

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

WRIT PETITION NO. 10672 OF 2016

Appasaheb s/o. Dattu Gadekar .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.Santosh S. Jadhavar, Advocate for the petitioner.

Mr.P.S. Patil, A.G.P. for respondent/State.

Mr.P.P. More, Advocate for respondent No.2.

Mr.M.B. Kolpe, Advocate for respondent No.3.

Mr.Prasad B. Kadam h/f. Mr. S.J. Salunke, Advocate for respondent No.4.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.**

DATED : 12.10.2017

P.C. :-

1. Mr. Jadhavar, learned Counsel submits that the petitioner was appointed by respondent No.3 as a Shikshan Sevak, thereafter, became permanent as Assistant Teacher. The petitioner was declared surplus in the year 2014 and was directed to be absorbed in respondent No. 4 - School. Respondent No.4-school did not allow the petitioner to join. Thereafter, vacancy arose with parent school of petitioner-respondent No.3. The petitioner requested the

Management to allow him to join in respondent No.3-school. Even the Education Officer directed respondent No.3-School to allow the petitioner to join. Learned Counsel submits that respondent No.3 being parent institution, the petitioner is entitled to be repatriated to the parent institution on availability of post with the parent institution. Repeated requests are made, but to no avail.

2. Learned Counsel for the Education Officer submits that considering the increase in the strength of students, one post became available in respondent No.3 in the year 2016. The Education Officer directed respondent No.3 to allow the petitioner to join being parent institution of the petitioner. Respondent No.3 did not allow the petitioner to join.

3. Learned Advocate for respondent No.4 submits that as there was no vacancy available with respondent No.4, the petitioner could not be accommodated.

4. Mr. Kolpe, learned Counsel for respondent No.3 submits that it was for the petitioner to join respondent No.4 - school having been declared surplus and directed to be absorbed in respondent No.4-school in the year 2014.

5. In 2014 two teachers had become surplus and in 2016 when additional post became available, the institution on 29.04.2017 issued letter of one Smt. Trihone Trupti Gorakh to join, as she was senior to the petitioner. However, till date she has not joined.

6. As per Rule 26 of the M.E.P.S. Rules, if an employee is declared surplus and subsequently the post becomes available in the parent institution, such employee is entitled for repatriation. In the present case, two teachers from respondent No.3 school were declared surplus in the year 2014. Both these teachers were directed to be absorbed in other institution. The

petitioner was directed to be absorbed in respondent No.4 - institution. It is nobody's case that the petitioner on his own volition did not join respondent No.4 - institution. The petitioner was willing to join and he also approached respondent No.4 to allow him to join the post, however, was prevented from joining. According to respondent No.4, the vacancy did not exist with their institution. The petitioner made representation to respondent No.3 asking to accommodate in the post created. Other teacher was asked to join respondent No.3 under letter dated 29.04.2017. That teacher did not respond. Even according to respondent No.3, there would be no impediment to respondent No.3 to allow the petitioner to join.

7. In the result, we pass following order :-

8. Respondent No.3 shall allow the petitioner to join on the post which is now admissible immediately. The petitioner shall join respondent No.3-institution

tomorrow i.e. on 13.10.2017. The period from the date of petitioner being declared surplus and till the date of joining shall be considered for the purpose of continuity. Respondent No.3 would submit salary bills to the Education Officer for the period the petitioner was declared surplus till he is joined. The Education Officer shall process said salary bills in accordance with law and shall take decision upon it within three months.

9. The writ petition stands disposed of. No costs.

[S.M.GAVHANE, J.]

[S.V.GANGAPURWALA, J.]