IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9748 OF 2016

Santosh s/o Anandrao More,
Age : 32 years, Occupation : Service
as Assistant Teacher,
Shri Sainath Vitthalnath Vidyalaya,
Mangalsangvi, Tq.Lohara,
District Nanded.

...PETITIONER

-VERSUS-

1 The State of Maharashtra.
Through the Secretary,
Education & Sports Department,
Mantralaya, Mumbai.

2 The Commissioner of Education,
Maharashtra State, Pune.

3 The Director of Education,
Maharashtra State, Pune.

4 The Deputy Director of Education,
Latur Region, Latur.

5 The Education Officer (Secondary),
Zilla Parishad, Nanded.

6 Shri Satya Shikshan Krantik Guru
Vithaldas Bhakt Sant Tukaram Shikshan
Prasarak Mandal, Mangalsangavi,
Tq.Kandhar, District Nanded.
Through its Secretary.

7 Shri Sainath Vitthalnath Vidyalaya,
Mangalsangvi, Tq.Lohara,
District Nanded.
Through its Headmaster.

8 Gajanan s/o Vishwambhar Patil,
Age : 28 years, Occupation : Service
as Assistant Teacher,
Shri Sainath Vitthalnath Vidyalaya,
Mangalsangvi, Tq.Lohara,
District Nanded.

...RESPONDENTS

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Advocate for Petitioner : Shri Tripathi Manish P.
AGP for Respondents 1 to 5 : Shri N.T.Bhagat.
Advocate for Respondent 6 & 7 : Shri R.I.Wakade.
Advocate for Respondent 8 : Shri V.J.Dhage.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 31st January, 2017

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner is aggrieved by the order dated 11.09.2016 passed by Respondent No.5/ Education Officer (Secondary), Zilla Parishad, Nanded by which the Petitioner has been declared surplus.

3 I have heard the learned Advocates for the respective sides.

4 The Petitioner is aggrieved by the impugned order for the

reason that though he has joined on 14.06.2006, he has been declared surplus by the impugned order despite few other teachers being below him in the seniority.

5 Respondent No.8 has undisputedly joined on 01.07.2011. The Petitioner and Respondent No.8 are both D.Ed. qualified and belong to the Open Category. There is yet another employee by name Shashikant Ghorband, who is also from the Open Category and junior to the Petitioner, but falls in a different strata being B.Sc. B.Ed.. It is informed that he cannot be considered for declaration as a surplus candidate.

6 The impugned order is quite cryptic and without reasons. Respondent No.8 is in employment. The Education Officer has relied on an order passed by the learned Division Bench to conclude that the order protects Respondent No.8 and insulates him against any action. I find that the said conclusion is erroneous for the reason that Respondent No.8 had approached the learned Division Bench in Writ Petition No.11059/2014 since the Education Officer had cancelled his approval. The learned Division Bench, by order dated 05.12.2015, has issued notices to the Respondents therein and has passed the following order:-

> *"Issue notice to Respondents returnable on 12.01.2015. Learned AGP waives notice for Respondent Nos.1 to 4. Hamdast allowed. Till then,*

no adverse action be taken against the petitioner only on the ground that approval is cancelled."

7 It is, therefore, evident that the learned Division Bench has protected Respondent No.8 only to the extent of any prejudicial action based on cancellation of his approval. The declaration as surplus teacher is neither an adverse action, nor is it connected with the cancellation of approval of Respondent No.8. I find it improbable and difficult to accept that the Education Officer has not understood the order passed by the learned Division Bench.

8 In the light of the above, this Writ Petition is allowed. The impugned order dated 11.09.2016 is quashed and set aside. The Petitioner stands reinstated, if not already reinstated. Respondent No.5/ Education Officer shall once again deal with the issue of deciding as to who is to be declared surplus in accordance with the applicable Rules. However, it is made clear that the Petitioner, who is senior, would not be declared surplus.

9 Considering the nature of the order passed by Respondent No.5/ Education Officer, I find this to be a fit case to compensate the Petitioner with costs of Rs.5,000/- (Rupees Five Thousand), which shall be paid by Respondent No.5/ Education Officer from his salary account to the

Petitioner. The said amount of costs shall not be paid through the State Exchequer. Respondent No.5 shall, accordingly, pay from his salary the said amount of costs within a period of FOUR WEEKS from today.

10 Rule is made absolute in the above terms.

kps (**RAVINDRA V. GHUGE, J.**)