

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1599 OF 2014

(Santosh s/o Janardhan Lichode vs. The State of Maharashtra and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

CORAM : B.P. DHARMADHIKARI AND
 P.N. DESHMUKH, JJ.

DATED : AUGUST 24, 2015

Heard Adv. Sohoni for petitioner,
Shri Rao, learned Assistant Government Pleader for
respondent nos.1 and 2, Adv. Paliwal for respondent
nos.3 and 4 and Adv. Tiwari for respondent no.5.

Adv. Sohoni submits that one
Shri Borkar, regular employee in the School
managed by respondent nos.4 and 5 became blind
while in service and in terms of Section 47 of The
Persons with Disabilities (Equal Opportunities,
Protection of Rights and Full Participation) Act,
1995, respondent nos.1 and 2 as also respondent
nos.4 and 5 have protected his employment.

However, he was shown on supernumerary post as required by Section 47(1) of the said Act and against vacancy, petitioner has been selected and appointed. Though petitioner is working since 2009, as there is no approval, he is not getting salary regularly.

Upon instructions, Adv. Sohoni submits that petitioner is not seeking any arrears of salary in the present petition, but his entitlement to salary from the date of filing of petition, i.e. 20/1/2014 should be considered.

Adv. Paliwal as also Adv. Tiwari do not dispute these facts.

Shri Rao, learned Assistant Government Pleader is relying upon reply-affidavit, particularly paragraph 3 thereof. He submits that the provision on which petitioner is placing reliance is not applicable to the establishment of respondent nos.3 to 5.

We find that the defence raised by respondent nos.1 and 2 is unsustainable. Mandate of Section 47(1) of the said Act is very clear. A person, who acquires disability and, therefore, found not suitable for the post on which he is working is to be

shifted to some other post with same pay scale and service benefits. If it is not possible to adjust such employee against any post, such employee needs to be kept on supernumerary post until a suitable post is available for his absorption or he attains the age of superannuation, whichever is earlier. Thus, Shri Borkar needs to be continued on supernumerary post till a post on which he can be accommodated and given workload becomes available. If such post does not become available, he needs to be continued till he reaches the age of superannuation.

The learned Assistant Government Pleader has pointed out that Shri Borkar is not party before this Court.

It is apparent that the post on which Shri Borkar was working earlier is an approved post on the establishment of respondent nos.3 to 5. Salary for that post was, therefore, being released through grants. Even on supernumerary post, salary will be released through Government grants. In this situation, it is open to the State Government to absorb Shri Borkar in any other School by treating him as a surplus employee in terms of Rule 26 of the

Maharashtra Employees of Private Schools
(Conditions of Service) Rules, 1981.

We direct that service of petitioner shall be considered against a clear vacant post from the year 2009 and proposal for grant of approval in his favour shall be looked into within a period of three months from today. If proposal is accepted and approval is granted, his salary from 1/1/2014 shall be released by respondent nos.1 and 2 within further period of three months. Needless to mention that his regular salary shall then be released by respondent no.2 along with other employees of respondent nos.3 to 5. The petition is thus partly allowed and disposed of. No costs.

JUDGE

JUDGE

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