

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1111 OF 2015

Saida Begum Daud Saheb & Anr. ... Petitioners.

V/s.

Education Officer, Zilla Parishad, Solapur ... Respondents.
And Another.

Mr. Ashok B. Tajane, Advocate for the Petitioners.
Mr. Vijay Killedar, Advocate for the Respondent No. 1.
Mr. Vikas Mali, AGP for the State.

**CORAM : NARESH H. PATIL AND
A. A. SAYED, JJ.**

DATE : 29th FEBRUARY, 2016.

P.C. :

1 Heard the learned counsel appearing for the parties.

2 By this petition, the Petitioners pray for direction to the Respondents to absorb them as Assistant Teachers and to pay consequential salary benefits from 31.05.2000 till absorption of the Petitioners in the said posts. It is contended by the learned counsel appearing for the Petitioners that the Petitioners were appointed as Teachers in the Jamaitul Quresh Urdu Primary School, Solapur. It is an admitted position that

the said School was de-recognized in the year 2000. The Petitioners seek suitable directions to declare them as surplus. It is submitted by the learned counsel for the Petitioners, on instructions, that two teachers of the same School were declared surplus. The Petitioners have approached this court earlier. The orders passed by this court are placed on record. It is further submitted that the Petitioners are not responsible for de-recognition of the School and, therefore, necessary directions shall be issued to the Respondents to absorb the Petitioners.

3 The learned counsel appearing for the Zilla Parishad, Solapur points out paras 3 and 8 of the order dated 18th July, 2013 passed by the Division Bench of this Court (Coram : S.C. Dharmadhikari & S.B.Shukre, JJ.), which are reproduced as under :

“3 When a complaint is made that this order has not been complied with, firstly because there is no communication within the period specified and secondly, the communication belatedly issued on 4 April 2013 is not in terms of the order. The only explanation forthcoming and that too orally is that there was some delay in communicating the order, but that is not intentional and deliberate.”

“8 To our mind, if the response is as found in the present case, then we cannot be a silent spectator. Although the order has been complied with and belatedly, but the other grievance is that it is not in terms of the Division Bench order and direction that

we do not proceed further and take action in civil contempt, but we direct the Respondents to pay the sum of Rs.25,000/- to the original Petitioners which shall be paid within a period of two weeks from today. This order be brought to the notice of the Principal Secretary in the concerned Department so that he issues directions and takes action against the erring officials. This order does not prevent the Petitioners from challenging the communication issued now and in April 2013 on merits and all contentions in that regard of both sides are kept open.”

The learned counsel for the Zilla Parishad has placed on record the communication issued by the State on 2nd April, 2013, as noted in para 8 of the order dated 18th July, 2013. It is submitted that the Petitioners have not placed the said communication/order of the State on record. According to learned AGP, the State Government had taken a decision that the teachers were responsible for the de-recognition of the School and, therefore, they shall not be listed as surplus teachers. The learned counsel appearing for the Petitioners submits that the Petitioners are not aware of any such communication / order of the State Government and that he would take appropriate instructions in the matter.

4 The issue relates to the year 2000 in which the said School was de-recognized. As to in what circumstances, those two teachers were declared surplus in the year 2000,

need not be investigated now. In view of the decision taken by the State on 2nd April, 2013, we are not inclined to declare the Petitioners as surplus. However, the Petitioners are at liberty to raise appropriate challenge to the said communication issued by the State Government on 2nd April, 2013 in the appropriate proceedings. A copy of the said communication is taken on record and marked “X” for identification.

5 With the above observations, we reject the petition.

6 However, all contentions of the parties are kept open.

(A.A.SAYED,J.)

(NARESH H.PATIL,J.)

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