

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4386 OF 2015

- 1] Jai Hind Education Trust, Dhule
through its Director,
Iccharam Gangaram Patil,
Age Major, Occ. Legal Profession,
r/o.Jai Hind Colony, Deopur,
Dhule
- 2] The Head Master,
Jai Hind High School and Junior
College, Dhule ..Petitioners

versus

- 1] The State of Maharashtra,
Through Secretary,
School Education and Sports
Department, Mantralaya,
Mumbai
- 2] The Director of Education,
Secondary and Higher Secondary,
Pune
- 3] The Deputy Director of Education,
Nashik Division, Nashik
- 4] The Education Officer (Secondary)
Zilla Parishad, Dhule ..Respondents

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Mr.S.S.Patil, advocate for petitioners

Mr.S.G.Karlekar,, AGP for respondents - State

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**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.
DATE : APRIL 02, 2016**

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

Heard.

2] Rule. Rule is made returnable forthwith. With consent of the parties, the petition is taken up for final hearing.

3] This petition takes exception to the order passed by respondent no.4 on 20th December, 2014, whereby one post of trained graduate teacher from the approved staff of the petitioner no.2 - school came to be cancelled permanently.

4] Learned counsel appearing for the petitioners submits that the Education Officer had directed to absorb the surplus teacher to teach Mathematics subject, however, three vacancies, which were

advertised for appointment of the Assistant Teachers, were for Science and Hindi subjects. There was no vacancy for the teacher of Mathematics subject. He further submits that the Education Officer is not empowered to cancel the approved post. He further submits that already the petitioner – Institution has absorbed 13 surplus teachers as directed by the respondent – Education Officer. He further submits that a surplus teacher about whom directions were given for absorption, has been absorbed in another school by order dated 14th December, 2015 passed by the Education Officer. The said teacher is absorbed in secondary school namely, Adarsh Secondary School, Nijampur Jaitane, Tq. Sakri, Dist. Dhule, as stated by the Education Officer in paragraph 9 of his affidavit. Learned counsel for the petitioners, therefore, submits that the impugned order deserves to be set aside.

5] On the other hand, learned AGP, relying on the affidavit-in-reply filed on behalf of the respondents, submits that keeping in view the State Government's policy, more particularly, the Government Circular dated 14th October, 2014 issued by the School Education and Sports Department, Government of Maharashtra, Mantralaya, Mumbai, it was incumbent upon the petitioners to absorb the surplus teacher namely, Manoj Gangaram Choudhari, as directed by the Education Officer and therefore, on refusal of the petitioners to absorb the said surplus teacher, the Education Officer has cancelled one post. Therefore, this Court may not entertain the present Writ Petition.

6] We have heard learned counsel appearing for the petitioners and learned AGP appearing for the respondents – State. With their able assistance, we have perused the pleadings in the petition, grounds taken therein, annexures thereto, the

reply filed on behalf of the respondents – State and Government Circular dated 14th October, 2014 reference of which, is already made herein above.

7] Upon careful perusal of the documents on record, it is not in dispute that the petitioners have absorbed 13 surplus teachers as directed by the respondents. Apart from it, the assertion of the petitioners that, there is no vacancy for the teacher of Mathematics subject, has not been denied by the respondents. It is also not stated in the affidavit-in-reply filed on behalf of the respondents that, when the respondent – Education Officer cancelled one approved post, whether he had sought approval from the higher authorities/State Government for such drastic action of cancellation of post. It is also relevant to consider that the surplus teacher namely, Manoj Gangaram Choudhari has already been absorbed in another secondary school at Nijampur

Jaitane, Tq. Sakri, Dist. Dhule, as stated by the Education Officer in his affidavit-in-reply.

8] Therefore, keeping in view the discussion in the foregoing paragraphs, we are of the opinion that the impugned order cannot sustain. The respondent – Education Officer did not consider the fact that the petitioner – Institution has already absorbed 13 surplus teachers and there was no post vacant for the teacher in Mathematics.

9] In the peculiar facts of the case, therefore, the impugned order passed by the Education Officer stands quashed and set aside.

10] The Writ Petition stands allowed on the above terms. Rule is made absolute accordingly.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]

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