

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

WRIT PETITION NO. 5403 OF 2024

Gajanan Satish Vandarne & Ors. ... Petitioners

versus

The State of Maharashtra & Ors. ... Respondents

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Mr.Suresh Pakale, Senior Advocate with Mr.Nilesh Desai i/b.
Ms.Padmaja Malgaonkar for the Petitioners.

Ms.R.A.Salunkhe, AGP for the Respondent -State.

Mr.Kedar B. Dighe for Respondent Nos. 2 and 3- Pimpri Chinchwad
Municipal Corporation.

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

DATE : 23 April 2024

P.C. :

Heard the learned Counsel for the parties.

2. This petition is filed by 18 Petitioners who are working with Respondent No.2 -Pimpri Chinchwad Municipal Corporation as primary teachers in the school run by Respondent No.3-Primary School Board of Pimpri Chinchwad Municipal Corporation.

3. The post of primary teacher working in Respondent No.2- Municipal Corporation, appointment is governed by Section 23 of the Bombay Primary Education Act, 1947 (the Act of 1947) which provides for staff selection committee and appointment of teachers and a methodology is provided for. The Rules also deal with the power and duties of the school board and as a Secretary of the staff selection committee. Following this procedure, the recruitment and appointment of primary teacher is to be made.

4. An advertisement was published on 23 November 2022 for appointment of primary teachers in the Primary Education Department of the Municipal Corporation for Marathi, Urdu, Hindi and English mediums. These appointments were on a consolidated pay. Several persons including the Petitioners applied. The select list was published on 30 January 2023 and the Petitioners' names appeared therein. The Petitioners were appointed. While issuing appointment order, firstly on 17 January 2023, it was stated that the appointment was on a consolidated pay basis. It was stated that the appointment is on purely temporary basis and would come to an end after the period of six months. Thereafter, the Petitioners' appointment was further continued by issuing another letter dated 8 August 2023 on the same terms and conditions. Thereafter, the appointment order was issued on 11 March 2024 for a further period.

5. The Petitioners are before this Court because again an Advertisement is issued by Respondent No.2- Municipal Corporation on 13 April 2024 for appointment of teachers on a consolidated pay basis. It is asserted that out of 324 posts, 5 posts that have been advertised, the post held by the Petitioners are amongst them. It is to be noted that this advertisement of 13 April 2024 is not for regular recruitment, but again it is for appointment on a consolidated pay on a temporary basis.

6. The learned Senior Advocate for the Petitioners submitted that such repeated temporary appointment is contrary to the policy of education and it is entirely arbitrary. The learned Senior Advocate further submitted that it is not a regular recruitment, but there is no reason whatsoever as to why the Petitioners who have been appointed on a temporary basis continued from time to time are again not given extension, and they cannot be replaced by another temporary appointment on a consolidated basis.

7. The learned Counsel for Respondent Nos. 2 and 3 based on the reply affidavit submitted that the Petitioners have accepted their temporary contractual appointment and have given an undertaking. The learned Counsel submitted that after the period of six months, the contract was over and it was again renewed on an undertaking, and the Petitioners cannot claim any legal right. The learned Counsel further submitted that the Petitioners are free to participate

in the selection process for the post of Assistant Teacher. The learned Counsel also submitted that there are certain compelling reasons because of which this methodology of temporary appointment had to be resorted. The learned Counsel, on instructions, also submitted that as regards the primary teachers are concerned, the process of regular recruitment has been initiated and as far as the secondary teachers are concerned, the same has to be under centralized portal of the State Government. As regards the statement about initiation of regular recruitment process is concerned, we do not find the same in reply affidavit. It is made on instructions across the bar.

8. According to us, first and foremost what needs to be kept in mind by the Municipal Corporation is the education that is to be imparted to the children. The schools in question are primary schools. Right to education has been recognized under the Constitution of India and now it finds place in form of the statutory enactment. Steps that had to be taken by a public body such as Municipal Corporation must be with an aim of improving and imparting quality education in mind. In that context, the role of primary teachers stands on a different footing than other employees, which distinction unfortunately Respondent No.2- Municipal Corporation, seems to have lost sight of. There should be continuity and bonding between the students and primary teachers. The Hon'ble Supreme Court in the case of *Rattanlal V/s. State of Haryana*¹ observed as under :

1 1987 AIR (SC) 478

“[1] In all these petitions the common question which arises for decision is whether it is open to the State Government to appoint teachers on an ad hoc basis at the commencement of an academic year and terminate their services before the commencement of the next summer vacation, or earlier, to appoint them again on an ad hoc basis at the commencement of next academic year and to terminate their services before the commencement of the succeeding summer vacation or earlier and to continue to do so year after year. A substantial number of such ad hoc appointments are made in the existing vacancies which have remained unfilled for three to four years. It is the duty of the State Government to take steps to appoint teachers in those vacancies in accordance with the rules as early as possible. The State Government of Haryana has failed to discharge that duty in these cases. It has been appointing teachers for quite some time on an ad hoc basis for short periods as stated above without any justifiable reason. In some cases the appointments are made for a period of six months only and they are renewed after a break of a few days. The number of teachers in the State of Haryana who are thus appointed on such ad hoc basis is very large indeed. If the teachers had been appointed regularly, they would have been entitled to the benefits of summer vacation along with the salary and allowances payable in respect of that period and to all other privileges such as casual leave, medical leave, maternity leave etc. available to all the Government servants.

These benefits are denied to these ad hoc teachers unreasonably on account of this pernicious system of appointment adopted by the State Government. These ad hoc teachers are unnecessarily subjected to an arbitrary “hiring and firing” policy. These teachers who constitute the bulk of the educated unemployed are compelled to accept these jobs on an ad hoc basis with miserable conditions of service. The Government appears to be exploiting this situation. This is not a sound personnel policy. It is bound to have serious repercussions on the educational institutions and the children studying there. The policy of “ad hocism” followed by the State Government for a long period has led to the breach of Article 14 and Article 16 of the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer.

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3. We strongly deprecate the policy of the State Government under which “ad hoc” teachers are denied the salary and allowances for the period of the summer vacation by resorting to the fictional breaks of the type referred to above. These “ad hoc” teachers shall be paid salary and allowances for the period of summer vacation as long as they hold the office under this order. Those who are entitled to maternity or medical leave, shall also be granted such leave in accordance with the rules.

9. We note that it is for almost one year that temporary

appointments are being given for a short duration. This would certainly create uncertainty about security of tenure for the teachers which is bound to affect the quality of education imparted. Therefore, Respondent No.2- Municipal Corporation should or ought to have initiated regular recruitment process. Instead of doing so, till date the recruitment of above nature is being undertaken keeping aside this aspect. Even the impugned advertisement dated 13 April 2024, which is issued, is not a regular recruitment, but it is again for the same purpose appointing on a consolidated pay basis.

10. We find no logic discernible from this course of action. After hearing this petition in the morning session, we have kept it back for the learned Counsel for Respondent Nos. 2 and 3- Municipal Corporation to take instructions whether the Petitioners could be continued in the interest of the students till regular recruitment takes place. The learned Counsel for Respondent Nos. 2 and 3- Municipal Corporation states that he has been instructed to argue the matter on merits and not to make any statement.

11. Considering the totality of the circumstances, while we defer the hearing of this petition to **27 June 2024** for Respondent Nos. 2 and 3- Municipal Corporation to place before us the position of the regular recruitment stated to be initiated by way of an additional affidavit. We direct that the Petitioners services shall not be dispensed with or replaced with by another set of teachers on a

temporary basis on a consolidated pay. Necessary orders be issued by Respondent Nos. 2 and 3- Municipal Corporation in favour of the Petitioners.

12. The learned Counsel for Respondent Nos. 2 and 3- Municipal Corporation states that, however, during the period of vacation, the Petitioners cannot be paid as per the terms and conditions. We have noted the decision of the Hon'ble Supreme Court in the case of *Rattanlal V/s. State of Haryana*². The measure adopted by the Municipal Corporation of keeping the teachers in status of uncertainty and create artificial post is itself not proper. Further, the learned Counsel for Petitioners states that even during the vacations, these teachers are made to work for other than teaching. While the matter is being considered further as regards the regular appointment, the balance of convenience lies in favour of the Petitioners and therefore, we reject the contention that the Petitioners should not be paid during the period of vacation. The Petitioners shall be paid salary for the period of vacation as per the terms of the contract entered into between the parties.

13. Leave to amend to incorporate the challenge in respect of tendering of an undertaking. Amendment to be carried out within a period of two weeks from today.

2 1987 AIR (SC) 478

14. Additional reply to the amendment petition, if any, to be filed before the next date.

(M.M.SATHAYE, J.)

(NITIN JAMDAR, J.)