

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

205 WRIT PETITION NO. 840 OF 2005

CHALISGAON EDN SO & ANR

VERSUS

STATE OF MAH & ORS

...

Advocate for Petitioner : Mr. P R Patil
AGP for Respondents 1 and 2 State: Mr. S. Y. Mahajan

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

DATE : 14th October, 2016

ORDER:

1. Mr. Patil, the learned counsel for the petitioners submits that the order passed by respondent No.3. directing the petitioner to absorb and appoint respondent No.4 as Assistant Teacher is illegal as no vacancy existed with the petitioner. The order is contrary to the Government Resolution dated 13.08.2004. As per the said Government Resolution, surplus teachers are required to be absorbed with the Municipal Council or Zilla Parishad Schools. The said order was also passed without hearing the petitioner. The petitioner had already appointed respondent No.5 and upon appointment of respondent No.5, vacancy did not exist. The said aspect is not considered. This Court had granted interim order on 25th February, 2005 after having been satisfied that while appointing respondent

no.5, proviso to Section 5(1) of the Maharashtra Employees of Private Schools (condition of Service) Regulation Act, 1977 was followed. According to the learned counsel, since the said date, respondent no.5 is officiating with the present petitioner.

2. We have heard the learned AGP.

3. None appears for respondent Nos.4 and 5. On 24.08.20016, also when the matter was called out, none appeared for respondent Nos. 4 and 5. Today also none appears for respondent Nos.4 and 5 so also for respondent No.3.

4. This Court had granted interim relief in favour of the petitioner on 25.02.2005 in terms of prayer clause (F) and (F1). The said prayer clauses read as under:

"(F) During the pendency and final hearing of this petition, the order dated 24.08.2004 passed by respondent No.3 Administrative Officer, Nagar Parishad Shikshan Mandal, Chalisgaon, Dist. Jalgaon directing to appoint respondent No.4 Hemant Anant Amrute be stayed. (Exh.A page 12)

(F-1) During the pendency and final hearing of this

petition, the respondent No.1 to 3 be directed to grant approval to the appointment of Miss Milan Shivaji Patil as Shikshan Sevak."

5. Since the said date, the interim orders is in force. Respondent No.5 has been in service. Services of respondent no.5, it seems, are approved pursuant to the interim orders passed by this Court. Respondent No.4 was a surplus candidate as strength of the students of the school where Respondent No. 4 was serving had been reduced and respondent no.4 was required to be declared surplus. Respondent no.4 must have accommodated in some other institution by now.

6. Be that as it may, as no vacancy was available with the petitioner upon appointment of respondent no.5, respondent no.4 could not have been directed to be absorbed with the petitioner.

7. In light of above, Rule is made absolute in terms of prayer clauses (C) and (D). No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC