

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 712 OF 2018

DR ZAKIR HUSSAIN UPS RAHEMATNAGAR NANDED
THROUGH HEADMASTER MOHD MURTUJA MOHD ISMAIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner: Mr. V.D. Patnoorkar
AGP for Respondent/State : Mr. S.S. Dande
Advocate for Respondent No.4 : Mr.S.B.
Pulkundwar

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

Dated: February 08, 2018

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PER COURT :-

This Petition is filed with the following
substantive prayers :-

"B) By issuing a writ of mandamus
or other appropriate writ or
direction, the respondent No.4 be
directed to release the salary of
the teachers who are presently
working with the petitioner in the
school of Dr.Zakir Hussain UPS
School, Rahemantnagar, Nanded
(Exhibit - N) forthwith.

C) By issuing a writ of mandamus or other appropriate writ or direction directing to respondent No.4 to send all 9 surplus teachers in the petitioner school who were absorbed by the respondent No.4 as per his order dated 21.06.2013 temporarily in the Zilla Parishad school.

D) To hold that the letter dated 18th September, 2017 and 28.9.2017 are being illegal and against the rules of M.E.P.S. Act.

E) By issuing a writ of mandamus or other appropriate writ or direction directing to respondent No.3 and 4 to grant permission to the petitioner to appoint new teachers in the petitioner school, if those 9 surplus teachers are not send or rejoin in the petitioner school."

2. Though there are as many as four substantive prayers, we are not inclined to

entertain the prayers in terms of prayer clauses "D" and "E". Accordingly the said prayers stand rejected.

3. Learned counsel appearing for Respondent No.4 has tendered across the Bar the letter written by the Education Officer (Primary), Zilla Parishad, Nanded addressed to him. The same is taken on record and marked "X" for identification purpose.

4. Upon careful perusal of the contents of the said letter, it appears that, nine surplus teachers have been absorbed on temporary basis in various schools run by the Zilla Parishad. Learned counsel appearing for the petitioner submits that, the petitioner has made request time to time in last two years to Respondent No.4 to send back the teachers, who have been declared surplus from the petitioner school, and the petitioner – school will accommodate them, the Education Officer is not ready to send nine surplus teachers to the petitioner – school.

5. We have considered the submissions of learned counsel appearing for the petitioner and learned counsel appearing for

the respective Respondents. We have carefully perused the pleadings in the Petition, grounds taken therein and the contents of the letter of Respondent No.4, which is taken on record. It appears that, nine teachers were declared surplus from the petitioner. A statement is made in the Petition that, now the posts are made admissible to the petitioner – school in view of increase in strength of the students and as per the staffing pattern. In case, the posts are admissible as per staffing pattern and the petitioner can take back the surplus teachers, who have been declared surplus, there is no reason for Respondent No.4 i.e. Education Officer to accommodate those teachers, who have been declared surplus, on temporary basis in some other schools instead of sending them back to the petitioner school. Without sending those teachers back to the petitioner – school, asking the petitioner to submit their salary bills cannot be countenanced. Therefore, at the cost of repetition, if the posts of teachers are now made admissible in the petitioner – school, in that case appropriate course would be to send back teachers, who have been declared surplus. There is no question of

appointment of new teachers on the said posts, when nine teachers have been already declared surplus from the petitioner – school.

6. In the light of discussion above, the Petition is allowed in terms of prayer clauses "A" and "B".

So far as the prayer clause "C" is concerned, Respondent No.4 shall verify/ascertain, whether the number of posts of teachers are admissible/sanctioned again given to the petitioner – school and then only take the appropriate decision to send nine surplus teachers to the petitioner – school.

In case, the posts are available in the petitioner school, and if those surplus teachers are not ready to come back to the original school, in that case Respondent No.4 shall take appropriate action against those teachers as permissible in law including stoppage of submitting the salary bills to the Treasury.

We make it clear that, we have not

expressed any opinion about the availability or non-availability of posts of teachers in the petitioner – school for absorption of nine teachers, who have been declared surplus. In that respect Respondent No.4 will have to verify the record and after satisfying himself shall proceed further in the light of discussion in foregoing paragraphs.

(S.M. GAVHANE, J.)

(S.S. SHINDE, J.)

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