

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

WRIT PETITION NO.10743 OF 2016

1. Hitsanwardhan Lokseva Mandal,
Bhusawal, District Jalgaon
through its President
Shri Nilkanth Ramdas Firke,
Age : Major, Occu. Agriculture
and President of Hitsanwardhan
Lokseva Mandal, Bhusawal,
R/o Bhusawal, Dist. Jalgaon
2. The Headmistress,
Sharda Madhyamik Vidyalaya,
Nhavi, Taluka Yawal,
District Jalgaon.

PETITIONERS

VERSUS

1. The State of Maharashtra,
through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai
2. The Director of Education
[Secondary and Higher Secondary],
Maharashtra State, Pune
3. The Deputy Director of Education,
Nasik Division, Nasik.
4. The Education Officer [Secondary],
Zilla Parishad, Jalgaon
5. Gajanan s/o.Ashok Surwade,
Age: 42 years, Occu. Service,
R/o. Dahigaon, Taluka Yawal,
District Jalgaon

RESPONDENTS

...
Mr.Kalyan Patil, Advocate holding for
Mr.S.R.Barlinge, Advocate for the petitioners
Mr.S.Y.Mahajan, Addl.GP for respondent nos.1
to 4—State
Ms.Surekha Mahajan, Advocate for respondent
no.5.

...
**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 17.01.2018
Pronounced on : 24.01.2018

ORDER: (Per S.S.Shinde, J.):

1] This Petition takes exception to the
impugned order dated 14.03.2016 passed by the
Deputy Director of Education, Nashik.

2] Learned counsel appearing for the
petitioners submits that, though there was no
vacancy available with the petitioners,
respondent no.5 was allowed to join as
Shikshan Sevak, and his appointment as
Shikshan Sevak is also approved by the
Education Officer, vide his order dated 3rd
February, 2016. It is submitted that, the
petitioners filed representation on 26th May,

2016, to the Director of Education contending therein that, despite there being no vacancy available for respondent no.5, he was required to be appointed and the Deputy Director of Education wants his salary bills to be submitted with retrospective effect. It is submitted that, respondent no.5 has no right to be appointed when there is no vacancy available with the petitioners. However, by suppressing the fact that no vacancy is available, respondent no.5 filed Writ Petition No.3416/2014 [Gajanan Ashok Surwade Vs. The State of Maharashtra & others], and the learned Single Judge set aside the oral termination of the petitioner therein i.e. respondent no.5 herein, by setting aside the order of the School Tribunal passed in Appeal No.29/2010. It is submitted that, in the said judgment there is no direction to the management to accept the claim of respondent no.5 and on the contrary,

the Court observed that, the respondent-management shall take steps in accordance with the averments made by it in paragraph No.3 of its affidavit. It is submitted that, though the petitioners have allowed respondent no.5 to join as Shikshan Sevak, in fact there is no vacancy. Despite that, respondent nos. 3 and 4 are unnecessarily pressurizing the petitioners to submit salary bills of respondent no.5, who is not at all entitled to get any salary.

3] On the other hand, learned AGP appearing for the respondent-State invites our attention to the judgment of the learned Single Judge in the case of *Gajanan Ashok Surwade* [supra], and also the order passed by the Deputy Director of Education, Nashik Division, Nashik on 14th March, 2016 and the order dated 27th July, 2016, passed by the learned Single Judge of this Court in Contempt Petition No.343/2015 in Writ

Petition No.3416/2014 [Gajanan Ashok Surwade Vs. The State of Maharashtra & another] and submits that, respondent nos.3 and 4 have acted upon the directions issued by this Court in aforesaid Writ Petition and also in the Contempt Petition, and therefore, the Writ Petition is devoid of any merits and the same may be dismissed.

4] Learned counsel appearing for respondent no.5 adopts arguments of the learned AGP and submits that, the Petition is devoid of any merits and the same may be dismissed.

5] We have considered the rival submissions at length. Perused the pleadings and grounds taken in the Petition, annexures thereto, and also the order dated 11th March, 2015, passed by the learned Single Judge [Coram: N.W.Sambre, J.] in Writ Petition No.3416/2014, and also order dated dated 27th

July, 2016, passed by the learned Single Judge [Coram : Ravindra V.Ghuge, J.] in Contempt Petition No.343/2015 and also the order impugned in this Petition. Upon conjoint reading of the reasons assigned by the learned Single Judge in Writ Petition and also in Contempt Petition and also the reasons assigned in the impugned order, we are of the view that, the Deputy Director of Education, after hearing all the concerned parties, has arrived at a conclusion to consider the services of respondent no.5 for 4 years on part-time basis, and further from the date indicated in the said order, issued directions to appoint respondent no.5 on regular basis and place him in regular pay scale. In our considered view, as already observed, the learned Single Judge has considered all the factual aspects and the impugned order is passed, after affording proper opportunity to all the parties to put-

forth their contentions. In that view of the matter, interference in the impugned order by invoking extra ordinary writ jurisdiction is not warranted.

6] In that view of the matter, we are unable to persuade ourselves to grant any relief to the petitioners. Therefore, in the peculiar facts and circumstances of this case, and keeping in view the findings given on facts by afore mentioned Forums, we declined to entertain this Writ Petition. Hence this Writ Petition stands rejected.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE