

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3401 OF 2018**

Vinit Thakkar	...Petitioner
<i>Versus</i>	
Somaiya Vidyavihar & Ors	...Respondent

Mr Sanjay Jadhav, *for the Petitioner.*
Mr Lancy D'souza, *with Dipika Agarwal, i/b KK Jadhav & JK Jadhav, for Respondents Nos. 1 and 2.*
Mr Kedar Dighe, *for the Respondent-State.*

**CORAM G.S. Patel &
 S.G. Dige, JJ.**
DATED: 13th January 2023

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- 1. Rule.** Rule made returnable forthwith. The Petition is taken up for hearing and final disposal.

- 2.** We have heard Mr Jadhav for the Petitioner. The point involved is short. The challenge is to an order dated 4th September 2017 issued to the 2nd Respondent by the 3rd Respondent. A copy of the impugned order is at page 44. There is an Affidavit in Reply by the State Government represented by Mr Dighe as also by the 2nd Respondent minority college represented by Mr D'souza.

3. The 2nd Respondent college is run by 1st Respondent, a public charitable linguistic minority trust. A more elaborate consideration of the dates is not necessary. The Petitioner was appointed as a teacher on a clock-hour basis with effect from 16th June 2014 to 30th April 2015 in the 2nd Respondent's junior college. The 2nd Respondent sent a proposal to Respondent No. 3 seeking a No Objection to appoint an instructor for the subject of banking in that college. The 2nd Respondent published an advertisement on 20th June 2013. The Petitioner applied. He was called to an interview on 4th July 2013. A local selection committee was constituted since the 1st Respondent is a registered minority institute. The Petitioner secured the highest marks and was recommended to the post. He was appointed as a full-time instructor for banking by the 2nd Respondent with effect from 1st February 2014 by a letter of that date. The 2nd Respondent forwarded a proposal for approval of the services of the Petitioner to Respondent No. 3. A copy of this letter was 2nd Respondent is at Exhibit "G" at page 26. It seems to be of 4th September 2017.

4. This is really the only issue and the one that is addressed in the Affidavit in Reply. The government says that there is a delay of more than three years in making the proposal for the Petitioner. Clause 10 of a GR dated 6th February 2012 requires it to be sent for approval within ten days of the date of the appointment. We note that there is also a delay, though much less, of about seven months in filling the post. This is a case where permission was granted to fill the post. It had to be filled in under that GR within 45 days of the date of permission. It was actually filled in after a delay of seven months.

5. The result of this is that the State has applied its GR. The Petitioner is blameless, so we turn to next party involved namely the 2nd Respondent. Mr D'souza takes us through his Affidavit to say that there were administrative difficulties on the part of the 2nd Respondent due to some staffing issues. It did not in fact have enough staff. It had to engage private staff from outside. Sometimes even the teaching staff had to be engaged in non-teaching work and seconded to these administrative issues. All these factors resulted in a delay and the college ultimately sent a proposal regarding the Petitioner on 6th March 2017. The Affidavit also says that on 11th October 2017 the institution resubmitted the proposal but there is no response.

6. In a situation like this, it is impossible for us to say that any of the three parties are really at fault. The government has applied the clear terms of its GR and it cannot be faulted for that. The Petitioner is, self-evidently, blameless and is really the victim here. Mr D'souza for the 2nd Respondent has presented the problems the institution encountered, and we have no reason to disbelieve them.

7. The question that then presents itself, to paraphrase Professor Michael Sandel of the Harvard Law School is, *what is the right thing to do?* We answer this by assessing where lies the prejudice — if any. Who might suffer if relief is granted? No one. Who might benefit if relief is denied? Not only the Petitioner, but the 1st and 2nd Respondents, and also, importantly, the students of the junior college who are enrolled in the banking course. The public purpose of the GR is not achieved by a refusal of relief.

8. There is a Government Resolution. It prescribes a time period. That was not followed. An explanation is offered, and we are asked more by Mr D'Souza than by Mr Jadhav to condone the delay. That is surely an invocation to our extraordinary equitable discretion under Article 226 of Constitution of India. The terms of the GR will not constrain us when the result would be patently inequitable.

9. Accordingly, we make Rule absolute. We do so in terms of prayer clause (a) and (b) which are set out below.

“(a) The Hon’ble Court may be pleased to issue a writ of Certiorari or a writ, order or direction in the nature of Certiorari, quashing and setting aside the impugned order dated 04/09/2017 thereby rejecting the proposal for approval of services of the Petitioner;

(b) that this Hon’le Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondents to approve the service of the Petitioner as Instructor for Banking subject in the Respondent No. 2 w.e.f. 01/02/2014 and pay her the arrears of salary w.e.f. 01/02.2014 as per the prescribed pay scale.”

10. It goes without saying that since we have exercised our discretion, this is done equitably in the peculiar facts and circumstances of the case. We have not set out any larger principle of law of broader or universal applicability.

(S. G. Dige, J)

(G. S. Patel, J)