

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.553 OF 2015**Sunil S/o Bhausaheb Thombal Vs. The State of Maharashtra and others.**

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.D.A.Bide, advocate holding for Mr.S.B.Rajebhosale, advocate for the Petitioner.

Mr.B.V.Virdhe, A.G.P. for the State.

Mr.S.S.Paturkar, advocate holding for

Mr.S.M.Ganachari, advocate for Respondent Nos.3 to 6.

CORAM : S.V.GANGAPURWALA AND K.L.WADANE, JJ.**Date : 06.10.2016.****PER COURT :**

1. Heard.

2. The learned counsel for petitioner strenuously contends that the petitioner was transferred on administrative ground from Tembhapuri Centre Turkabad Tq. Gangapur, Dist. Aurangabad to Akhatwada, Paithan Taluka Centre, Tq. Paithan, Dist.Aurangabad, vide order dated 26.12.2006. On 2.7.2012, the petitioner went to Akhatwada School to join. The Centre head of the Zilla Parishad School did not allow the petitioner to join duties on the ground that post is not vacant. The learned counsel submits that numerous

applications were given by the petitioner to the Respondent Nos.2 and 3 to change his posting as vacancy is not available at Akhatwada, however, to no avail. Because of the non-availability of the vacancy, the petitioner is not getting any salary. The petitioner thereafter vide order dated 6.5.2014 was transferred to Zilla Parishad School Nijalgaon Tanda No.2, Taluka Paithan. The petitioner is not paid salary from 1.7.2012 till 5.5.2014. The petitioner is not at fault. The plea taken by the Respondents that the petitioner did not join at his transferred place is erroneous. The letter of the Centre head itself establishes about non-availability of vacancy at Akhatwada. The Respondents are taking a false stand in the matter.

3. The learned counsel appearing for Respondent Nos. 3 to 6 submits that the petitioner deliberately remained absent as the petitioner wanted transfer at a place near to the work place of his wife. The notices were also given to the petitioner. The Inquiry was also conducted by the Education Officer and the Deputy Education Officer and as per the orders of the Court by the Chief Executive Officer. It is clearly established that it is the petitioner who did not join at the transferred place.

4. The dispute is about the non-payment of salary from July 2012 to 6.5.2014. There are rival contentions. It is not disputed that by order dated 25.6.2012, the petitioner was transferred to the

Zilla Parishad School at Akhatwada. The dispute is raised about the vacancy not being available at Akhatwada. The petitioner was transferred under a valid order of transfer. The petitioner can make a grievance about non-payment of salary if the petitioner remains present at the place of his work and the salary is not paid to the petitioner. If the petitioner remains present at the place of his work and still the salary is not paid to the petitioner on the ground that the vacant post did not exist then the petitioner is not at fault. However, without remaining present at the place where the petitioner is transferred, the petitioner can not claim salary for the said period as of right.

5. This Court under its order dated 18.2.2016, had directed the Chief Executive Officer to conduct an inquiry after giving opportunity to the petitioner of being heard. The Chief Executive Officer thereafter conducted an Inquiry and has found that it is the petitioner who on his own volition did not remain present at the place of his work. The applications were given time and again by the petitioner to the Respondents to give him a posting within a distance of 30 Kms. of the work place of his wife. All these aspects are considered by the Chief Executive Officer.

6. Twice the Inquiry has been conducted, one by Education Officer and subsequently by the Chief Executive Officer under the directions of this Court. They have come to the conclusion that the

petitioner was absent at the place of his work.

7. In light of the above, the relief claimed by the petitioner can not be granted.

8. The Writ Petition as such is dismissed. No costs.

(K . L . WADANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.06.10.2016.
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