

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

20 WRIT PETITION NO. 5265 OF 2015

PRABHU LIMBRAJ BAGAL
VERSUS
STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Deshmukh Sachin S.
AGP for Respondents State: Mr. S. Y. Mahajan
Advocate for Respondents Nos. 2 and 3 : Mr. S. S. Dambe
Advocate for Respondent No.4 : Mr. N. B. Khandare

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

DATE : 4th October, 2016

ORDER:

1. The petitioner was working as Assistant Teacher in Shri Virbhadreswar Primary School, Parli Vaijanath. In the said school the petitioner was declared surplus. The Education Officer (Primary) passed an order directing the petitioner to be absorbed with respondent No.4 School. The said order is passed on 5th February, 2015. Respondent No. 4 School did not allow the petitioner to join. As such the petitioner has filed this writ petition for implementing the order dated 5th February, 2015 and to pay the petitioner unpaid salary.
2. As far as payment of unpaid salary is concerned, the order is already passed to that effect.

3. Mr. Khandare, the learned counsel for respondent no.4 submits that while passing the order, directing the petitioner to be absorbed with respondent no.4 school, provisions of Section 26 of the M.E.P.S. Act have not been followed. As per section 5 of the M.E.P.S. Act, it is for the Management to appoint teachers. The Management is required to have free hand. As per section 26 of the M.E.P.S. Act, the Education Officer has to maintain the list of surplus teachers and according to their seniority, has to pass the order. The Education Officer has not followed the provisions of Section 26 of the M.E.P.S. Act, while passing the order directing the petitioner to be absorbed with respondent No.4 school. The learned counsel submits that even earlier, twice the surplus teachers were directed to be absorbed with respondent no.4 School. Every time, respondent No. 4 school is only chosen for absorbing the surplus teachers. There is no vacant post available for a graduate teacher in respondent No.4 School. The posts are already filled in. The learned counsel submits that it is for the respondent no.4 school to consider the suitability of the candidates.

4. Mr. Dambe, the learned counsel for the Education

Officer submits that considering the vacancy available with respondent no.4 School, the petitioner is directed to be absorbed with respondent No. 4 School. The chart showing the vacancy is also filed on record.

5. We have considered the submissions. It is for the Education Officer to maintain the seniority list of surplus teachers and direct their absorption as per the seniority, with the school where the vacancy arises. No other surplus teacher has made grievance that the petitioner is directed to be absorbed out of turn.

6. The State also has issued Government Resolution, thereby imposing ban on fresh fresh recruitment considering the fact that large number of surplus teachers are yet to be absorbed. Rule 26 M.E.P.S. Act, deals with absorption of those teachers who were working on grant-in-aid posts and are required to be declared surplus for one or the other reasons. Respondent No.4 is not entitled to claim as of right the seniority list of surplus candidates to be maintained by the Education Officer. Respondent no.4, at the most, can agitate about the vacancy not being available. However, that also will have to be on the

touchstone of the policy and the provisions of law. There was ban on fresh recruitment. As such, it would not be open for respondent No.4 to take a plea that the post which is shown as vacant as per the list produced by the Education officer has already been filled in. Of course if the permission is sought by respondent No.4, then the same can be filled in. However, the same is subject to certain conditions.

7. As the order is already passed by the Education Officer, considering the vacancy, respondent no.4 is required to absorb the petitioner in its school and thereafter can raise the issue with the Education officer about the non availability of the vacancy or otherwise.

8. In light of the above, respondent no.4 shall accommodate the petitioner within 15 days from today.

9. Writ petition is accordingly disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC