

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

WRIT PETITION NO.732 OF 2017

Balu s/o. Baburao Shinde ..Petitioner

Vs.

The State of Maharashtra
and ors. ..Respondents

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Mr.Sanjay B.Bhosale, Advocate for petitioner

Mr.S.G.Karlekar, AGP for respondent nos.1 to 3

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**CORAM : V.M. KANADE AND
SANGITRAO S. PATIL, JJ.**

DATE : JANUARY 25, 2017

PER COURT :

Heard.

2. The petitioner is aggrieved by his transfer from Zilla Parishad Primary School, Wadgaon (J), Tq. Kallam to Zilla Parishad Primary School, Gairan Vasti, Itkoor, Tq. Kallam.

3. The learned Counsel for the petitioner submits that the said transfer order has been passed in December, 2016 and the last date for absorption of teachers, has been prescribed as 31st

October of every year. He submits that out of four posts, only two posts are filled-up and therefore, the petitioner could not have been declared as a surplus teacher. He submits that after the transfer order is passed, the petitioner made a representation to the Chief Executive Officer, Zilla Parishad, however, the representation is not yet decided. According to the petitioner, a trained graduate teacher was included in the list of surplus teachers, however, later on, her name was deleted and the petitioner's name was included.

4. On the other hand, the learned AGP for the respondent nos.1 to 3 submits that as per the Government Resolution dated 12/18.05.2011 the petitioner has an alternate remedy of filing a complaint before the Divisional Commissioner.

5. After having heard the learned Counsel for both sides, we are of the view that since the petitioner is not a surplus teacher, there was no

need to transfer him. However, since the petitioner has an alternate remedy of filing a complaint before the Divisional Commissioner, this Writ Petition stands disposed of with liberty to the petitioner to avail of that remedy.

6. Delay in filing complaint before the Divisional Commissioner stands condoned since the petitioner, instead of approaching the Divisional Commissioner, has wrongly approached the Chief Executive Officer. The petitioner to file complaint before the Divisional Commissioner within a period of two weeks from today.

7. If the petitioner files the complaint within two weeks from today, we direct the Divisional Commissioner to consider the same on merits and in accordance with the provisions of law, as expeditiously as possible and preferably, within a period of four weeks from filing of the complaint. All contentions of the petitioner are kept open.

8. During pendency of the complaint before the Divisional Commissioner, the impugned order shall remain stayed.

[SANGITRAO S. PATIL, J.]

[V.M. KANADE, J.]

kbp