salary to the Petitioner on the Management. Despite specific directions to the Management to submit the proposal for approval by the Education Department, the approach of the Management appears to be completely irresponsible. The Management appears to be totally unfazed by the plight of its teachers, for which solely and wholly the Management itself is responsible. Even after this Court's order, the proposal has

been submitted in a casual manner and without annexing supporting and necessary documents. Neither the State nor the Petitioner can be faulted for the complete disarray in the recruitment procedure. The Management could not have published the advertisement without prior approval. Even the contents of the advertisement are not as per the provisions of the MEPS Act. Further, there is a total contravention of Rules as temporary and *ad hoc* appointment letters were issued to Petitioner and other teachers. An attempt is made by the Management to show that after the order of refusal, some documents were sent to the Department, but nothing is placed on record to corroborate this.

12. In these circumstances, we do not find the Education Department to be blameworthy for the plight of the Petitioner. The entire chaos is the doing or rather failure to act on the part of the Management.

13. In view of the foregoing, there is no infirmity in the impugned order of 12th May 2022. However, this Court in its earlier order of 22nd February 2022 has already held that for all purposes the services of the Petitioner are to be treated as regular and permanent. But we cannot saddle the exchequer with the responsibility to bear the expenditure of the salary of the Petitioner as the State cannot be faulted for the substantive lapses in the selection procedure adopted by the Management. By way of an interim order, we had already restrained the Management from filling up the post held by the Petitioner and now we have no hesitation in directing the

Management to reinstate and continue the services of the Petitioner on the post and bear the entire expenditure of her salary.

14. Respondents Nos 3 and 4 are directed to reinstate the Petitioner on her post and continue to pay salary to her as per the applicable scale.

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

(Neela Gokhale, J)

(G. S. Patel, J)

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