

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 242 OF 2013
WITH
CIVIL APPLICATION NO. 607 OF 2013
WITH
CIVIL APPLICATION NO. 14134 OF 2013

1. Kishor s/o. Rangnathrao Kulkarni,
Age 50 years, Occu. Service,
R/o. Flat No. 10, Himanshu Pride,
Deep Nagar, Shahanoorwadi Area,
Aurangabad.
2. Subhash s/o. Ramkrishna Daware,
Age 48 years, Occu. Service,
R/o. N-9, R-27/146, CIDCO,
MHADA Colony, Pratapgad Nagar,
Aurangabad.
3. Shankar s/o. Maruti Jagtap,
Age 40 years, Occu. Service,
R/o. Shivneri Bunglow, Near
Kale Hospital, Tagor Nagar,
Latur. At present C/o. Govt.
Technical School, Centre Renapur,
Tq. Renapur, Dist. Latur.
4. Govind s/o. Devidasrao Joshi,
Age 49 years, Occu. Service,
R/o. Plot No. 1, Flat No. 3,
Snehankit", Swapna Nagari,
Garkheda Area, Aurangabad.
5. Sharad s/o. Raghunathrao Deshpande,
Age 51 years, Occu. Service,
R/o. Yogayog Building, Vijay Nagar,
Nanded. At present C/o. : Govt.
Technical School, Centre Mukhed,
Tq. Mukhed, Dist. Nanded.
6. Shrikant s/o. Baburao Sawant,
Age 49 years, Occu. Service,
R/o. Samata Colony, Near B & C
Office, Osmanabad, Tq. & Dist.

Osmanabad.

(Petition is withdrawn by petitioner
No. 6 as per Court's order dated
7.8.2015)

7. Shrikant s/o. Chandrakant Wasgadekar,
Age 44 years, Occu. Service,
R/o. Kasar Galli, Near Bhaji Mandi,
Ashtti, Tq. Ashtti, Dist. Beed.
8. Bharat s/o. Kishanrao Panchal,
Age 53 years, Occu. Service,
R/o. Mahavir Society, Nanded.
At Present C/o. Govt. Technical
School, Centre Mukhed, Tq. Mukhed,
Dist. Nanded.
9. Shaikh Abed s/o. Niyaz,
Age 41 years, Occu. Service,
R/o. Navi Peth, Khandak Galli,
Ausa, Tq. Ausa, Dist. Latur.
At present C/o. Govt. Technical
School, Centre Ausa, Tq. Ausa,
Dist. Latur.
10. Syed Khalil s/o. Yusufsaheb,
Age 46 years, Occu. Service,
R/o. Himayat Nagar, Ausa,
Tq. Ausa, Dist. Latur
At present C/o. Govt. Technical
School, Centre Ausa, Tq. Ausa,
Dist. Latur.
11. Sivanand s/o. Kashinath Bhete,
Age 47 years, Occu. Service,
R/o. Nagoba Nagar, Opp. Mahatma
Gandhi College, Ahmedpur,
Tq. Ahmedpur, Dist. Latur
At present C/o. Govt. Technical
School, Centre Udgir, Tq. Udgir,
Dist. Latur.
12. Shaikh Abumohamed Mujawar s/o.
Khajamohamed Mujawar Shaikh,
Age 44 years, Occu. Service,
R/o. Opp. to Madarsa Burhan-ul-ulum,

Near Panika Bamba, Kiradpura,
Aurangabad.

13. Kishor s/o. Asaram Borde,
Age 46 years, Occu. Service,
R/o. House No. 22, Hariram Nagar,
Satara Parisar, Aurangabad.
At present C/o. Govt. Technical
School, Centre Gangapur,
Tq. Gangapur, Dist. Aurangabad.

....Petitioners.

Versus

1. The State of Maharashtra
Through its Secretary,
Higher & Technical Education
Department, Mantralaya,
Mumbai.
2. The Director,
Vocational Education and Training
3, Mahanagar Palika Marg,
Mumbai.
3. The Joint Director,
Vocational Education and Training
Regional Office, Badkal Gate,
Aurangabad.
4. The Assistant Deputy Director,
Vocational Education and Training
Regional Office, Bhadkal Gate,
Aurangabad.

....Respondents.

Mr. V.J. Dixit, Senior Counsel i/b. Mr. Milind M. Joshi, Advocate
for petitioners.

Mr. M.M. Nerlikar, AGP for respondent Nos. 1 to 4.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : APRIL 26, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The petition is filed under Article 226 of the Constitution of India for giving directions to respondent/State to permanently absorb petitioners on the post of Instructor in Government Technical Institutions till their retirement on priority basis. By making amendment, the petitioners have mentioned some vacancies available in few technical schools of Government Technical Institutions and they have prayed their absorption on those posts. They want the relief of setting aside of order made by the respondent due to which they will be required to work on other posts like Clerk-cum-Typist, Clerk-cum-Storekeeper on their parent establishments, private schools imparting technical education. Both the sides are heard.

2) The petitioners have passed S.S.C. and they have done courses like I.T.I. and it is their contention that they were qualified to work as Instructor in technical institutions running I.T.I. courses. In the year 2009, they were declared as surplus in non Government technical institutions, which were receiving grant-in-aid.

3) It is the contention of the petitioners that the petitioners were transferred to various technical schools of

Government and after their transfer to Government Institutions, they worked their as Instructors. It is contended that they were declared surplus due to introduction of new staffing pattern in the year 2008 and as per the Government scheme, they were transferred to other institutions like Government Institutions. It is their contention that as they started working with Government Institutions, they are entitled to get absorbed in Government Institutions on the post available with the Government and so, the Government cannot recruit new persons if and when the posts are available on which the petitioners can be absorbed. Alternatively, they contended that they are ready to return to their parent institution provided that there the posts of Instructors are given to them.

4) It appears that some posts which were available with the Government in various Government Technical Institutions were advertised and the said advertisement was challenged in one writ petition. In the said petition, stay was granted to the recruitment, but subsequently, the said proceeding was withdrawn. It is contended that as there was promise from the respondents to absorb them in Government Institutions, those proceedings were withdrawn. All other petitions filed by similar persons are withdrawn.

5) Civil Application No. 608/2013 was filed in writ petition to point out some vacant posts which were available in Government Technical Schools and the petitioners have prayed for giving appointments on those posts as Instructors.

6) In writ petition, Government has filed reply affidavit. It is contended that at no time, there was scheme to transfer or absorb the employees of private institutions either receiving aid or not receiving aid on the establishment of Government. It is the contention of the Government that there was no order of transfer of the petitioners and for some time, they were taken on deputation in Government Schools as their services were available. It is contended that the Government has made it clear that after return of the petitioners to parent department, there will be pay protection to them if the post of Instructor is not available and they are required to join on other post like Clerk.

7) The learned Senior Counsel for petitioners took this Court through the various Government Resolutions (hereinafter referred to as 'GR' for short) and some communications of the authority like Director of Education. It is not disputed that in the year 2008-2009 due to new staffing pattern created by the

Government, some posts from private technical institutions which were receiving Government aid were declared as surplus. The petitioners are from that surplus staff and they were working as Instructors in some private technical schools.

8) In the GR dated 22.5.2008, the Government had expressed the policy about the steps which were required to be taken in respect of surplus staff and also steps which were required to be taken for creation of new posts as per the new staffing pattern. The GR shows that the assessment of the posts was done in respect of 1097 private aided institutions. As per the new staffing pattern, 9543 posts were permissible to these institutions and 1006 posts had become surplus. The Government had given permission to abolish those 1006 posts. The process which was followed for reducing the number of posts is mentioned in the GR. In para No. 3 of the GR, it is mentioned that as per the GRs of the State Government dated 10.9.2001 and 26.3.2004 and various GRs issued by the finance department of the State, the surplus staff was to be absorbed. Further, direction was given to see that no new recruitment was to be made unless surplus staff was absorbed. Before making any new appointment on vacant post, the authority was expected to ascertain that there was no surplus staff who can be

absorbed on those posts.

9) The learned Senior Counsel took this Court through GR of the State Government dated 10.9.2001. This GR was issued for taking steps for assessment of the requirement of staff in Government Department and also in the institutions which were under the Control of the Government. This exercise was to be done by all the departments and the GR was issued by finance department. The object behind it was to see that the sanctioned posts are reduced. Ban was imposed for creating of new posts and only after exercise of assessment of the requirement was over, the Government was to take steps for making new recruitment. In clause (7), it was made clear that those directions were applicable to Government Officers, Zilla Parishad Offices and also to the Local Bodies and other institutions which were receiving grant-in-aid from the Government. The learned Senior Counsel took this Court through Annexure 3 of this GR. There is nothing in this GR indicating that the employees, who were declared surplus due to new staffing pattern in private educational institutions which were receiving grant-in-aid, can be absorbed in Government Department or Government Technical Educational Institutions.

10) The GR dated 25.7.2007 was issued by Higher and Technical Education Department of the State Government for approval of new staffing pattern. This GR shows that only that part of the report which was concerning the Government Institutions was considered. There were 3374 posts available as per the new staffing pattern and so, there was question of abolition of 984 posts. The decision was taken to continue 3374 posts as mentioned in Annexure to the GR and some posts were declared as surplus. The work which had become available due to abolition of those posts was distributed to other employees in this GR. Thus, this GR also does not show anything about the absorption of surplus staff from private institutions in Government Institutions.

11) It appears that the Government had taken decision to start 34 new technical institutions, I.T.Is. in the State. The learned Senior Counsel for the petitioners placed reliance mainly on the letter dated 27.8.2009 written by Incharge Director of Technical Education to Joint Director. This letter shows that for the newly established 34 I.T.Is., no posts were sanctioned by the Government. It was expressed in this communication that staff which had become surplus in Government Technical Institutions can be deputed to the new institutions. Similar staff was

available in other technical institution of the State Government and it was expressed that that staff also can be used in new 34 institutions. It was expressed that there was surplus staff in private technical institutions which were receiving Government grant and that staff also can be deputed to work in the new 34 technical institutions. It appears that after this communication dated 27.8.2009, on 18.9.2009 and afterwards letters were issued to the petitioners by Deputy Director of Technical Education and it was informed that the Director had given instructions to see that the staff who had become surplus in private Government aided institutions was to be used in new technical institutions of the State Government and so, their services were transferred to the new technical institutions. There are the appointment orders like appointment order dated 18.9.2009 issued in favour of petitioner Shri. K.R. Kulkarni, who was working as Instructor in Saraswati Bhuvan Tantrik Vidyalaya, Aurangabad. He was shown to be transferred to Government Technical Institution, Ambad, District Jalna. It appears that subsequently the parent institution of Shri. Kulkarni sent the name of Shri. S.R. Dawre and so, Shri. S.R. Dawre was shown to be appointed at new institution of Government at Ambad, District Jalna. There are similar orders in favour of Shri. M.M. Jagtap, Shri. D.D. Joshi and others. Thus, in the orders issued by the

authority their services are shown to be transferred though in the initial correspondence made by the Incharge Director, it was mentioned that services can be used on deputation basis. In any case, there was no Government scheme to use the surplus staff of private institutions receiving Government aid in Government Institutions even on deputation basis. When staff becomes surplus, the Rules of Employees of Private Schools (Condition of Service) Regulation Act, 1977 need to be seen in that regard and the steps can be taken only in accordance with those rules. Rule No. 26 and 27 are relevant in this regard and it can be said that in view of those rules, there was no provision for staking claim by the surplus staff of the private institutions on Government post or giving appointment by the Government even on deputation basis to such surplus staff in Government Institutions. This Court has no hesitation to observe that even the Director of Technical Education had no such authority. Due to blunder of this Incharge Director, the petitioners and probably some others came to be appointed by issuing orders of aforesaid nature in newly created Government Technical Institutions. Thus, surplus employees of private institutions are now claiming right on permanent posts from Government Institutions. Due to aforesaid circumstances, this Court has no hesitation to hold that there was no question of giving appointments to the petitioners

in any manner in Government Institutions and the first order made by the authority itself was illegal and without the authority.

12) It appears that after the advertisement dated 8.8.2011 published by the Government Department to make recruitment of Instructors in Government Institutions, the persons like petitioners filed writ petitions like Writ Petition No. 7159/2011 in this Court and some interim orders were made. Subsequently, those petitions were withdrawn. The petitioners of the present proceedings are still feeling that they are entitled to get Government posts due to the orders issued in their favour in the past, in the year 2009 as mentioned above. It appears that due to some interim orders made by this Court in various proceedings, some appointments were continued, but the record like minutes of meeting of the year 2012 shows that when the persons like petitioners created dispute, filed litigations, the authority took it seriously and directions were given to parent institutions to see that the persons like petitioners were absorbed on the available posts and if the posts of Instructors were not available, they were absorbed on other posts like Clerks. It is already mentioned that the Government had taken decision to see that their pay as Instructor was to be protected though they were to work on the post of Clerk. Accordingly,

orders were issued against the petitioners also and they were expected to join the parent institutions. The order was made on 31.12.2012. After that the petitioners came to this Court.

13) The record shows that on the first date itself, this Court admitted the petition, but refused the interim relief. Then Civil Application No. 608/2013 came to be filed on 16.1.2013. Prayer was made to see that no appointments are given by nomination to anybody as per the advertisement published by the respondent on 8.8.2011. It is already mentioned that in other petitions the process of recruitment was stayed. Submission was made that only due to the orders made by this Court in many proceedings, the persons like petitioners were continued in Government Technical Schools on the post of Instructor and the Government was required to spend more than Rs.2.5 Crore due to such appointments. Every Instructor was paid around Rs.40,000/- to Rs.50,000/- p.m. The learned AGP made a statement that as the petitioners were of no use, they collected salary without practically doing any work in Government Institutions. This contention is disputed by the learned Senior Counsel, who represented petitioners. The fact remains that due to orders made by this Court the persons like petitioners continued to work in Government Technical

Institutions. This Court has no hesitation to observe that those posting were in contravention of Articles 14 and 16 of the Constitution of India. In ordinary course, serious action ought to have been taken against those officers who were responsible for giving appointments to persons like petitioners in Government Technical Institutions. The nature of orders issued in favour of persons like petitioners is already mentioned and that circumstance was sufficient to initiate departmental action against those officers. Petitioners cannot be treated as 'innocent persons' when such orders are there.

14) The submissions made show that in accordance with the decision taken by the authority and directions given by the authority, few of the petitioners subsequently returned to parent institutions. The submissions made show that out of the present petitioners 3-4 petitioners have returned to parent department. The office note also shows that few petitioners filed pursis and submitted that they were withdrawing the petition. The record shows that by giving one or other excuse, the proceedings were protracted. Only when the learned AGP took initiative and insisted early hearing of the matter, this Court realised the seriousness of the matter and this Court saw that proceedings are argued. In view of the aforesaid observations, this Court

holds that the petitioners are not entitled to continue on any post in Government Technical Institutions. For that matter, not for a single day interim relief can be granted in their favour. If the petitioners do not want to work on lower post even when Government is assuring that their pay scales will be protected, then they will have to wait and follow the procedure laid down in the rules of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

15) In the result, the petition stands dismissed. All civil Applications are disposed of. The learned Senior Counsel requested for granting interim relief for some period. But, in view of the aforesaid circumstances and as the Government has already sustained huge loss mainly because of the orders made by this Court in various proceedings, this Court holds that it is not possible to give interim relief even for a single day. So that request is also rejected.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/