

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.3455 OF 2015

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.M.M.Joshi, advocate for the petitioner.
Mr.K.G.Patil, Addl. Govt. Pleader for the State.
Mr.H.M.Shaikh, in person for Respondent No.5.

**CORAM : S.V.GANGAPURWALA &
V.K.JADHAV, JJ.**

Date : 27.07.2015.

PER COURT :

1. Heard.
2. The petition impugns the order (Exh.J), wherein directions are given by the Education Officer to the Headmaster of the School to take steps and to communicate the aspect of surplus teacher. In the order it is stated that the present petitioner seems to be surplus.
3. Mr.Joshi, learned counsel for the petitioner submits that the petitioner was appointed on 12.6.1999. As per the seniority list, the petitioner is placed at serial No.6 and is getting B.Ed. Pay-scale. According to the learned counsel, persons junior to the petitioner are sought to be retained only because one Mr. Charansing Jarwal went on hunger strike, the petitioner is sought to be declared as

surplus. The learned counsel submits that petitioner is the only Arts Teacher in the School and only Arts Teacher is entitled to teach the Art subject. The learned counsel relies on the judgment and the order delivered in W.P.No.759/2004 dated 29.9.2006.

4. The learned Addl. Govt. Pleader submits that there are 13 admissible posts and 14 appointments are made. According to the learned Addl. Govt. Pleader, the Education Officer has directed the Management to consider the case of surplus candidates. The other two Assistant Teachers are from the reserved category and as such they can not be declared as surplus. The petitioner is appointed to teach 5th to 7th classes and as other two are from reserved category, it is the petitioner who alone can be declared surplus.

5. Mr.H.M.Shaikh, in person represents Respondent No.5 in the capacity of the Secretary and states that petitioner is required to be declared surplus as there were no students in 5th standard because of the Zilla Parishad School. This year few students have taken admission and if 5th standard is again approved by the authorities then the petitioner can be accommodated in the Respondent institution. He submits that the judgment relied by the petitioner is of the year 2006. Thereafter, Right to Education Act is introduced and parties would be governed by the provisions of Right to Education Act. The other two persons who were appointed in D.Ed. Category are from reserved class, as such they

can not be declared surplus.

6. We have considered the submissions canvassed by the learned counsel. No doubt, Right to Education Act, is introduced in the year 2009 and parties certainly would be governed by the provisions of Right to Education Act also. The judgment of this Court in W.P. No.759/2004 is of the year 2006 and of-course, the relevancy of the said judgment is also required to be considered.

7. There also can not be any dispute with the proposition that in view of Rule 26 of the MEPS Rules, reserve category employee though may be Junior, can not be declared surplus if it results in creating imbalance of reservation i.e. the candidates remaining are less than the minimum required reservation.

8. While perusing the order passed by the Education Officer, it does not appear that the Education Officer has considered the provisions of Right to Education Act, the order of this Court in W.P.No.759/2004 and the extent of applicability vis-a-vis the Right to Education Act. So also the aspect of petitioner being Art Teacher and the extent of its efficacy while declaring surplus. All these aspects are required to be considered by the Education Officer before proceeding to pass the impugned order in the present Petition.

9. In light of the above, the impugned order is quashed and set aside. The Education Officer shall reconsider all the aforesaid

aspects of the matter and decide about the person being surplus or not from the Respondent No.6 School expeditiously. The said process shall be done within three (3) months after hearing all the concerned.

10. The Writ Petition is disposed of. No costs.

(V . K . JADHAV , J .)

(S . V . GANGAPURWALA , J .)

Dt.27.07.2015.
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