

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2356 OF 2015

Usman S/o Nizamoddin Shaikh,
Age : 46 Years, Occu. : Nil,
R/o Indira Nagar, A-P Kalamb,
Tq. Kalamb, Dist – Osmanabad. .. Petitioner

Versus

1. State of Maharashtra,
School Education and Sports Department
Mantralay Vistar Bhavan,
Mumbai 32.
(Through its Principal Secretary)
2. Deputy Director of Education
Latur.
3. The Education Officer (Secondary),
Zilla Parishad, Osmanabad. .. Respondents

Shri Prashant Nagargoje, Advocate h/f Shri R. J. Godbole,
Advocate for the Petitioner.

Mrs. A. V. Gondhalekar, Addl.G.P. for Respondent Nos. 1 to 3.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

DATE : 13TH DECEMBER, 2016.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. Taken up for final hearing with consent of parties.

2. Mr. Nagargoje, the learned counsel for the petitioner submits that, the petitioner at the relevant time was working as a peon with Shri Shivaji Vidyalaya Karanjikalla, Tq. Kallamb, Dist. Osmanabad. The said school was derecognized. The petitioner is not absorbed. The petitioner being a member of non teaching staff, is nowhere concerned with imparting education. According to the learned counsel, some of the members of the teaching staff had approached this Court by filing Writ Petition No. 340 of 2015 and Writ Petition No. 348 of 2015. This Court had directed those teachers shall be placed in the list of surplus candidates and that they are not responsible for the closer of the school. The said order was passed on 14th September 2016. The petitioner was also permanent employee of the said school having rendered service for 23 years.

3. Mrs. Gondhalekar, the learned Additional Government Pleader submits that, the school was derecognized. For last three years the result of 10th standard was 00%. Various deficiencies were noted. Considering the same and the provisions of the Right of Children to Free and Compulsory Education Act 2009, the action was rightly taken. The petitioner is not required to be absorbed.

4. We have considered the submissions canvassed by the

learned counsel for respective parties. This Court under order dated 14th September, 2016 in Writ Petition No. 340 of 2015 and Writ Petition No. 348 of 2015 had allowed the petitions filed by the teachers and had held that the teachers cannot be said to be solely responsible for the closer of the school and were directed to be absorbed. The petitioner it appears that, is a member of non teaching staff, was working as a peon. The name of the petitioner also appears in the list.

5. For the reasons recorded in the order dated 14th September, 2016 in Writ Petition No. 340 of 2015 and Writ Petition NO. 348 of 2015, we pass following order.

: O R D E R :

- a) The impugned order is set aside.
- b) The respondent authority shall place the petitioners in the list of surplus employees and as per its turn, accommodate the petitioner in aided institution.
- c) It is made clear that the petitioner would not be entitled for salary during the period he stood terminated and till the time he is absorbed.

However, his services may be considered as per law for the purpose of continuity.

d) Rule accordingly is made absolute in above terms. No costs.

Sd/-

[K. L. WADANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]