

(2021) 12 BOM CK 0137

In the Bombay High Court

Case No : Writ Petition (ST.) No.21141 Of 2021

Mohini Mohan Bhandwale

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 15-12-2021

Acts Referred:

Citation : (2021) 12 BOM CK 0137

Hon'ble Judges : R. D. Dhanuka, J R.N.Laddha, J

Bench : Division Bench

Advocate : Prashant S. Bhavake, N. C. Walimbe

Final Decision : Disposed Of

Judgement

R. N. Laddha, J

(Not on Board. Mentioned. Taken on Board.)

1. Rule. Rule made returnable forthwith. This Writ Petition is taken up for hearing and final disposal, by consent and on the request of the learned counsel for the parties.

2. The petitioner was initially appointed as the part time Shikshan Sevak with effect from 01.07.2012 and after completion of the probation period was confirmed in service as a permanent part-time Assistant Teacher. Respondent No.5 - Education Officer, from time to time, granted approval to the appointment of the petitioner. After rendering eleven years' continuous part time service, by exercising powers under the Government Resolution dated 31.01.2001 as well as the Government Resolution dated 10.06.2005, respondent No.6 granted up-gradation to the petitioner on full-time post of Assistant Teacher. A proposal was thereupon submitted for approval to his appointment as a full time Assistant Teacher. The respondent No.5 - Education Officer vide order dated 13.12.2018 approved the proposal and that the approval is still in force. The Education Officer vide his recommendation letter dated 10.05.2019 forwarded the said

proposal to the office of respondent No.4 - Deputy Director of Education. After receipt of the said proposal, the respondent No.4 - Deputy Director of Education vide his letter dated 04.11.2019 communicated some deficiencies in the said proposal to the respondent No.5 - Education Officer, who in turn vide his letter dated 18.11.2019, forwarded the detailed compliance report to the respondent No.4 - Deputy Director of Education and again recommended for granting Shalarth ID to the petitioner. However, till date, the respondent No.4 - Deputy Director of Education has not taken any decision on the said proposal and kept the same in abeyance.

3. We have heard Mr. Bhavake, learned counsel for the petitioner and Mr. Walimbe, learned AGP for the respondents-State.

4. According to Mr. Bhavake, learned counsel for the petitioner, after getting approval from the Education Officer for up-gradation of the petitioner in the full-time post of Assistant Teacher, the allotment of Shalarth ID pursuant to the said approval is only the ministerial act. The learned counsel for the petitioner further submits that even otherwise the Deputy Director of Education cannot refuse to enter the name of the petitioner in Shalarth Pranali in view of the order of approval already granted by the Education Officer. In support of his contention, he placed reliance on the judgment of this Court in the case of Nilesh Namdev Patil Vs. State of Maharashtra and others, Writ Petition No.6405 of 2021 with connected writ petitions. In his view, it is incumbent upon respondent No.4 - Deputy Director of Education to allot the Shalarth ID to the petitioner. Learned counsel for the petitioner further submits that the respondent No.4 - Deputy Director of Education illegally kept pending the proposal for allotment of Shalarth ID to the petitioner and for want of Shalarth ID, the salary of the petitioner cannot be released.

He accordingly sought the directions to the Deputy Director of Education to include the name of the petitioner in the Shalarth Pranali and to release his salary arrears.

5. Learned counsel for the petitioner further submits that the Government Resolution dated 23.06.2017 lays down the guidelines for appointments to be made in vacant posts. The judgment of the Division Bench of this Court in the case of Shri Manohar Bhairu Patil Vs. The State of Maharashtra and others, Writ Petition No.4920 of 2019, dated 02.02.2021, is relied upon to submit that the ban on the fresh appointments under the applicable Government Resolution, by no stretch of imagination, would apply to those teachers, who were already in service as part-time teachers and the proposal was for their up-gradation as full-time Assistant Teachers in view of the Government Resolutions dated 31.01.2001 and 10.06.2005.

6. Learned AGP is not in a position to justify the inaction on the part of respondent No.6 - Deputy Director of Education.

7. It is not in dispute that the Education Officer had already granted approval to

the appointment of the petitioner on the full-time post of Assistant Teacher on 30.06.2020. Thus, the Deputy Director of Education, now, cannot refuse to enter the name of the petitioner in the Shalarth Pranali in furtherance of the order passed by the Education Officer. The Education Officer approved the appointment of the petitioner on the post of of full-time Assistant Teacher, meaning thereby, the Education Officer was satisfied about qualification, roaster and all other aspects. Moreover, it is submitted that the petitioner was initially appointed after following the selection process and his appointment as part-time Assistant Teacher was also approved by the Education Officer in the past.

8. In view of this, we direct the respondent No.4 - Deputy Director of Education to include the name of the petitioner in Shalarth Pranali within a period of four weeks from today. Respondent Nos.2 to 7 shall take appropriate steps to release the arrears of the salary within a period of six weeks as per the salary bills submitted by the respondent-school.

9. Rule is made absolute in the aforesaid terms.

10. Writ petition is disposed of. There shall be no order as to costs.