

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

WRIT PETITION NO.9324 OF 2015

Balaji S/o Kisanrao Mali ... Petitioner.

Versus

The State of Maharashtra
and others. ... Respondents.

...

Mr.S.S.Jadhavar, advocate for the petitioner.
Mr.A.P.Basarkar, A.G.P. for the State.
Mr.G.L.Awale, advocate for Respondent No.3.

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**CORAM : S.V.GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

Date : 10.04.2017.

PER COURT :

1. Heard.

2. Mr.Jadhavar, learned counsel submits that the petitioner was appointed as a lecturer/Assistant Teacher in Respondent No.3 - Junior College on 12.20.1995. In the year 2009, the Principal of the College submitted proposal

declaring the petitioner as surplus. On 15.5.2009, Respondent No.2 declared the petitioner as surplus. According to the learned counsel, the petitioner could not have been retrenched as petitioner belongs to OBC category for which 19% reservation is provided. According to the learned counsel, the order declaring petitioner as surplus was assailed in Writ Petition No.7337/2009. The same was disposed of on 3.12.2014. The relief was not given to the petitioner. Learned counsel submits that now the post is vacant with the Respondent No.3 in the subject of Commerce. The petitioner can teach Commerce subject. According to the learned counsel, the petitioner is entitled to be repatriated to his parent institution.

3. Mr.Awale, learned counsel for Respondent No.3 submits that in the year 2009, the petitioner was rightly declared as surplus. There are no students for Cooperation subject. The vacancy exist for the Commerce subject. As the subject of petitioner is Cooperation, the petitioner can not be considered for the post of

Commerce subject. A specialised person is required to be appointed for the said post. Learned A.G.P. for the Deputy Director of Education submits that the procedure under Rules 26 and 27 of the MEPS Rules are required to be followed in case of repatriation.

4. We have considered the submissions canvassed by learned counsel for respective parties. It is not disputed that one post for Commerce subject has now become vacant with Respondent No.3. Whether the petitioner is eligible to teach Commerce subject will have to be considered by the Deputy Director of Education. The petitioner initially was teaching Cooperation subject. As is submitted that now the students for the said subject are not available. Learned A.G.P. for the Deputy Director of Education also does not dispute that the post for Commerce subject in the Respondent No.3 institution had become vacant.

5. In light of the above, we pass the following order :

a) The Education Officer shall consider the eligibility of the petitioner to teach Commerce subject and shall pass orders accordingly with regard to absorption of the petitioner or otherwise with Respondent No.3. The same shall be done expeditiously, preferably within two (2) months from the receipt of application from the petitioner. The petitioner shall file application within one (1) week from today with the Deputy Director of Education. If Respondent No.3 so desires, the Respondent No.3 may represent himself before the Deputy Director of Education.

b) The Writ Petition is disposed of. No costs.

(SANGITRAO S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

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