

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

**CONTEMPT PETITION NO. 538 OF 2014
IN
WRIT PETITION NO. 183 OF 2013**

Maheshkumar Raghunath Borse .. Petitioner

Versus

Ravindra Atmarao Patil and others .. Respondents

Shri P. B. Shirsat, Advocate for the Petitioner.

Shri A. R. Sayed, Advocate h/f Shri S. P. Brahme, Advocate for the Respondent No. 1.

Shri S. B. Pulkundwar, A.G.P. for the Respondent No. 2.

Shri P. B. Vikhe, Advocate for the Respondent No. 3.

The Respondent No. 4 is served.

Shri R. S. Pawar, Advocate for the Respondent No. 5.

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

DATE : 22ND SEPTEMBER, 2016.

PER COURT :

. The present petition is filed with a grievance that the respondents are not complying with the order of this Court dated 03rd July, 2014 passed in Writ Petition No. 183 of 2013.

2. Mr. Shirsath, the learned counsel for the petitioner submits that, the said writ petition came to be disposed of by this Court under order dated 03rd July, 2014 with a direction that, the

petitioner shall be given reappointment as a fresh Shikshan Sevak with effect from 15.04.2010. According to the learned counsel the said order was passed upon an affidavit filed by the Head Master stating that there are two posts vacant and petitioner can be accommodated. This Court had also considered that, the respondent institution ought to have considered the case of the petitioner for reappointment as fresh Shikshan Sevak, as was considered in respect of another candidate.

3. In spite of said order, the petitioner was not accommodated in the said institution. According to Mr. Shirsat, the learned counsel for the petitioner two posts were vacant, still the petitioner was not given the appointment order. According to the learned counsel, the respondent institution after the order of 2010 has filled in the post. The petitioner is not at fault.

4. Mr. Pawar, the learned counsel for the Education Officer (Primary) states that, the respondent institution is a secondary school and junior college, as such the Education Officer (Primary) has no concern with the same.

5. Mr. Sayyed, the learned counsel for the respondent No. 1 submits that, the Head Master had filed the affidavit under misconception before this Court in the writ petition. There was no vacancy available at the time when the affidavit was filed. As

the affidavit was filed under misconception, the order was passed by this Court in the Writ petition. The respondent No. 1 has no objection, if the petitioner is declared as surplus.

6. The learned A. G. P. states that, as per the staffing pattern there are two surplus candidates in the respondent/institution. According to the learned A. G. P. the vacancy will arise in the institution i. e. in Hiraji Shravan Borse High School and Junior College, Kapadne in April 2017, as one Sau. N. N. Bhambre would retire on attaining age of superannuation.

7. We have considered the contentions of respective parties. The anomalous situation has arisen because of the affidavit filed by the then Head Master in Writ Petition No. 183 of 2013. We have already concluded that, the petitioner is required to be given reappointment as a fresh Shikshan Sevak with effect from 15.04.2010. The question only remained with regard to the absorption of the petitioner with the said institution. We had directed the petitioner to be allowed to be joined in the institution where he was working earlier. As it was stated that, vacancy exists, otherwise we would have passed order of placing the petitioner in the list of surplus candidates.

8. Be that as it may, we need not enter into the debate as to who is at fault. The fact remains that, the petitioner is required

to be given reappointment as a fresh Shikshan Sevak with effect from 15.04.2010. The said order has become final. Considering the vacancy not being available with the institution at present and the vacancy would be created in April 2017, we direct that, the petitioner shall function with the Hiraji Shravan Borse High School and Junior College, Kapadne from 01st May, 2017. However, his appointment as a fresh Shikshan Sevak will be considered from 15.04.2010, naturally the same would be depending upon the staffing pattern at the said time. With these observations, the contempt petition stands disposed of.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]