

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6867 OF 2013
WITH
CIVIL APPLICATION NO. 8394 OF 2014

HANUMANT MACHINDRA MALUSARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Advocate for petitioner : Mr. V. D. Gunale
A.G.P. for respondent nos. 1 and 2 : Mrs. S. A. Dhumal
Advocate for respondent no. 3 : Mr. V. S. Panpatte
Advocate for respondent no. 5 : Mr. M. V. Ghatge h/f Mr. B. N.
Gadegaonkar
.....

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

DATED : 2nd JULY, 2015

P.C. :-

1. The petitioner seeks relief of absorption and salary from date of his declaration as surplus till his absorption.
2. Mr. Gunale, the learned counsel for the petitioner states that the petitioner was appointed as Shikshan Sevak on 15.06.2007 with Kasturba Primary School. On 06.06.2011, the said school stood derecognized. Appointment of the petitioner was approved vide order dated 31.05.2008. The order of absorption was also issued by the then Education Officer on 17.11.2012 with respondent no. 5 school. Respondent no. 5 school did not allow the petitioner to be absorbed on the ground that there is no vacancy. According to the

learned counsel, the petitioner be paid salary and be directed to be absorbed. It is submitted by Mr. Gunale that another teacher from the same school has been absorbed in the year 2014.

3. Mr. Panpatte, the learned counsel for respondent Education Officer submits that the school was derecognized. The petitioner also has contributed for the derecognition of the said school. No attendance registers were maintained. There were only two students and the teachers were also not present when the school was inspected. The learned counsel submits that order of absorption was wrongly passed earlier. In fact, the President of the present institution has stolen the record pertaining to the petitioner. Without work the petitioner is not entitled for the salary. According to the learned counsel, unless the petitioner is permanent employee on grant-in-aid post, the petitioner is not entitled even to be absorbed.

4. We have considered the submissions canvassed by the learned counsel for respective parties. The order of absorption has been issued in favour of other teachers working in the same school where the petitioner was working. The petitioner is appointed on 15.06.2007. It is not the case that the petitioner was terminated from service prior to the derecognition of the school. After working for three years as Shikshan Sevak, the petitioner would be deemed

permanent employee even as per Section 5 of the Maharashtra Employees of Private School (Condition of Service) Regulation Act, 1977. The appointment of the petitioner is also approved vide order dated 31.05.2008. Even the order of absorption was issued in favour of the petitioner but the school where the petitioner was directed to be absorbed did not allow him to join on the ground that there is no vacancy. The Affidavit to that effect has been filed by the respondent no. 5. Considering the above, it was improper to cancel the said absorption order.

6. In the light of the above, we pass the following order:

ORDER

- I. The respondents shall absorb the petitioner in appropriate school expeditiously.
- II. The period from the date of his initial appointment shall be counted for the purpose of continuity of service and for all further increments and monetary benefits.
- III. The petitioner shall be paid salary from 17.11.2012 till May, 2014 and further from the date of his absorption.
- IV. Steps shall be taken by the Education Officer to absorb the petitioner in other institution, expeditiously and preferably within a period of three (03) months, else, thereafter the

petitioner may claim for salary.

V. The writ petition accordingly stands disposed of. No costs.

VI. In view of disposal of writ petition, the Civil Application No. 8394 of 2014 also stands disposed of.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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