

WRIT PETITION NO.3176 OF 2016

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Mr. Brahme, learned counsel submits that vide order dated 14.8.2013, the petitioner was

declared surplus and was directed to join Zilla Parishad, Jalgaon. At that time, the petitioner was working in Municipal Council, Shahada. The petitioner was relieved by Municipal Council, Shahada on 10.10.2013. The petitioner went to join Zilla Parishad, Jalgaon, but was not joined on the ground that the post is not vacant. Thereafter, the petitioner was directed to join at Mohida, Tq. Chopda. There also the post was not vacant. Thereafter, the petitioner was directed to join at Warghavhan, which the petitioner joined. The petitioner is getting regular salary from 23.7.2014, however, is not paid salary from 10.10.2013 to 22.7.2014.

3. Mrs.Kutti, learned counsel for the Respondent submits that petitioner would not be entitled for the salary for the said period on the principle of 'no work no pay'. According to the learned counsel, as the petitioner has not performed her duties, the salary can not be paid to the petitioner.

4. The affidavit-in-reply is filed by

Respondent No.3. The relevant portion reads as under :

"3. I say that, however, on 15.5.2014, absorption of surplus teachers was made under Zilla Parishad. Accordingly, on submission of the file for allowing the petitioner as per the vacant post under Zilla Parishad, posting was given to her as per sanctioned note dated 30.5.2014 at Zilla Parishad School, Mohida, Taluka Chopda. But, the petitioner filed letter on 5.6.2014 for partially changing the posting, through the Member of Zilla Parishad. Thereupon, the Zilla Parishad confirmed the decision dated 30.5.2014 and issued order to the petitioner to join at Zilla Parishad School, Mohida, Taluka Chopda, as per order dated 4.7.2014. I say that, however, during the intervening period, the vacant post on the said school was filled. Therefore, the Block Education Officer, Panchayat

Samiti, Chopda, as per report dated 4.7.2014, partially modified the posting of the petitioner and as per order dated 22.7.2014, the petitioner was posted at Zilla Parishad School, Warghavhan, Taluka Chopda by absorption. As per conditions Nos.1 to 9 of this office order O.No.Education/ Estt-3A/RR/88/2014, dated 22.7.2014, the petitioner has accepted the order and has joined her duties at Zilla Parishad School, Warghavhan, Taluka Chopda on 23.7.2014."

5. It would be seen that it is not the fault of the petitioner for not having worked at the said place. The petitioner was absorbed at those places where vacancy did not exist. It is not the case that petitioner was not ready to join. The petitioner at all material time was ready to join service at the place the petitioner was directed to be absorbed. For no fault of the petitioner, the petitioner can not be made to suffer.

6. In light of the above, the Respondent No.3 shall pay salary as admissible to the petitioner for the period 10.10.2013 to 22.7.2014. The same shall be paid preferably within four (4) months. The said period shall also be counted for the continuity in service and all other consequential benefits.

7. The Writ Petition is accordingly allowed. No costs.

(SANGITRAO S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

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