

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

37 WRIT PETITION NO. 12405 OF 2015

BADAR SULTANA MIRZA MUNWAR ALI BAIG ..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

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Mr. J. M. Murkute, Advocate for the Petitioner.

Mr. S. B. Joshi, AGP for Respondent-State.

Mrs. Yogita M. Kshirsagar, Advocate for the Respondent Nos.2 and 3.

Mr. Irfan D. Maniyar, Advocate for Respondent No.4.

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**CORAM : S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.**

DATED : 18th SEPTEMBER, 2018.

PER COURT:-

1. Mr. Murkute, learned counsel for the petitioner submits that the petition is now restricted to prayer clauses 'C' and 'D' as the petitioner has attained the age of superannuation.

2. The learned counsel submits that the petitioner had made representation to allow her to join at her original place. Though, the petitioner was senior, the juniors were retained and the petitioner was declared surplus and directed to be absorbed. The petitioner had earlier filed Writ Petition bearing No.5463 of 2009, which was disposed of on 11.12.2009. The learned counsel

submits that petitioner is not paid salary from 1.4.2010 onwards. The respondent be directed to grant pensionary benefits.

3. Mrs. Kshirsagar, learned counsel for respondent nos.2 and 3 submits that the petitioner never joined at the place where the petitioner was absorbed, in spite of direction of this Court. The seniority list was finalized on 08.05.2010 itself. The petitioner was issued order to join at Dharmabad. The petitioner failed to join the duties at any of the places.

4. The learned counsel for the management submits that the petitioner did not join at the original place also.

5. We have considered the submissions canvassed by the learned counsel for the respective parties.

6. The petitioner was directed to be absorbed at school in Dharmabad. The petitioner challenged the said order by filing Writ Petition No.5463 of 2009. This Court on 11.12.2009 disposed of the writ petition directing the Education Officer to finalize the seniority list of school within four months after hearing all parties concerned. This Court also directed the petitioner to join at her transferred place subject to the finalization of the seniority list. The petitioner did not join at

the transferred place, however filed the Contempt Petition bearing No.218 of 2010 contending that the seniority list has not been finalized, as directed by this Court in Writ Petition No.5463 of 2009. The learned Single Judge of this Court on 14.12.2010 disposed of the Contempt Petition by observing that the seniority list is already finalized on 08.05.2010.

7. In fact, the petitioner ought to have disclosed this fact in the present petition. On the contrary the petitioner is making grievance that the seniority list is not finalized.

8. It is also apparent that, as per the order of this Court in Writ Petition No.5463 of 2009 dated 11.12.2009, the petitioner did not join at the transferred place nor we could get any application filed by the petitioner allowing her to join at the transferred place. It is contended that the petitioner was on medical leave for sometime. Be that as it may, it was bounden duty of the petitioner to join at the transferred / absorbed place. The issue of seniority list had become final, the same was not assailed.

9. Considering the above, when the petitioner has not worked on the said post, it will not be appropriate to direct the respondent to pay salary to the petitioner for the said period.

10. As far as the pensionary benefits are concerned, it is for the respondents to take decision about the admissibility of the pensionary benefits to the petitioner. The Education Officer shall take the said decision expeditiously and preferably within four (04) months.

11. Writ Petition accordingly disposed. No costs.

(S. M. GAVHANE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/September-18

Devendra
Nandkumar
Kale

Digitally signed
by Devendra
Nandkumar Kale
Date: 2018.09.24
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