

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2480 OF 2016

Zahoor Gulam Hussain Deshpande
Age : 45 years, occupation: service
resident of Sathghar Mohalla
Near Sunni Masjid, At Paldhi,
Taluka Dharangaon
District Jalgaon

Petitioner

Versus

1 The State of Maharashtra
through Secretary
School Education & Sports Department,
Mantralaya, Mumbai 400 032

2 The Secretary
Anjuman – Khidmat-E-Khalkh
Jalgaon

3 Head Master
MTP Urdu High School Paldhi
Taluka Dharangaon District Jalgaon

4 The Education Officer (Secondary)
Zilla Parishad, Jalgaon

Respondents

Mrs. A.N. Ansari advocate for the petitioner
Mr. M.M. Nerlikar, Assistant Government Pleader for
Respondent Nos.1 & 4
Mr. G.A. Nagori advocate for respondent Nos.2 and 3

CORAM : R.M. BORDE &

SANGITRAO S. PATIL, JJ

(Date : 21st November, 2016.)

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Heard.

2 Rule. With the consent of the parties, petition is taken up for final decision at admission stage.

3 The petitioner is working as a Peon in a school, operated by Respondent No.2 institution. The petitioner was appointed on 14.6.1989 and is placed at Sr.No.5 in the seniority list of non-teaching staff for the year 2014-2015, maintained by the institution. The petitioner came to be transferred from one school to another, which was objected by the petitioner by presenting an application to the Education Officer. The Education Officer, however directed the petitioner to approach the institution, since the order of transfer is by way of absorption in K.K. Urdu High School, Jalgaon. The petitioner claims that, he is the senior most peon and there are three other employees from the said category listed in the seniority list, maintained by the institution who have been retained by the management.

4 Although the management, in the affidavit in reply has not stated anything about declaration of the petitioner as a surplus employee, the petitioner has invited our attention to the list maintained by Zilha Parishad of surplus employees, which includes the name of petitioner at Sr.No.460. The petitioner has been, in fact, treated as surplus employee, in disregard to the seniority list

maintained by the institution. The management, in its affidavit in reply has also accepted the fact that, the petitioner is the senior most employee in the category of peon and he has not been considered as a surplus employee. This issue appears to have been lost sight of, by the Education Officer, while directing the petitioner to approach the management. The management appears to have erroneously transferred the petitioner, treating him surplus, in disregard to the seniority list maintained by the institution.

5 The issue, as regards the seniority of the petitioner and as to whether he could be declared as surplus employee, together with the issue as to the legality and correctness of the transfer order issued by the management are required to be dealt with by the Education Officer.

6 The order passed by the Education Officer on 22.8.2015 appears to have been passed without application of mind to the record of the case and as such, deserves to be quashed and set aside and it is accordingly quashed and set aside. It would be open for the petitioner to file a detail appeal/representation to the Education Officer, within a period of 15 days from today. The Education Officer shall take appropriate decision on the appeal /

representation that would be tendered by the petitioner within one month on its own merit and in accordance with provisions of law.

7 Rule is accordingly made absolute.

8 There shall be no order as to costs.

(SANGITRAO S. PATIL, J)

(R.M.BORDE, J)

vbd