

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

WRIT PETITION NO. 6693 OF 2015

Prakash s/o Pandit Pawar,
Age : 34 years, Occupation : Service,
R/o At Valvhe, Post Amkhel,
Taluka Sakri, District Dhule.

...PETITIONER

-VERSUS-

- 1 Chalisgaon Education Society,
Chalisgaon.
C/o B.PArt, S.M.A. Science and
K.K.C. Commerce College and
K.R. Kotkar Junior College,
Chalisgaon, District Jalgaon.
- 2 The Head Master,
K.R.Kotkar Junior College,
Chalisgaon, District Jalgaon.
- 3 The Chairman,
Junior College Committee,
Chalisgaon Education Society,
Chalisgaon, District Jalgaon.
- 4 The Deputy Director of Education,
Nashik Region, Nashik.

...RESPONDENTS

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Advocate for Petitioner : Shri Gangakhedkar Shailendra S.
Advocate for Respondent Nos.1 to 3 : Shri R.J.Godbole.
AGP for Respondent 4 : Shri S.N.Kendre.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 23rd November, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner is aggrieved by the judgment and order dated 26.03.2015 delivered by the School Tribunal, Nashik by which his Appeal No.42/2012 has been dismissed.

3 While issuing notice, I had heard the submissions of the learned Advocates for the respective sides on 18.10.2016 and I had recorded the undisputed factors in my order dated 18.10.2016, which reads as under:-

"1 I have heard the learned Advocates for the Petitioner and Respondent Nos.1 to 3 / Management.

2 There is no dispute insofar as the following aspects:-

(a) An advertisement dated 10.07.2009 was published by the Respondent/ Management indicating that the post of Biology for a full time teacher is reserved for the Scheduled Tribe category.

(b) The Petitioner belongs to the Scheduled Tribe category and has a certificate of validity dated 21.11.2002 issued by the Committee for Scrutiny and Verification of Tribe Claims, Nashik Division.

(c) By appointment order dated 07.08.2009, the Petitioner was appointed as a Shikshan Sevak as per the said advertisement for the tenure of 07.08.2009 till 06.08.2012.

(d) On 06.08.2012, the Petitioner has been terminated

on the ground that he has become surplus as the strength of students has fallen.

- (e) *The Government Resolution dated 09.04.2013 would indicate at clause (8) that if a person belonging to ST/SC category is to be declared surplus, he should be absorbed in the same Institution so as to ensure that backlog does not grow. Such a candidate cannot be declared as a surplus.*

3 *I find from the impugned order that rather than considering the issue as to whether, the Petitioner/Appellant could have been declared surplus or not, the School Tribunal has misdirected itself by concluding in paragraph 23 that the appointment order does not disclose whether, he is from any reserved category.*

4 *Shri Godbole, learned Advocate for the Respondent/Management submits that he would require some time to prepare himself on the issue as to whether, the removal of the Petitioner has led to growth in the backlog for reserved categories.*

5 *By consent of the parties, stand over to 26.10.2016 in the supplementary board.*

6 *Until further orders in this matter, Respondent Nos.1 to 3/ Management shall not appoint any teacher in the subject of Biology."*

4 I have heard the learned Advocates extensively today.

5 There is no dispute that the Petitioner was appointed on 07.08.2009 as a Shikshan Sevak for a probation period of three years and he was disengaged on 01.06.2011 when the workload was not available in his subject. The Management has specifically taken a stand before the School Tribunal that the Petitioner cannot be continued in employment since the workload has fallen and as he is a temporary employee, he

cannot be given preference as against a permanent employee while dealing with the issue of fall in workload.

6 There can be no dispute as regards the contention of Shri Gangakhedkar, learned Advocate for the Petitioner, that in the face of a fall in the workload, the Management has to consider the roster of reservation and has to ensure that the removal of a teacher/ employee from the reserved category on the ground of surplusage, should not lead to a growth in the backlog. However, Rule 27(e) of the MEPS Rules, 1981 specifically provides that while retrenching an employee, the members of a backward class already in service should not be retrenched though liable to be retrenched according to their seniority. It also provides that in between permanent and temporary employees in the face of a need to cause retrenchment on the ground of surplusage, a temporary employee shall be retrenched, irrespective of the fact that he belongs to the backward class.

7 Shri Godbole, therefore, submits that as the workload had fallen, the Petitioner was required to be retrenched and since he was a temporary employee, who had worked for only one year and nine months and was not a deemed permanent employee, the Management could not have disturbed the permanent employees.

8 The School Tribunal has considered this aspect in paragraph 22 of the impugned judgment when it recorded a finding on facts that the Petitioner had worked for 11 months in the academic year 2009-2010 and because of the inadequate number of students and reduction of workload, he was working on Clock Hour Basis in the academic year 2010-2011. It is also noted that out of the workload of 65 hours, 26 hours were allotted to the senior teacher Shri B.R.Yeole and equal number of hours were allotted to another senior teacher by name Shri S.S.Patil, in the academic year 2010-2011. In the academic year 2011-2012, the workload for the subject of Biology was reduced to 52 hours and as such, Shri Yeole and Shri Patil had shared the said workload as per the rules and the Petitioner was left with no workload at all.

9 I have noted the submissions of Shri Godbole, learned Advocate for the Management that the request for new recruitment was not in relation to the subject of Biology. In the light of the above, the contention of the Petitioner cannot be accepted that the permanent teachers should be dislodged and he should be retained in service inasmuch as it cannot be accepted that the Management is proceeding to recruit fresh hands for the same subject of Biology.

10 In the light of the above, I do not find that the impugned judgment of the School Tribunal could be termed as being perverse or erroneous. The Writ Petition is dismissed. Rule is discharged.

11 However, it needs mention that since the Petitioner has been disengaged purely on the ground that the workload for the post of Biology was not available for the Full Time Teacher and which post was earlier reserved for Scheduled Tribe category, in the event in future, if such post in the said subject is available on account of rise in the workload, the Petitioner shall be entitled to apply for the same and in such eventuality, the Management shall consider his claim preferentially for appointment in service.

kps

(RAVINDRA V. GHUGE, J.)