

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11367 OF 2014

Uttam Vithal Vaidya
age 42 years, occ. Service
as an Assistant Teacher,
Vidyasagar Vidyala
Khanapur (Chita)
Tq. & Dist Hingoli

Petitioner

Versus

1. The State of Maharashtra
Through its Secretary
School and Education Department
Mantralaya, Mumbai
2. The Education Officer
(Secondary), Zilla Parishad,
Tq. & dist. Hingoli
3. The Head Master
Vidyasagar Vidyalaya
Khanapur(Chita)
Tq. & Dist. Hingoli
4. The President,
Shri Gajanan Shikshan Prasarak
Mandal,

Respondents

Mr. S.R. Kolhare, advocate for the petitioner.
Ms. R.P. Gour, A.G.P. for Respondent no. 1.
Mr. D.M. Shinde, advocate for respondents 3 and 4.

**CORAM : R.M.BORDE &
P. R. BORA, JJ.
DATE : 20th MARCH, 2017**

ORAL JUDGMENT: (PER R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith.
2. Heard finally with the consent of learned counsel for the respective parties.
3. Petitioner belongs to Nomadic Tribe category and was appointed as Assistant Teacher in the secondary school operated by respondents 3 and 4. Service of the petitioner came to be terminated on 15th December, 1997. Petitioner, being aggrieved by the order of termination, preferred appeal, which was allowed on 12th December, 2000 and, the order of termination came to be set aside. Respondent-management was directed to re-instate the petitioner with backwages. The order passed by the school tribunal was a matter of challenge at the instance of management in Writ Petition No. 305/2001. According to management, after presentation of the petition, the order impugned passed by the school tribunal was directed to be stayed by the High Court. The writ petition was allowed on 3rd July, 2014. The order in respect of payment of backwages issued by the tribunal was set aside and the management was directed to re-instate the petitioner in employment. While disposing of the petition, the management was not directed to pay wages during the pendency of the petition since the order was stayed and the petitioner was not admittedly in employment of the school operated by respondent-management. The petitioner, as such, in any case, is not entitled to claim backwages and shall be entitled to claim wages from the date of re-instatement in pursuance to the judgment of the High Court.
4. Petitioner contends that immediately after his

re-instatement, he has been declared surplus, which order, according to petitioner is illegal. Petitioner belongs to Nomadic Tribe category and there is a backlog in respect of the aforesaid category and, in view of the policy laid down by the State Government, the petitioner ought not to have been declared as surplus employee.

5. Learned counsel appearing for respondent contends that at the time of induction of petitioner in employment, he did not possess requisite qualification however, he acquired the qualification by pursuing postal B.Ed. course in the year 2004. Seniority of the petitioner shall have to be considered since the date of acquisition of qualification and not from the date of his initial appointment. The contention raised by respondent appears to be sound and in consonance with the Full Bench judgment of this Court in the matter of Vaijanath s/o Tatyarao Shinde Vs. Secretary, Marathwada Shikshan Prasarak Mandal, Devgiri College Campus, Aurangabad and others reported in **2006(6) Mh.L.J. 682.**

6. Another contention raised by petitioner that since he is a candidate belonging to Nomadic Tribe category, he cannot be declared as surplus, deserves consideration. Apart from this aspect, seniority of petitioner from the date of acquisition of qualification also deserves to be considered and since he has acquired training qualification in the year 2004, his placement in the seniority list shall have to be on the basis of the date of acquisition of training qualification. The issue in respect of placement of petitioner in the seniority list as well as subsequent

order of declaration of petitioner as surplus by management deserves to be considered by the Education Officer.

7. It would be open for the petitioner to tender representation to the Education Officer (Secondary). If petitioner tenders representation within a period of 15 days from today, the Education Officer (Secondary) shall deal with the representation and pass appropriate order after extending an opportunity of hearing to petitioner and the educational institution, as expeditiously as possible, preferably within a period of 8 weeks from the date of tendering of representation. The Education Officer shall consider the issue as regards fulfilment of reservation quota by the institution as well as the issue as to whether petitioner who belongs to Nomadic Tribe category can be declared as surplus when the vacancy for the prescribed category exists. The Education Officer is also expected to consider the seniority of petitioner from the date of acquisition of training qualification and shall pass appropriate order. Rule made absolute to the extent specified above. No costs.

(P. R. BORA)
JUDGE

(R.M.BORDE)
JUDGE