

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 10640 OF 2019

Smt. Vandana Manoj Chauhan

..Petitioner

Versus

The Secretary/President,
Prithviraj Chauhan Shikshan Samiti & Ors.

..Respondents

Mr. Mayuresh S. Lagu for Petitioner.

Mr. Ajit R. Pitale for Respondent No.3.

Mr. C. D. Mali, A.G.P. for Respondent No.4.

CORAM : SARANG V. KOTWAL, J.

DATE : 20 APRIL 2023

PC :

1. By consent of the parties the petition is disposed of finally by this order.

2. Rule. Rule is made returnable forthwith.

3. The Petitioner has challenged the order dated 27.07.2018 passed by the Respondent No.3 i.e. the Education officer (Primary) Thane Municipal Corporation, Thane. The Petitioner was appointed as an Assistant Teacher in the Respondent No.2 School i.e. Prithviraj Hindi Vidyalaya. The said school was

managed by the Respondent No.1- Prithviraj Chauhan Shikshan Samiti, Nalpada, Kapurbavdi, Thane.

4. Heard Shri. Mayuresh Lagu, learned counsel for the Petitioner, Shri. Ajit Pitale, learned counsel for the Respondent No.3 and Shri. Mali, learned A.G.P for the Respondent No.4.

5. It is the case of the Petitioner that, in the year 2014 the Respondent Nos.1 and 2 issued a public advertisement for appointment of a teacher holding D.Ed. qualification. The Petitioner was appointed on the post of Assistant Teacher. The letter of appointment was dated 25/06/2014. In the year 2018, the Respondent Management submitted a proposal before the Respondent No.3 for approval of the appointment of the Petitioner. The said proposal was rejected by the impugned order.

6. Learned counsel for the Petitioner submitted that the Respondent No.1 was granted a certificate on 10/07/2017 that the said institution was Minority Institution. In the cases of Minority Institutions, the G.R. dated 02/05/2012 mentioned in the impugned order was not applicable. It was mentioned in the

impugned order that, pursuant to the said G.R. unless all the surplus teachers were absorbed, no new appointment could be made by the Management in the private schools. The other reason was that the documents were incomplete and that in the area of Thane Municipal Corporation there were surplus teachers in the Hindi Medium School. Therefore, based on all these reasons the approval was not granted.

7. Learned counsel for the Petitioner relied on the order passed by a division bench of this Court at Aurangabad Bench on 02/09/2013 in the Writ Petition No.3707 of 2013, in which, exactly this issue was dealt with. It was observed that, in the case of Minority Institution the said G.R. dated 02/05/2012 was not applicable and in a similar situation the order passed by the Education Officer in that case on the similar ground was set aside.

8. Learned counsel for the Respondent No.3 tried to defend the impugned order. He submitted that, by the subsequent communication, other reasons are also given as to why the proposal was not accepted.

9. I have considered these submissions. As far as this petition is concerned, I am examining the order passed on 27/07/2018. As rightly submitted by learned counsel for the Petitioner, the ratio of the Judgment passed by the Division Bench of this Court at Aurangabad Bench in W.P. No.3707 of 2013 is squarely applicable to the present case. The institution is declared as Minority Institution on 10/07/2017. The impugned order was passed on 27/07/2018. According to the ratio of said Judgment, the G.R. dated 02/05/2012 which is the basis of the impugned order is not applicable to a Minority Institution. In this view of the matter, the reasons given in the impugned order are not sustainable and the impugned order is liable to be set aside. The petition deserves to be allowed.

10. Hence, the following order:

ORDER

- i) The impugned order dated 27/07/2018 passed by the Respondent No.3- Education officer (Primary) Thane Municipal Corporation, Thane, is set aside.

ii) The Respondent No.3 shall consider the proposal sent by the Respondent Nos.1 and 2 for approval of the appointment of the Petitioner, afresh, in accordance with law.

iii) With these observations, Rule is made absolute in the aforesaid terms.

iv) The Petition is disposed of.

(SARANG V. KOTWAL, J.)