



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12609 OF 2022

Minakshi Sanjay Shinde
Age: 48 years, Occu.: Service,
As Teacher,
R/o. 76, Gopai, Ajabnagar,
Near Jain Temple, Sakri Road,
Dhule, Tq. And Dist. Dhule.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
School Education and Sports
Department, Mantralaya,
Mumbai-32.
2. The Deputy Director of Education,
Nashik Region Nashik.
3. The Education Officer (Secondary),
Zilla Parishad, Dhule.
4. The Headmistress,
Kamlabai Shankarlal Kanya School,
& Late Prof. Vasantrao Ghaskadbi,
Taluka and District Dhule.

.. RESPONDENTS

...
Mr. S. S. Deshmukh, Advocate for the petitioner.
Mr. S. J. Salgare, AGP for respondent Nos.1 to 3 – State.
Mr. M. S. Shah, Advocate for Respondent No.4.
...

**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

DATE : 21st March, 2024.

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. Present petition has been filed challenging the order dated
14.10.2022 passed by respondent No.3 rejecting the grant of approval

to the services of the petitioner from the date of her initial appointment i.e. 15.06.2015 and impliedly rejecting the benefits to her.

2. The facts which are not in dispute are that the petitioner is working as Assistant Teacher with respondent No.4. She came to be appointed with effect from 15.06.2015 after following due procedure of law. In fact, she was working with respondent No.4 from 07.08.2008 to 30.04.2015. However, in the wake of Maharashtra Teachers Eligibility Test, she came to be appointed from 15.06.2015. The petitioner is from reserved category and possesses validity certificate issued by the Caste Scrutiny Committee on 02.08.2004. Respondent No.3 was supposed to decide the approval dated 29.07.2016, but since it was not done, it resulted in termination of services of the petitioner. The petitioner then challenged the action on the part of management by filing Appeal No.102 of 2016 before learned Presiding Officer, School Tribunal, Nashik. Her appeal came to be allowed by order dated 16.10.2020, thereby setting aside the order of termination with further directions for granting approval to the services of the petitioner with consequential service benefits. The management then reinstated the petitioner, however, service benefits in respect of back-wages and salary after reinstatement are awaited. After reinstatement, in view of the order passed by this Court in Writ

Petition No.7791 of 2020 dated 27.11.2020, fresh proposal was submitted by respondent No.4 with respondent No.3. In fact, by way of Writ Petition No.8210 of 2021, this Court had directed respondent No.3 to decide the proposal as expeditiously as possible, but when no such steps were taken, petitioner had filed contempt petition. It is still pending. The petitioner contends that there was absolutely no impediment in her appointment, as though she was working since 2008 on no grant basis, clear vacancy occurred on account of retirement of teacher Ms. Pushpa More on 30.04.2015 and, therefore, the management had considered her appointment. The reasons given in the impugned order are illegal and, therefore, the impugned order deserves to be set aside.

3. Heard learned Advocate Mr. S. S. Deshmukh for the petitioner, learned AGP Mr. S. J. Salgare for respondent Nos.1 to 3 – State and learned Advocate Mr. M. S. Shah for respondent No.4.

4. It can be seen from the record that though the petitioner is contending that she was serving with respondent No.4 since 2008, yet it appears that there was no vacant post at that time. A clear vacancy is stated to have occurred in 2015 and accordingly, she was granted the appointment. She already passed Maharashtra Teachers Eligibility Test on 01.05.2014 before her appointment on 15.06.2015. It can be further gathered from her appeal that her services were terminated on

10.10.2016 and it was challenged by her before learned School Tribunal. The School Tribunal decided the appeal on 16.10.2020. Respondent No.3 was party to the said appeal and, therefore, it will have to be presumed that respondent No.3 had the knowledge about the order that was passed in appeal. While allowing the appeal, further directions were given by the School Tribunal to respondent No.3 stating that he should allow the proposal dated 29.07.2016 forwarded for the grant of approval of the services of the petitioner. It was also then stated that the respondents (including the management) should reinstate the petitioner on the same post with same salary, continuation of service and all other financial benefits. Therefore, when positive directions were given to respondent No.3, then while considering the said proposal, respondent No.3 was not justified at all in scrutinizing each and every document of the proposal. Respondent No.3 cannot go beyond the directions given by the learned School Tribunal. School Tribunal has referred the directions given by this Court only, but failed to consider that along with the said Writ Petition No.8210 of 2021, the petitioner had produced the copy of the judgment in appeal before the School Tribunal, Nashik Division, Nashik at Exhibit- 'D'. The said order passed by the learned School Tribunal has achieved finality, as the management had never challenged the said order before the higher authorities. Similarly, respondent No.3, who was a party to the said appeal also has not challenged the said

judgment in the appeal for whatever directions. Therefore, at the cost of repetition it will have to be stated that respondent No.3 was not justified in scrutinizing the proposal on merits. Unless the School Tribunal would have considered that the appointment of the petitioner was legal, it would not have directed the management to reinstate the petitioner.

5. In view of these facts, the petition deserves to be allowed. Hence, the following order :-

ORDER

. The Writ Petition stands allowed in terms of prayer clauses 'B' and 'C'.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm