

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.18769 OF 2024

Brinal Derrick Fargose

(Nee: Brinal Wilson Correia)

....Petitioner

versus

The State of Maharashtra & Ors.

....Respondents

Mr. Prashant Bhavake, Advocate for the Petitioner.

Mr. M.M. Pable,, AGP for the Respondent Nos.1 to 5– State.

Mr. Utkarsh Desai, for Respondent No.6 and 7.

CORAM : RAVINDRA V. GHUGE
&
ASHWIN D. BHOBE, JJ.

DATE : 10th FEBRUARY, 2025

P.C. :-

1. In this Writ Petition, the learned Advocate for the Petitioner submits that she is identically placed. The advertisement for recruitment was published in Indian Express. This case pertains to the period prior to the delivery of the judgment of this Court in *Nitin Bhika Tadge and Another versus State of Maharashtra and*

Others¹ and the Government Resolution (**G.R.**) dated 27th March, 2024. A statement is made that the Petitioner is in employment today, though without an approval

2. Having considered the submissions of the learned Advocate for the Petitioner and the AGP, we find that Education Inspector, Brihan Mumbai, Western division, has observed that the staffing pattern for the non-teaching staff was not formalised and on account of the COVID-19 Pandemic, there was a ban on the recruitment. With these reasons, the impugned order has been passed.

3. The learned Advocate for the Petitioner submits that if an adequate opportunity of representation to assist the said Authority would have been granted to the management, in short, an opportunity of hearing, the management could have pointed out the number of posts available, as well as, would have cited the G.R. by virtue of which the ban has been lifted. He further submits that the ban would not apply to a minority institution.

¹SCC online BOM 1116

4. It is quite evident from the impugned order that the Education Inspector appears to have not referred to the record available. The Petitioner vehemently submits that the posts are available. A ground is taken that the staffing pattern would not apply to a minority institution. All these issues have to be considered by the said Authority, which apparently has not been done.

5. In view of the above, this **Writ Petition is partly allowed**. The impugned order is set aside. The contents of the impugned order would be treated as an intimation to the management as well as the Petitioner, as regards the deficiencies in the proposal. The Management is at liberty to rework on the proposal and submit a revised proposal dealing with the issues which the concerned Authority has raised in the impugned order. Let such revised/reworked proposal be tendered by the Management, within a period of 30 days. Thereafter, the Education Inspector, Brihan Mumbai, Western Division, would issue notices for hearing to the stakeholders including the Petitioner and the Management and after granting them sufficient opportunity, pass a reasoned order within a period of 60 days from the date of the submission of the revised/reworked proposal.

6. We make it clear that we have not expressed any view or opinion about the claim of the Petitioner. In the event, her approval is granted, the Management would initiate the appropriate procedure for seeking Shalarth ID to the Petitioner. If the approval is granted and such the procedure is followed, the Shalarth ID be issued within a period of 45 days from the date of the proposal.

7. Since the Petitioner apprehends termination only for the reason that she does not have the approval, we direct the Management not to terminate her service in the light of the law laid down in *St Ulai High School V/s. Devendraprasad Jagannath Singh, 2007 (1) Mh.L.J. 597*, only because she does not have an approval.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)