

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3053 OF 2013

GURUDATTA VITHAL KADAM
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for petitioner : Mr. S. R. Barlinge
A.G.P. for respondent nos. 1 and 2 : Mr. D.B. Bhange
Advocate for respondent no. 3 : Mr. S. B. Ghute
Advocate for respondent Nos. 4 and 6: Mr. P.D. Suryawanshi
Advocate for respondent no. 5 : Mr. Amit Mukhedkar h/f Mr. L. C. Patil

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

DATED : 2nd JULY, 2015

P.C. :-

1. The petitioner has made dual prayers, one to be absorbed and second the salary to be paid. So far as the prayer with regard to absorption is concerned, the same does not survive as pursuant to the subsequent absorption order, the petitioner has already joined on 16.12.2014 with respondent No. 4.

As far as salary is concerned, few facts which are necessary can be culled out as under:

2. The petitioner was declared as surplus on 17.06.2010. On 26.06.2010, the Education Officer issued an order of absorption of

the petitioner with respondent No. 5. Mr. Mukhedkar, learned counsel for Respondent No. 5 states that as there was no vacancy available with respondent No. 5, the petitioner could not have joined with respondent No. 5. Thereafter, on 07.09.2012, second order of absorption was issued with respondent No. 6. Respondent No. 6 has also filed affidavit stating that at the relevant time, there was backlog of two posts of reserved category candidates, as such, the petitioner could not have been accommodated. Thereafter, again an order of absorption was issued with respondent No. 4. There is dispute as to whether respondent No. 4 did not allow the petitioner to join or the petitioner himself did not join. The Education Officer has filed affidavit stating that it is the petitioner who did not report on duty on the date given.

3. Here, we would not be investigating into the said disputed question of fact. The fact remains that the petitioner was not at fault from joining at the place where he was directed to be absorbed from 26.06.2010 till the third order of absorption was issued, as the respondent No. 5 with whom he was directed to be absorbed vide order dated 26.06.2010, stated that respondent No. 5 did not have the vacancy. So also the respondent No. 6 with whom the petitioner was directed to be absorbed vide order dated 07.09.2012, states that there was back-log of reserved category candidates and as such, the

petitioner could not have been accommodated. As such, it would be clear that the petitioner was not at fault in not joining at the absorbed place vide 3rd order of absorption wherein the petitioner was asked to join with respondent No. 4. Respondent No. 4 comes with a case that it was the petitioner who did not join whereas the petitioner states that it is the respondent No.4 who did not allow the petitioner to absorb. The Education Officer has filed an affidavit in that regard also and we would be guided by the said affidavit. The petitioner has eventually joined on 16.12.2014.

4. Considering the aforesaid aspects of the matter and the fact that the petitioner is not paid salary from February 2011 till 13.05.2011 and from November 2012 till the date of his joining and also considering the fact that affidavit of the Education Officer about the petitioner not having joined in February/March, 2014, we pass the following order with regard to salary:

ORDER

- I. The respondent Education Officer shall direct the appropriate institution to submit the salary bill of the petitioner for the period from February 2011 to 13.05.2011 and from November 2012 to December 2013 i.e. the period

during which the petitioner was not absorbed. We are negating the request of the petitioner for payment of salary from January 2014 till the date of joining i.e. 16.12.2014 in view of the dispute that the petitioner had not joined. However, the said period would be counted for the purpose of continuity in service.

II. The Education Officer shall make this payment upon verifying record of the petitioner not being paid the said amount. This exercise shall be done expeditiously.

III. The writ petition is accordingly disposed of. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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