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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13111 OF 2016

Mr. Rajendra Uttam Yande ...Petitioner

vs

State of Maharashtra And Ors. ...Respondents

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Mr. Anvil S. Kalekar, for the Petitioner.

Ms. K.R. Kulkarni, AGP, for Respondent Nos. 1 and 2.

Mr. Vishwanath Patil, i/b. Mr. Sandeep Katke, for Respondent Nos. 3 and 4.

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CORAM : PRASANNA B. VARALE, J.

DATED: 18 SEPTEMBER, 2017

P.C. :

. Heard learned Counsel for the Petitioner.

2. The petition revolves around a limited controversy. The Petitioner challenges the order passed by the Education Officer (Secondary), Z.P., Solapur, dated 11 September 2016. By the said order, the Education Officer reviewed his order dated 19 August 2016. The sole ground raised by learned Counsel for the Petitioner in challenge to the order is that the Education Officer do not possess the power of review, and once the Education Officer, by exercising his powers, considered the claim of the Petitioner in a hearing and passed an order in favour of the Petitioner, the Education Officer could not have passed contrary order to

his own order. The facts giving rise to the petition are as follows :-

The Petitioner was appointed in year 1999 in the school, namely, Anant Chaitanya Madyamik Va Uchya Madhyamik Mahavidhyalaya, Solapur, run by Respondent No.3 Institute. The Petitioner was appointed on a pay scale of 4500-7000 as an Art Teacher on probation. The Petitioner applied to the Education Officer (Secondary), Zilla Parishad, Solapur on the grievance that though the Petitioner was serving as an Art Teacher for 16 years, and was senior and also acquired higher qualification as Special Art Master in year 2008, without issuing any prior notice, either written or oral, the Petitioner was declared as a surplus teacher. The Petitioner also submitted that though he was entitled for a senior pay scale since 2012, the Petitioner was neither paid the same pay scale, nor such an entry is taken in his service book. On receiving the application, the Education Officer called for the parties for hearing on 3 August 2016. The hearing was attended by the Headmaster of the School - Mr. S.V. Kalburgi and the Petitioner. On the submissions of the Headmaster - Mr. Kalburgi, the Education Officer arrived at a conclusion that the Petitioner was a teacher in the category of Other Backward Classes. As per the staffing pattern, the requirement was of six teachers. One Mr. Kotnur from the general category was junior to the Petitioner and he was possessing the qualification of De.Ed. and was placed under De.Ed. pay scale. It was submitted by the Headmaster that the Institute runs two schools. There are 32 posts in all approved in these Schools. As per the roster requirement for the OBC teachers was of 6 teachers, and 6 teachers were working. Thus, considering the submissions of the Headmaster - Mr. Kalburgi, the

Education Officer arrived at conclusion that the Petitioner is an Art Teacher, he is from the OBC category, and he fulfills the requirement available as per the staffing pattern in the school, and the Petitioner cannot be declared as a surplus teacher. It seems that the Institute approached the Education Officer submitting their objection. Through order passed by the Education Officer, again a hearing took place before the Education Officer on 11 September 2016. The hearing was attended by the Headmaster, namely, Mr. S.V. Kalburgi, Secretary - Mr. Sachin Kalyanshetty and the Petitioner. It was the specific submission of the Institute that as per the staffing pattern, the requisite requirement was of 6 OBC teachers, whereas there were 7 teachers from the OBC category working in the school. Insofar as one teacher from the OBC category, the claim was subjudice in a Court of law. The Petitioner was the junior employee. It was submitted that the Headmaster provided erroneous information. As such, the Education Officer passed the order, which was not in consonance with the record. The Institute, thus, prays for setting aside the order earlier passed by the Education Officer. The Petitioner supported the order, which was passed in his favour. The Education Officer, by taking call of the situation, and more particularly, finding that erroneous information was provided to him, passed the order thereby issuing a direction to give warning to the employee, who provided erroneous information. The Education Officer uphold the declaration in respect of the Petitioner being a surplus teacher and quashed and set aside his order dated 3 August 2016. Though learned Counsel for the Petitioner made an attempt to submit before this Court that as the Education Officer do not possess power of reviewing his own order, and the order passed by the Education Officer in review be

quashed and set aside, on perusal of the material placed on record itself, I am of the opinion that the Education Officer was misled by the material supplied by the Headmaster of the Institute. It was submitted before the Education Officer that the requirement in the OBC category teacher was of 6 teachers, and 6 teachers are working in the Institute. As such, there was sufficient workload available for the Petitioner. It was also submitted before the Education Officer that the Petitioner was a Senior Teacher and, as such, he could not have been declared as surplus. The Institute then submitted the record before the Education Officer to show that as against 6 teachers, according to staff pattern to be accommodated in OBC category, there were already 7 teachers working and, therefore, one teacher was a surplus teacher. The seniority list, which is also placed on record by the Petitioner himself, shows that the Petitioner was appointed in year 1999, whereas there are other teachers senior to the Petitioner in the OBC category appointed prior to the Petitioner. As such, the Petitioner was a junior teacher. If the order obtained by the Education Officer is by misleading the Education Officer, and on the basis of mischief and erroneous record, same cannot sustain. The Education Officer, in his subsequent order dated 11 September 2016, finding that his earlier order was passed on an erroneous information supplied to him, issued a direction giving warning to the erring Officer in his earlier hearing dated 3 August 2016. On basis of the material, the Education Officer found that the Petitioner was the junior-most employee and the declaration of the Petitioner being surplus, could not have been faulted with. Accordingly, the declaration was held to be just and proper. Considering all these aspects, the petition is devoid of merits. Learned Counsel for the Petitioner submitted that there is a Government

policy and the resolutions are passed by the Government in respect of the surplus teacher. Learned Counsel also submitted that the issue of declaration of the surplus teachers and accommodation of these surplus teachers was before this Court and, accordingly, certain judgments are also passed by this Court, learned Counsel for the Petitioner prays that liberty be granted to the Petitioner to avail the appropriate legal remedies for raising his grievance in an appropriate proceeding before the appropriate forum. The petition thus dismissed with liberty as prayed for.

(PRASANNA B. VARALE, J.)