

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.11145/2014

Shaikh Mohd.Rafique s/o Abdul Aziz,
age 52 yrs., occu.service
(Asst.Teacher, Anglo Urdu High
School, Jamkhed) r/o Nurani Colony,
Jamkhed Tq.Jamkhed Dist.Ahmednagar.
...Petitioner..

Versus

- 1] The State of Maharashtra,
through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai-32.
- 2] The Deputy Director of Education,
Pune Division, Pune.
- 3] The Education Officer (Secondary),
Zilla Parishad, Ahmednagar.
Dist.Ahmednagar.
- 4] Anjuman Tarraki-E-Taleem Society,
Kharda, through its President,
Mr.Syed Mansoor s/o Syed Osman,
r/o Sadaphule Vasti, Jamkhed.
Tq.Jamkhed Dist.Ahmednagar.
- 5] Anglo Urdu High School, Jamkhed.
Tq.Jamkhed Dist.Ahmednagar.
Through its Head Master
Mr.Pathan J.N.
- 6] Kazi Mohd.Hanifoddin s/o
Mohd.Fasioddin, age 32 yrs.,
occu.service (Asst.Teacher),
Anglo Urdu High School, Jamkhed.
Tq.Jamkhed Dist.Ahmednagar.

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- 7] Madarsa Miftahul-Ul-Uloom,
Kopargaon. Tq.Kopargaon.
Dist.Ahmednagar.
Through its President.

...Respondents...

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Shri Chaudhari MD Mujeebuddin MS, Advocate for
petitioner.

Shri V.H. Dighe, AGP for respondent nos.1 to 3.

Shri A.N. Kakade, Advocate for respondent nos.4 & 5.

None for respondent no.6.

Smt.A.N. Ansari, Advocate for respondent no.7.

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CONTEMPT PETITION NO.39/2015

Shaikh Mohd.Rafique s/o Abdul Aziz,
age 52 yrs., occu.service
(Asst.Teacher, Anglo Urdu High
School, Jamkhed) r/o Nurani Colony,
Jamkhed Tq.Jamkhed Dist.Ahmednagar.

...Petitioner..

Versus

- 1] Smt.Ashwini Bhide,
Principal Secretary,
School Education Department,
Mantralaya, Mumbai-32.
- 2] Smt.Suman Shinde,
The Deputy Director of School
Education, Pune Division, Pune.
- 3] Smt.Sunanda B.Thube,
The Education Officer (Secondary),
Zilla Parishad, Ahmednagar.
Dist.Ahmednagar.
- 4] Shri Arun Dhamne,
The Deputy Education Officer
(Secondary), Zilla Parishad,
Ahmednagar.

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- 5] Sayyad Mansur s/o Sayyad Usman,
President of Anjuman Tarraki-E-Taleem
Society, r/o Sadaphule Vasti, Jamkhed.
Tq.Jamkhed Dist.Ahmednagar.
- 6] Sayed Wahed s/o Sayed Mansoor,
Secretary of Anjuman Tarak-E-Taleem
Society, r/o Sadaphule Vasti,
Jamkhed. Tq.Jamkhed Dist.Ahmednagar.
- 7] Mr.Pathan J.N.,
Head Master,
Anglo Urdu High School, Jamkhed.
Tq.Jamkhed Dist.Ahmednagar.
- ...Respondents...

.....
Shri Chaudhari MD Mujeebuddin MS, Advocate for
petitioner.
Shri V.H. Dighe, AGP for the State and its authorities.
Respondent no.7 served.

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**CORAM: S. S. SHINDE &
P.R. BORA, JJ.**

DATE: 10.04.2015

ORAL JUDGMENT (Per S.S. Shinde, J.) :

- 1] Heard learned counsel for the parties.
- 2] Rule. Rule is made returnable forthwith with
the consent of learned counsel for the parties and the
writ petition along with contempt petition are taken up
for final disposal.
- 3] It is the case of the petitioner that the

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petitioner came to be appointed on 14.6.1991 with respondent no.5 – school as Science Teacher against clear and permanent post. On completion of his two years probation period satisfactorily, in the month of June, 1993, he acquired the status of permanency in service of respondent no.5 – school.

4] It is the case of the petitioner that the respondent no.6 – Kazi Mohd.Hanifoddin s/o Mohd.Fasioddin came to be appointed as Shikshan Sevak illegally without following any procedure of law. It is further case of the petitioner that the petitioner was declared surplus teacher by the respondent no.2 on 18.11.2014. The petitioner submitted representation before the respondent no.3 requesting to recall the order dated 18.11.2014 declaring the petitioner as surplus teacher, however, the said representation is rejected and hence the present writ petition.

5] Learned counsel appearing for the petitioner invited our attention to Exhibit B page 24 of the compilation of the writ petition and submits that one Shri Pathan Jahagirkhan Nasirkhan stands at Sr.No.1, Shri Siddiqui Mohd.Wahajoddin Farimoddin stands at Sr.No.2,

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the petitioner stands at Sr.No.3 in the said seniority list, Shri Shaikh Yunus Akbar stands at Sr.No.4 and the respondent no.6 herein Shri Kazi Mohd.Hanifoddin Mohd.Fasioddin stands at Sr.No.5 in the seniority list. It is submitted that the respondent no.6 was appointed as Shikshan Sevak on 1.7.2011. His services are approved as Shikshan Sevak by the Education Officer in the month of January, 2015. Learned counsel for the petitioner invited our attention to paragraph nos.4(b) and 7 of the petition and submits that the petitioner is declared surplus so as to accommodate the respondent no.6, who is husband of grand-daughter of the President, though he is appointed illegally with effect from 1.7.2011 as Urdu teacher. It is submitted that even before granting the final approval to the services of the respondent no.6 as Shikshan Sevak, the respondent no.3 by order dated 18.11.2014 declared the present petitioner as surplus teacher. It is submitted that the petitioner has served for more than 25 years and the respondent no.6 is appointed on 1.7.2011. As per the provisions of Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, the principle of

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seniority shall ordinarily be followed while taking the decision of declaring the teachers as surplus teacher. It is submitted that even the petitioner and the teachers who are at Sr.Nos.1 & 2 are well conversant with Urdu language and if they are called upon, the petitioner can also teach Urdu subject. Therefore, relying upon the pleadings in the petition, grounds taken therein and annexures thereof, learned counsel for the petitioner submits that the petition deserves to be allowed.

6] Learned counsel appearing for the petitioner submits that though this Court on 9.12.2014 directed the parties to maintain status quo about the services of the petitioner, the petitioner was relieved on 23.12.2014 in disregard to the order passed by this Court on 9.12.2014. Therefore, he submits that the respondent – Education Officer and the management are required to be dealt with in accordance with the Contempt of Courts Act and under Article 215 of the Constitution of India.

7] Learned counsel appearing for the respondent nos.4 & 5 invited our attention to the averments in the affidavit in reply and in particular paragraph no.6 thereof. He submits that the respondent – school is

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running classes from 8th to 10th standards. As per the staff fixation, one post was excess and hence the respondent – management has recommended the name of the petitioner. It is submitted that the teacher at Sr.No.2 as per the seniority list is having the qualification of B.Sc.B.Ed. and is teaching the subject of Mathematics. The petitioner at Sr.No.3 is possessing the qualification of B.Sc.B.Ed. and teaching the subject of Science. The teacher at Sr.No.4 – Mr.Shaikh Yunus Akbar is possessing the qualification of B.A.B.Ed. and is a special teacher teaching the subject of English. The respondent no.6 is the only teacher who is having special subject of Urdu and teaching classes from 8th to 10th standards. The respondent – school is a Urdu school and considering this aspect, the services of the respondent no.6 were retained. It is submitted that the management by resolution dated 25.10.2014 has decided to retain the services of the respondent no.6 and to that extent, communication was sent to the Education Officer. The Education Officer has approved the action of the management to retain the respondent no.6 in the school and declared the petitioner as surplus teacher.

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Therefore, relying upon the affidavit in reply, annexures thereof, learned counsel appearing for the respondent nos.4 & 5 submits that in the light of provisions of Rules 9 and 26 and in particular Clause (2) of Rule 26, the respondent no.6 is retained in the school and the petitioner is declared as surplus teacher. Therefore, this Court may not interfere by exercising writ jurisdiction under Article 226 of the Constitution of India.

8] Learned counsel for the respondent No.4 and 5 submits that though this Court has passed order on 9.12.2014, the same was not communicated to the respondent – management. It is submitted that on 17.12.2014, the respondent – management received communication from the Education Officer directing the management to relieve the petitioner. Therefore, there is no any disobedience of the order passed by this Court on 9.12.2014 as alleged by the petitioner.

9] We have given careful consideration to the submissions made by learned counsel appearing for the petitioner, learned counsel appearing for the respondent – management and the learned AGP for the respondent –

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Education Officer (Secondary) and with their able assistance, perused the pleadings in the petition, annexures thereof and in particular the seniority list at Exhibit B page 24 of the compilation of the writ petition. Though respondent no.6 is served, none appears for him.

10] It is not in dispute that the petitioner stands at Sr.No.3 and was appointed in the year 1991 and the respondent no.6 was appointed as Shikshan Sevak in the year 2011. It is also not in dispute that though the initial approval was granted by the Education Officer, the final approval to the services of the respondent no.6 was granted by the Education Officer in the month of January, 2015 with effect from 1.7.2014. It is also not in dispute that before the final approval was granted to the services of the respondent no.6, the management took decision to declare the petitioner as surplus teacher by resolution dated 25.10.2014 and as a matter of fact, the Education Officer by order dated 18.11.2014 declared the petitioner as surplus teacher. Upon perusal of the qualifications mentioned about the teachers in the seniority list, the candidate at Sr.No.1 – Shri Pathan

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Jahagirkhan Nasirkhan possesses the qualification of B.A.B.Ed. (Geography & Hindi); candidate at Sr.No.2 – Shri Siddiqui Mohd.Wahajoddin Farioddin is B.Sc.B.Ed. (Physics, Mathematics & Science), and the petitioner who is at Sr.No.3 is B.Sc.B.Ed. (Chemistry, Botany & Zoology). Therefore, upon perusal of the qualifications of the candidates at Sr.Nos.1 to 3, though they are graduate in Science, the petitioner alone possesses the degree in Botany & Zoology. Therefore, if the qualifications of candidates at Sr.Nos.1 to 3 are considered, the distinction of each subject is not made while teaching the Science subject. Nevertheless, if the petitioner is possessing the degree in Botany and Zoology, his presence in the school to teach the said subjects is also necessary.

11] As already observed, the respondent no.6 who has received the final approval to his services in the month of January, 2015, has been favoured by the respondent – management since it is not in dispute that the respondent no.6 is husband of grand-daughter of the President. We are constrained to observe that though the petitioner is serving in the said school from 1991, he is non-suited so

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as to accommodate the respondent no.6, who is relative of the President of the respondent – management. If the harmonious interpretation / construction is given to the relevant Rule 26 of the said Rules, in our opinion, in the first place, the management was bound to adhere to the rule of seniority and more so when the petitioner has completed B.Sc. with Botany and Zoology subjects and there is no other teacher in the said school to teach those subjects.

12] If the expertise is required in the Urdu subject, equally why it should not be required in the subjects of Botany and Zoology is also not understandable. It is also difficult to fathom that the Education Officer with great speed proceeded to approve the resolution of the management even before the services of the respondent no.6 were finally approved in January, 2015. It is also difficult to understand that when this Court on 9.12.2014 directed the respondents to maintain status quo in respect of services of the petitioner, the respondent – management has relieved the petitioner from the post on 23.12.2014 and the Education Officer issued letter on 17.12.2014. It is difficult to accept that

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though this Court has passed the order on 9.12.2014 and the learned AGP represented the Education Officer, the Education Officer was unaware of the order passed by this Court or for that reason, the management was not aware about the order passed by this Court on 9.12.2014. However, so far as contempt proceedings are concerned, we do not wish to stretch those proceedings any further, however, suffice it to say that the respondent – Education Officer and the management were not justified in relieving the petitioner in spite of the order passed by this Court on 9.12.2014.

13] In the light of discussion hereinabove, in our considered view, in the peculiar facts and circumstances of the case and in view of the specific allegations made in paragraph nos.4(b) and 7 of the petition, the action of the management to pass the resolution to declare the petitioner as surplus teacher, though he stands at Sr.No.3 in the seniority list and to retain the respondent no.6, who stands at Sr.No.5 in the seniority list and who was appointed only in the year 2011 and his services are finally approved in the month of January, 2015, was with intention to accommodate the respondent

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no.6 though the petitioner was appointed in the year 1991 as Assistant Teacher.

14] In the result, the impugned communication dated 18.11.2014 issued by the respondent – Education Officer declaring the petitioner as surplus teacher stands quashed and set aside. We direct the respondent – management and the Education Officer to allow the petitioner to join the school forthwith. In view of the order passed by this Court on 9.12.2014 directing the respondents to maintain status quo, the petitioner will be entitled for all the benefits as if he was in the service of the respondent – management. The writ petition as well as contempt petition stand disposed of and the Rule is made absolute accordingly. No order as to costs.

(P.R. BORA, J.)

(S.S. SHINDE, J.)