

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

WRIT PETITION NO. 11283 OF 2017

Kanhailal Gulab Thakakre.

Petitioner.

Versus

State of Maharashtra and others.

Respondents.

Mr. U.R. Awate, Advocate for the petitioner.

Mr. P.S. Patil, A.G.P. for the State/respondent Nos.1, 2 and 4.

Mr. Rahul S. Pawar, Advocate for respondent No.3.

Mr. N.E. Deshmukh, Advocate for respondent Nos.5, 6 & 7.

CORAM : **S.V. GANGAPURWALA &
SUNIL K. KOTWAL,JJ.**

Dated : **10th August, 2018.**

FINAL ORDER :-

. Mr. Aute, learned Counsel for the petitioner submits that the petitioner was appointed in the year 2010 by following due selection process. Appointment of the petitioner was also approved. Permanent approval was granted to the appointment of the petitioner. The petitioner was appointed as the post had become vacant on account of termination of one employee namely Nilkanth Chavan. Subsequently in the year 2013, respondent Nos.5 and 6

compromised the matter with Mr. Nilkanth Chavan and reinstated him. Pursuant thereto the Education Officer stayed approval granted to the petitioner. Learned Counsel submits that the petitioner was appointed by following due selection process. He is permanent employee and approval could not have been stayed.

2. Mr. Pawar, the learned Counsel for Education Officer submits that there is only one post available. As the said Chavan is reinstated and his appointment is of the year 1994, the post for the petitioner would not be available.

3. The present scenario has arisen because of the acts of omissions and commissions on the part of the Management. On one hand they had appointed the petitioner on the post becoming vacant on account of termination of Mr. Chavan and thereafter in the year 2013 compromised with Mr. Chavan and respondent Nos.5 and 6 reinstated him though at the relevant time the petitioner was officiating on that post and had achieved the status of deemed permanent employee. It also needs to be considered that the respondent – Zilla Parishad and the State cannot pay two employees at one and the same time for one post.

4. For the present situation the present petitioner cannot be faulted with. Considering the anomalous situation that has arisen, the only recourse that can be had, is to declare the petitioner

surplus, so that he would be accommodated in a vacant post in any other Institution.

5. It is also submitted that there are no vacant posts available with the respondent – Institution today.

6. Considering the above, we pass the following order.

7. The order granting stay to the approval of the petitioner is set aside.

8. The petitioner is declared surplus. The Education Officer shall list the petitioner as the surplus candidate and shall take steps to absorb the petitioner in vacant post in any Institution as per his turn in the list of surplus candidates to be absorbed, as Assistant Teacher.

9. Writ Petition is accordingly disposed of. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

vdd/