

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8341 OF 2022

Mital Vitthal Patil

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. Narendra Bandiwadekar, Senior Advocate with Vinayak Kumbhar, Rajendra Khaire, Aniket Phapale i/b Ashwini Bandiwadekar for the Petitioner.

Mr. S.H. Kankal, AGP for the Respondent Nos. 1 and 2/State.

Mr. Milind Deshmukh for Respondent No.3.

**CORAM : NITIN JAMDAR AND
M.M. SATHAYE, JJ.**

DATE : 13 JUNE 2024

P.C. :

. Heard learned counsel for the parties.

2. The Petitioner has challenged the order passed by the Deputy Director of Education, Kolhapur dated 15 June 2021 rejecting the Petitioner's request of upgrading the Petitioner from the post of 'Part-time *Shikshan Sevak*' to the 'Full-time *Shikshan Sevak*' in the aided Junior College of Respondent No.3-Management.

3. The Petitioner applied pursuant to the selection process initiated by Respondent No.3 in the Academic Year 2012-2013, the part-time *Shikshan Sevak* in the subject of Mathematics. The Petitioner participated and an appointment order was issued to the

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Petitioner on 31 August 2012. The Petitioner joined the services of Respondent No.3 from September 2012 onwards. Thereafter, the Petitioner came to be appointed from time-to-time by order dated 29 June 2013 for the Academic Year 2013-2014, order dated 26 July 2014 for the Academic Year 2014-2015, order dated 21 June 2015 for the Academic Year 2015-2016, order dated 29 June 2016 for the Academic Year 2016-2017, which appointments have been duly approved by the Education Authority.

4. Since the Petitioner's request for upgrading to the full time post was not accepted by the Respondent-Management, the Petitioner along with other employees filed Writ Petition bearing No. 9667 of 2018 with connected petitions which were disposed of on 29 October 2020 by passing the following order.

"PC:

. These seven petitions concern upgradation of the respective Petitioners, who are working as part time teachers, as full time teachers in accordance with the Government policy.

2. It is not in dispute that the Petitioners were duly appointed as part time Shikshan Sevaks in the concerned educational institutions and their appointments were approved by Respondent No.2 Deputy Director of Education. It is also not in dispute that in accordance with circular issued by the Education Department on 31 January 2001, and G.R. issued by the Respondent State on 10 June 2005, the Petitioners are eligible to be considered for upgradation as full time teachers on proper applications submitted in that behalf to the education

authorities. In a number of similarly placed cases (Writ Petition No.482 of 2002 and others), a Division Bench of this Court, by its order dated 10 July 2019, whilst disposing of the petitions of concerned teachers, granted liberty to the petitioners to make representations and directed the education authorities (Education Officer or Deputy Director of Education, as the case may be) to issue appropriate instructions/directions for facilitating their absorption in accordance with the State policy in a time bound manner. Learned AGP does not dispute that the facts of this case are no different from the facts of those cases.

3. The petitions are, accordingly, disposed of by giving liberty to the Petitioners to file appropriate applications/representations for absorption as full time teachers in accordance with the State policy. The concerned Education Officer or Deputy Director of Education, as the case may be, shall, on receipt of such applications/representations, extend opportunity of hearing to the Petitioners and the concerned institution (who are arraigned as Respondent No.3 in each of these petitions), and thereafter, issue necessary instructions/directions for facilitating absorption of the Petitioners in accordance with the policy of the Respondent State, expeditiously as possible, and preferably within a period of four months from the date of receipt of the applications/representations. In the event the Petitioners are found eligible for absorption either as full time Shikshan Sevaks or full time Assistant Teachers in the concerned private institution the authorities, i.e. the Education Officer or Deputy Director of Education as the case may be, shall issue directions to the employer institutions submitting appropriate proposals for grant of approval to upgradation the Petitioners as full time Shikshan Sevaks/Assistant Teachers.

4. Leave to amend Writ Petition (Stamp) No.5606 of 2020 by correcting the name of Respondent No.3 therein. Amendment to be carried out within one week. Re-verification dispensed with.”

(Emphasis Supplied)

5. Thereupon, the Petitioner appeared before the Deputy Director of Education, Kolhapur. The Petitioner submitted written submission so also Respondent No.3-Management. The Respondent-Management took a stand that the Petitioner has been appointed on part-time basis which was a temporary appointment and the Petitioner has not continuously worked and therefore, the Petitioner is not entitled to the relief to be appointed on full-time basis.

6. The Deputy Director noted that the Petitioner has served as per the appointment orders and made three observations. First that the Petitioner's appointment is not as per the Rule 9 of the Maharashtra Employees Of Private Schools (Conditions Of Service) Rules, 1981 and the Government Resolution dated 6 February 2012. Secondly, there is no continuous service from 2012-2013 to 2016-2017. The Deputy Director also observed that the Petitioner is not in service from the Academic Year 2016-2017.

7. As far as last ground in the impugned order that the Petitioner is not in service from Academic Year 2016-2017, we do not find that this is a specific stand of the Respondent-Management before the

Education Authority. The Respondent-Management had only stated that the Petitioner has been appointed as part-time basis for a limited duration, but has not categorically stated the same that the Petitioner is not in service at all from the Academic Year 2016-17. In fact, the Petitioner in the written submission before the Deputy Director had stated that after the Academic Year 2016, the Respondent-Management has continued the Petitioner in service, but deliberately on clock hour basis, and Petitioner working as on today. The learned counsel for the Petitioner submits that even today the Petitioner is working, therefore there is a clear error in the impugned order.

8. As regards the observations that the Petitioner's appointment is not as per the Rules and Government Resolution dated 6 February 2012, the learned counsel for the Petitioner has drawn our attention to the observations in the order dated 29 October 2020, (which we have quoted earlier and highlighted) where the Division Bench has specifically observed that the Petitioners were duly appointed and their appointments were approved. These observations continue to bind the Respondent-Management and the State who have not moved for any clarification. The State Government was a party when these observations were made and therefore, the Education Officer cannot overlook these observations which are now binding.

9. The question therefore, would then arise is Petitioner's claim for upgradation, There are other aspects that need to be considered before considering the prayer from upgradation to full-time post,

however, in the impugned order, there is no reference to the same at all. This position therefore would entail a remand to the Deputy Director of Education, Kolhapur. However, we do note the grievance of the Petitioner that the Petitioner had to approach this Court second time for seeking the same relief. The impugned order as stated above is based on factual position which was not on record and contrary to the observations of this Court. Therefore, while remanding the matter we are inclined to accede to the request of the Petitioner that in the meanwhile, till the decision is taken by the Deputy Director of Education, Respondent No.3 will not appoint and submit a proposal for approval for one post on Full-time basis in subject of Mathematics.

10. Accordingly, impugned order dated 15 June 2021, is quashed and set aside. The proceedings are restored to the file of the Deputy Director of Education, Kolhapur for decision afresh in light of what is observed above and keeping in mind of the observations of the Division Bench in the order dated 29 October 2020. The decision be taken within a period of 8 weeks after giving opportunity of hearing to both the parties and also giving an opportunity to submit their response.

11. Till the decision is so taken, Respondent No.3 will not appoint and submit a proposal for approval of one Full-time post in the subject of Mathematics .

12. Writ Petition is accordingly disposed of in the above terms.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)