

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 8607 OF 2023

MRUNAL MANDAR JOSHI,
Age: 42 Years, Residing at: Om Agatya
Society, B-9, RX 16/17 Sudarshan Nagar,
Dombivli (East), Thane.

...PETITIONER

~ VERSUS ~

- 1. STATE OF MAHARASHTRA,**
Through Principal-Secretary, Ministry
of School and Education and Sports,
Having office at: Mantralaya Annexe,
Madam Cama Marg, Hutatma Rajguru
Chowk, Mumbai 400 032.
- 2. DIRECTOR OF EDUCATION,**
MAHARASHTRA,
Central Building Camp, Near Sassoon
Hospital, Pune 411 001.
- 3. DEPUTY DIRECTOR OF**
EDUCATION,
Mumbai Region, Having office at:
Netaji Subhash Marg, Jawahar Bal
Bhawan, Charni Road, Mumbai 400
004.
- 4. TILAK NAGAR SHIKSHAN**
PRASARAK MANDAL,

Through its Secretary, Having office at:
Tilak School Road, Tilak Nagar,
Dombivli East, Dombivli, Maharashtra
421 201.

**5. TILAK NAGAR VIDYA MANDIR
SCHOOL,**

Through its Head Master, Having office
at: Tilak School Road, Tilak Nagar,
Dombivli East, Dombivli, Maharashtra
421 201.

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER **Mr Mihir Desai, Senior Advocate,**
*Sanskriti Yagnik, i/b Deryani
Kulkarni.*

FOR RESPONDENTS NO. 1 TO 3. **Mr NC Walimbe, AGP.**

FOR RESPONDENTS NO.4 AND 5. **Mr NV Bandiwadekar, Senior
Advocate, Vinayak Kumbhar,
i/b AN Bandiwadekar.**

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

RESERVED ON : 24th July 2023

PRONOUNCED ON : 1st August 2023

JUDGMENT (Per Neela Gokhale, J):-

1. Rule. Rule is made returnable forthwith. Heard finally with
the consent of parties.

2. This is a second round of litigation. An Assistant Teacher is compelled to run from pillar to post to seek confirmation of her services as a full-time teacher and spend time in litigation, which time and effort would be better spent in the classroom with her students.

3. In the earlier proceedings, this Court had set aside the order passed by the Respondent-Education Department, rejecting approval to the appointment of the Petitioner as a full-time teacher from the time of her appointment as such and had directed the Department to decide the proposal *de novo*, allowing the Management to produce documents required by it. The Petitioner and the Management produced necessary documents substantiating their claims. Nevertheless, the Department maintained the order of refusal. It is this order which the Petitioner assails in the present proceedings.

4. The Petitioner is a teacher employed in the 5th Respondent-School run by the 4th Respondent-Management. The Respondents No. 2 and 3 are the Director and Deputy Director of Education of the 1st Respondent- State respectively.

5. A post of a full time Chemistry Teacher fell vacant on the promotion of one Mr Pardeshi to the post of Assistant Headmaster. A post of a part-time Shikshan Sevak was created to bear the workload of a Chemistry Teacher. The Petitioner was appointed on the post following the due selection procedure. Her services were

approved by the Respondent, Department on 30th December 2014 after completion of her probation period.

6. Mr Pardeshi retired on 31st May 2016 and the seniormost teacher took over as Assistant Headmaster. A vacancy was thus created for the post of a full-time Chemistry Teacher. The Petitioner being eligible for the post was appointed as full-time Chemistry Teacher, a resolution was passed by the Management and the proposal was sent for approval to the Education Department. The Respondent Department rejected the approval on grounds that the resolution was passed by the Management two years after the Petitioner's appointment on the full time post, the Management had not maintained the roster nor had it been verified, and in view of a backlog of reserved category namely, VJ-NT, no vacancy was available in the open category.

7. The Petitioner filed a Writ Petition No. 3231 of 2019 in this Court. The Respondent-Department filed its reply and by judgement dated 13th April 2022 the rejection order was set aside with directions to the Department to decide the proposal afresh after allowing the Petitioner and the Management to produce the verified roster for the relevant years and other documents.

8. The Management produced the relevant documents including the verified roster etc. Nonetheless, the Department was reluctant to grant approval and by order dated 24th November 2022, rejected the proposal on identical grounds relied upon in the earlier proceeding. This is the impugned order.

9. Mr Mihir Desai, Learned Senior Advocate appearing for the Petitioner, has drawn our attention to the observations in the judgement dated 13th April 2022. The judgment of a Division Bench comprising of S.B. Shukre, J. and G.A. Sanap, J. clearly records that there was no open category post available on 6th February 2019 when the roster was checked and there was a backlog of two posts. However, the Petitioner was appointed on the full-time post on 15th June 2016 and hence the roster for the previous years was required to be verified. The Management concedes that they had not produced the roster of the relevant years before the Department and hence the earlier proposal was rejected. The Management thus sought opportunity to produce the verified roster for relevant years which clearly indicated availability of a post in the open category.

10. Mr Desai further points out that for the year 2016, seven posts were vacant including one post in the open category. He says that the teacher who had superannuated was also from the open category and hence the Petitioner's appointment on that post is perfectly legal. He thus assails the rejection order as being arbitrary and passed without application of mind.

11. Mr Bandiwadkar, Learned Senior Advocate appearing for the Management, supports the submissions of the Petitioner. The documents relating to the roster of the relevant years are on record.

12. Mr Walimbe learned AGP appears for the State and makes a valiant attempt to justify the impugned order. His reasons for the

same are *firstly*, the appointment was made without verifying the roster and *secondly*, the provisions of the MEPS Act regarding filling up backlog vacancies are contravened by the Management.

13. We have perused the judgment in the earlier round of litigation. It is quite clear that the grounds canvassed by the Respondent-Department in these proceedings are identical to those agitated by them in the first round of litigation between the parties. Pursuant to the earlier judgement of 13th April 2022, the Department was required to only verify the roster for the relevant period in which the Petitioner was appointed in the full time post, i.e., 2015-16, 2016-17 and 2017-18. The documents placed on record in the present proceedings separately by the Petitioner and the Management clearly indicate that the roster of the teaching cadre in the 5th Respondent School as on 19th July 2016 was inspected, verified and certified by the Education Officer, Zilla Parishad, Thane on 27th July 2016. The extract of the roster clearly shows that in the Academic Year 2016-17, there were 23 posts available in the open category, out of which only 16 posts were filled, leaving a deficit of seven posts in the open category. During the period 2016-17 and 2017-18, there does not appear to be any backlog of reserved posts.

14. Mr Desai also relies upon the Government Resolutions (“GR”) dated 31st January 2001 and 7th September 2017 which permit upgradation of a part-time teacher and provide for preference to be given for appointment on the full-time post for the same subject, once the said post fell vacant. The Petitioner is thus

correctly upgraded to the full-time post. It is true that the resolution recording the decision of the Management confirming the appointment of the Petitioner on the full-time post was required to be passed immediately following the appointment but was not done. The appointment of the Petitioner is of 15th June 2016 and the resolution was passed on 31st March 2018, i.e., after a period of two years. The Department points out this delay to buttress their refusal in sanctioning the approval.

15. We have seen the resolution and find that the resolution itself records the appointment and in fact confirms the same with retrospective effect.

16. In any case, the Petitioner cannot be faulted and penalised for the acts or omissions of the Management in completing the requisite formalities.

17. The Petitioner has served as a Chemistry Teacher in the School for as many as 11 years. There are no complaints against her, and she has an unblemished service record. She was appointed as part-time teacher after participating in a duly followed selection procedure. She is otherwise eligible for the post.

18. In these circumstances, the rejection order of 24th November 2022 cannot be sustained and is thus set aside.

19. The 3rd Respondent is directed to grant approval to the services of the Petitioner as a full time Assistant Teacher with effect

from 15th June 2016 and disburse the balance of her salary and arrears thereof within a period of four weeks from the date of the present order.

20. The Petitioner prays for interest at the rate of 18 per cent per annum on the arrears of her salary. We have considered her request. However, we find that it was a lapse on the part of the Management to have failed to submit relevant roster documents to the Education Officer along with the proposal for approval, which led to the earlier proceedings. They have thereafter produced the documents for the relevant academic years and there appears to be no substantial delay on the part of the Education Department in deciding the proposal afresh. In these circumstances, the prayer for interest from the State is denied. But the Petitioner is at liberty to seek interest as prayed from the Management for the period of loss, if she is so advised, from a jurisdictionally competent court.

21. Rule is thus made absolute in terms of prayer clause 33 (a) and (b).

22. There will be no orders as to costs.

(Neela Gokhale, J)

(G. S. Patel, J)

RAJU
DATTATRAYA
GAIKWAD
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signed by
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GAIKWAD
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