

(2023) 04 BOM CK 0035
In the Bombay High Court
Case No : Writ Petition No. 303 Of 2023

Smita Ashok Patil

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 17-04-2023

Acts Referred:

Maharashtra Employees Of Private Schools? (Conditions Of Service) Regulation Act, 1977 — Section 5(2)

Citation : (2023) 04 BOM CK 0035

Hon'ble Judges : G.S.Patel, J; Neela Gokhale, J

Bench : Division Bench

Advocate : NV Bandiwadekar, Vinayak Kumbhar, Rajendra Khair, AA Pura

Final Decision : Disposed Of

Judgement

Neela Gokhale, J

1. Rule. The Respondents have filed Affidavits in Reply and the Petitioner has filed her Rejoinder. By consent, Rule made returnable forthwith.

2. The facts in the present matter reveal the plight of a teacher, caught in the cross fire of an inefficient and irresponsible administration. This is perhaps the only way to describe the events that have transpired in the manner of appointments of teachers by the 3rd Respondent Management, totally unchecked by the State Education Authorities responsible for regulating them, each blaming the other for their respective failures is deplorable. Consequently, it is only the teacher who must bear the consequences of the casual and careless approach adopted by these Authorities. The provisions of the Maharashtra Employees of Private Schools' (Conditions of Service) Regulation Act 1977 ("MEPS Act") and Rules made thereunder in respect of appointments of employees are simple enough and do not require the study of Rocket science. Timely compliance of the simple procedure specified by law, in the appointment process could have prevented the matter to have reached this stage.

3. The Petitioner belongs to Open category and is qualified as M.A. and B.Ed. (Sociology). The 1st Respondent is the Education Department of the State, and the 2nd Respondent is the Deputy Director of Education of the Kolhapur Region. The 3rd Respondent is an Educational Trust registered under the Bombay Public Trust Act running the 4th Respondent College.

4. The Petitioner seeks a direction to quash and set aside order dated 4th November 2022 passed by the 2nd Respondent rejecting the proposal for grant of approval of the services of the Petitioner as a Full-time 'Shikshan Sevak' (Sociology) with effect from 1st September 2013 to 31st August 2016. She seeks a further direction to release the grant-in-aid for payment of monthly honorarium for a period of three years in lieu of her services as 'Shikshan Sevak' and thereafter approval as a Full-time Teacher (Sociology) on regular basis with effect from 1st September 2013 and release the grant-in-aid for monthly salary in related pay scale from the said date, with all arrears.

5. On 31st August 2013, Shri R B Pandharvale, a teacher of Sociology in the 4th Respondent College retired. The Petitioner claims that an advertisement was published in a newspaper called 'Aspire' calling upon candidates for a walk-in interview, to appoint teachers on permanent and temporary 'grantable' basis in various subjects. One of the posts advertised was the vacancy of Shri Pandharvale. The Petitioner applied and was appointed to the post of Full Time Assistant Teacher in the unaided Junior College. A letter of appointment dated 23rd August 2013 was issued. The letter specified that her appointment was on temporary basis only for the Academic Year 2013-2014 on a fixed salary of INR 7,700/-.

6. Advertisements were issued for every academic session. The Petitioner was appointed every year, on a year-to-year contractual basis. Pertinent to note is the fact that except for the first appointment letter dated 23rd August 2013, no further appointment letter was issued by the Management. The Managing council of the 3rd Respondent simply passed resolutions recording the appointment of the Petitioner for every academic session on a temporary vacancy. This continued till the academic session 2021-2022. The resolutions also show that the monthly salary of the Petitioner varies every year without recording any explanation for the same.

7. Mr Bandiwadekar, the learned Senior Advocate for the Petitioner draws our attention to a letter dated 22nd May 2015 issued by the 4th Respondent to the 2nd Respondent requesting a 'No-objection Certificate' to fill up vacant posts of teachers in the Junior College including the vacancy created by retirement of Shri Pandharvale in the year 2013. According to the Petitioner, no decision was communicated by the 2nd Respondent regarding the 'NOC'.

8. On 8th March 2019, the 4th Respondent addressed letters to 'Dainik Sakal' and 'Dainik Lokmat' requesting for publishing advertisements to fill up vacancies of teachers in various subjects, including that of Sociology. This was said to be

done in pursuance of the Maharashtra Employees of Private Schools' (Conditions of Service) Rules, 1981 ("MEPS Rules") for filling up vacancies through the 'Pavitra Portal'. The 1st Respondent forwarded the name of one Shri Meshram Rajkumar Haridas for his appointment as Sociology teacher. However, he turned out to be ineligible as also unwilling to join the service and the Management communicated this to the Education Department.

9. By letter dated 20th January 2022, the 4th Respondent again requested the 2nd Respondent to grant approval to the Petitioner as Full-Time Shikshan Sevak with effect from 2nd September 2013. The 2nd Respondent did not respond immediately. This led to the filing of Writ Petition No.9975 of 2022 in this Court by the Petitioner. The Petitioner prayed for direction to the 2nd Respondent to decide the proposal and grant approval to her appointment. By order dated 24th August 2022, the Division Bench of this Court disposed of the Writ Petition, directing the 2nd Respondent to decide the proposal on its own merits in accordance with law and within six months.

10. Acting in aid of this Court's order, the 2nd Respondent called the Petitioner and the Management for a hearing to be held on 12th September 2022. Written submissions were filed by the Petitioner and documents were submitted by the Management. Based on the hearing, the 2nd Respondent passed an order dated 4th November 2022, refusing approval to the Petitioner's appointment for various reasons stated in the order. It is this letter that is the subject matter of challenge in the present Writ Petition.

11. In a nutshell, the reasons for refusing approval were firstly, the procedure for appointment of a teacher as laid down in GR dated 6th February 2012 was not followed while appointing the Petitioner; secondly, 'No objection' from the 2nd Respondent was never sought by the Management; thirdly, the Petitioner's appointment was against the vacancy created by retirement of Shri Pandharvale and was limited to the Academic Year 2013-2014 and no further appointment letter was issued to her by the Management; and lastly, the Petitioner's services were continued in subsequent Academic Years on the same post by conducting an annual selection process.

12. Mrs AA Purav, learned AGP for the State disputes the Petitioner's contentions by canvassing the grounds mentioned in the impugned order dated 4th November 2022. The Respondents No.3 and 4 support the Petitioner. It is their contention that the Respondent-State failed to issue 'NOC' and that any error on their part in giving an honorarium to the Petitioner which was not in consonance with Rules cannot invalidate her appointment. They also complain that the Respondents State has sought certain additional documents only after the rejection order, which is a violation of principles of natural justice.

13. We have analysed the rival submissions. Admittedly, the initial appointment of the Petitioner on 23rd August 2013 was only for the Academic Year 2013-2014. We have perused the purported advertisements claimed to have

been published by the Management and placed on record at Exhibit 'A'. The said advertisements do not contain any details regarding the post, category, eligibility and other relevant information which is required by law to be published and is not in consonance with the MEPS Rules. Notwithstanding, even the further appointments of the Petitioner are on a yearly basis and that too without any appointment letter. It is thus a contractual appointment. Under no circumstances can the said appointment be construed as 'appointment on probation' to give it the colour of an appointment as 'Shikshan Sevak'.

14. The record shows that after the retirement of Shri Pandharvale in August 2013, the Management sought permission to fill up the said vacancy for the first time only in May 2015. Thereupon the advertisement was issued through 'Pavitra Portal' and Shri Meshram Rajkumar Haridas was deputed by the Education Officer. There was no lethargy on the part of the Department. Shri Meshram turned out to be ineligible as also unwilling and the Petitioner continued on the post. It is at this juncture that the Management sought approval of the Education Department for the Petitioner's services with effect from September 2013. The Education Department, upon directions of this Court decided the application for approval after giving opportunity of hearing to the Petitioner and the Management. The approval was then refused.

15. The Management has clearly flouted the appointment process as laid down in MEPS Act and Rules made thereunder. The requirements of the Government Resolution ("GR") have also not been complied. Undoubtedly, the Management has the discretion to make contractual appointments on a temporary basis. A fortiori, though the Management has implicit powers to appoint duly qualified person on contractual employment even against a permanent vacancy but, that must only be an interim arrangement till a suitable candidate is found in the selection process. It cannot be continued on year-to-year basis in succession. It is a settled position in law that if the Management hold the selection process in the prescribed manner but wants to appoint selected candidate on temporary basis, it must contemporaneously record tangible reasons as to why the selected candidate is not suitable to be appointed on probation against the permanent vacancy. There is no explanation given by the Management as to why appointment letters were not issued to the Petitioner for the Academic Years 2014 to 2022 although they claim to have employed her on a year-to-year basis for every academic year. Further there is no explanation as to why she was not appointed as Shikshan Sevak on probation instead of appointing her on contractual basis. Section 5(2) of the MEPS Act provides for certain obligations of Management of private schools, including complying the prescribed process for appointments. The Management cannot shirk its responsibility to make efforts in the right earnest to complete the selection process in accordance with the Act and Rules made thereunder. Ordinarily, if the selection process is commenced and a person duly qualified is available and is found to be suitable, the Management is under an obligation to appoint him on probation, to fill in the permanent vacancy. The Petitioner being appointed on a year-to-year basis and

without any appointment letter cannot be said to be Shikshan Sevak on probation nor deemed to be confirmed on expiry of three years' service.

16. Mr Bandiwadekar places reliance on a precedent in the matter of Priyanka Santosh Hegishte & Anr v the State of Maharashtra & Ors Writ Petition No. 8488 of 2022 decided on 28th February 2023. passed by the Division Bench of this Court to buttress his contention regarding the State Government's non-application of mind and failure to timely respond to the proposals submitted by the Management. The said judgment is wholly inapplicable to the facts in the present case. The Petitioner in that matter was appointed by following the due process of law, but the State had totally failed to acknowledge the proposal within a reasonable period and in fact had rejected it on the ground that the Management had not submitted any proposal, overlooking the repeated communications made by the Management.

17. The conspectus of above discussion leads to the irrefutable and only conclusion that the Management has not discharged its obligations with responsibility and has left the Petitioner to suffer the consequences. The grounds for rejection of the proposal cannot be faulted. It is unfortunate that the State Government cannot be compelled to grant retrospective approval to the Petitioner as Full-Time Shikshan Sevak (Sociology) or Full-Time teacher on a regular basis nor can it be compelled to release the grant-in-aid for monthly payment of her salary for the period from 2013 till date as prayed. The Petitioner was never appointed on probation and her services throughout were on contractual basis. The error and negligence appears to be completely on the part of Management. Even the quantum of the Petitioner's salary varies from year to year, with no justification forthcoming. We do not see how the State Government can be faulted, nor why it should be foisted with liability of payment once we find no infirmity with the impugned order. But it simply cannot be that the Petitioner is to be deprived of salary or continuity for the fault of the Respondents No.3 and 4.

18. Having regard to this, we direct Respondents No.3 and 4 to pay the arrears of salary accrued to the Petitioner within a period of two weeks and continue to pay her monthly salary as per applicable pay scales.

19. The Writ Petition is disposed of in these terms with no order as to costs. Accordingly, Rule stands discharged.