

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8620 OF 2017

Gokul s/o Bhalerao Patil
Age 43 years, occ. service
r/o Plot No. 18, Shankar Nagar
Pimple Road, Amalner, Tq. Amalner
Dist. Jalgaon

Petitioner

Versus

- 1 The State of Maharashtra
Secretary, School Education Department,
Mantralaya, Mumbai 32.
- 2 The Education Officer (Secondary)
Zilla Parishad, Jalgaon
- 3 Madhayamik Vidhyalaya,
Dodhwad
Tq. Amalner, Dist. Jalgaon
Through its Head Master
- 4 Kranti Jyoti Savitribai Phule
Municipal High School,
Chopda, Dist. Jalgaon
Through its Head Master / Mistress
- 5 Shivaji Shikshan Prasarak Mandal
Chichol, Tq. Amalner, Dist. Jalgaon
Through its Secretary

Respondents

Ms. Surekha P. Mahajan, advocate for petitioner.
Mr. A.R. Kale, AGP for respondents 1 and 2.
Mr. M.S. Deshmukh, advocate for respondent no. 4.
Respondents No.3 & 5 are served.

**CORAM : R.M.BORDE AND
SMT. VIBHA KANKANWADI, JJ.
DATE : 07th September, 2017.**

ORAL JUDGMENT : (Per R. M. Borde, J.)

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 The petitioner – Assistant teacher, who was initially serving in the school operated by Respondent No.3-Institution, was declared surplus and as such he was absorbed in the school operated by Respondent No.4. On noticing availability of vacancy in the original school i.e. Respondent No.3, petitioner made a request for repatriation to Respondent No.3-school. The application tendered by the petitioner was considered favourably by the Education Department and order of repatriation came to be issued by the Education Officer, (Secondary), Zilla Parishad, Jalgaon, on 24th April, 2017. Respondent No.3 was directed to permit the petitioner to resume duties as an Assistant teacher in Respondent No.3-school against available vacancy. Respondent No.3, however, did not obey the order issued by the Education Officer and as such, the petitioner is compelled to approach this Court seeking direction against Respondent No.3 as well as against the Education Officer to permit him to resume duties as an Assistant Teacher in Respondent No.3-school. It is also stated by the petitioner that he has already been relieved from Respondent No.4-school with a view to facilitate petitioner's joining in Respondent No.3-school on 10.07.2017.

3 In spite of service of notice, Respondents No.3 and 5

have not caused appearance.

4 An affidavit-in-reply has been tendered on behalf of the Education Officer and in paragraphs no.5 and 6 of the reply, it is stated thus:

5 I say and submit that, the Respondent No.2 again absorbed the Petitioner in Municipal Council School at Chopada and the petitioner joined at Chopada. As per request letter of Petitioner dated 30.07.2016, the Respondent No.2 Education Officer (Sec.), Zilla Parishad Jalgaon issued order dated 24.04.2017 to Respondent No.3, stating in said letter as one post of Assistant Teachers was created in the schedule for the year 2015-16 and therefore the petitioner has requested to absorb him at his original school at Dodhawad, Tal. Amalner. The Respondent No.2 considered the request of the petitioner and ordered to the Respondent No.3 to join the petitioner. The Respondent No.4 relieved the petitioner to join at Respondent No.3 school on dated 10.07.2017. But the Respondent No.3 school has not allowed to join to the petitioner.

6 I say and submit that as per provision made in M.E.P.S. Rules 1981 under Rule 26(3) and 26(6), the Respondent No.3 is bound to join the petitioner at his original appointed school at Dodhavada, Tal. Amalner, District Jalgaon, as per directions issued by the Respondent No.2 Education Officer (Sec.), Z.P., Jalgaon.

5 In view of the explanation tendered by the Education Officer, Zilla Parishad, a direction needs to be issued to Respondent No.3 to permit the petitioner to resume duties as an Assistant Teacher in the school. In the event of failure of

Respondent No.3 to abide by the direction, it would be appropriate for the Education Officer to take action against the concerned management and school.

6 The petitioner contends that though he has been relieved on 10.07.2017, he has not been permitted to resume duties by Respondent No.3 and as such, he has not been paid monthly salary since then.

7 It would be open for the petitioner to make appropriate application to the Education Officer (Secondary), Zilla Parishad, Jalgaon, in that regard and the Education Officer shall issue necessary instructions to the concerned. It would be open for the Education Officer to deduct the amount of grants payable to Respondent No.3 institution and to disburse the amount due to the petitioner in the event of failure of Respondents No.3 and 5 to abide by the directions.

8 Writ Petition is, thus, allowed. Respondents No.3 and 5 are directed to permit the petitioner to resume duties as an Assistant Teacher in Respondent No.3 school within a period of four weeks from today.

9 Rule is accordingly made absolute. There shall be no order as to costs.

SMT. VIBHA KANKANWADI
JUDGE

R.M.BORDE
JUDGE