

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12105 OF 2016
ALONGWITH
CIVIL APPLICATION NO.976 OF 2017**

Shri. Bhikaji Vilas Jadhav **..Petitioner/Applicant**
Versus
The State of Maharashtra and others **..Respondents**

Mr. Prashant Bhavake, Advocate for the Petitioner/Applicant.
Mr. V. M. Mali, AGP for the Respondent – State.
Mr. Satyajeet A. Rajeshirke, Advocate for Respondent Nos.6 and 7.

**CORAM : B. R. GAVAI &
SMT. BHARATI H. DANGRE, JJ.
DATE : 17th APRIL, 2018**

PC.

1] The Petitioner has approached this Court being aggrieved by the decision of the Respondents authority of declaring him surplus and absorbing him in Bharatratna Dr. Babasaheb Ambedkar High School, Tamgaon, Taluka Karvir, District Kolhapur.

2] In the Respondent No.7 school under the management of Respondent No.6 there are in all 9 teachers working. Undisputedly, the Respondent No.9 is the junior most teacher and above her in the seniority list is Respondent No.8. In the seniority list, the Petitioner is the 3rd junior most teacher.

3] It was the contention of the Petitioner that since Respondent Nos.8 and 9 are junior most teachers, they ought to have been declared

surplus. It is also the contention of the Petitioner that since the Petitioner belongs to Scheduled Caste category, he cannot be declared as surplus.

4] In the affidavit in reply filed on behalf of Respondent Nos.6 and 7, it is stated that though Respondent No.9 is the junior most teacher, she could not be declared as surplus, since she was the only lady teacher in the school and in view of 30% reservation to the woman, she is required to be retained. It is also stated that though the Respondent No.8 is second junior most teacher, he possesses degree in physical education, as such he is required to teach the subject of physical education. It is therefore submitted that the Petitioner who was immediately the junior most teacher in the list has been declared as surplus. It is submitted that in so far as the Petitioner's grievance that he belongs to Scheduled Caste is concerned, it is stated that out of nine posts, only one post would come to the share of Scheduled Caste and the same is already filled in the school.

5] In so far as Mr. Prashant Bhavake's submission that following Rule 26 of the MEPS Rules, 1981, the junior most teacher will have to be declared surplus is concerned, we find that overall view has to be taken into consideration. In this situation, the needs of the students of the school to have a physical education teacher, so also the need of school to

have a woman teacher to look after the girls in the school, cannot be ignored.

6] It is further to be noted that the Petitioner is absorbed in another school, which is 25 k.m. away, but in the same Taluka. As such, the Petitioner should not have any grievance.

7] In that view of the matter, it cannot be said that the decision taken in declaring the Petitioner surplus is either illegal or erroneous. In any case since the Petitioner was declared surplus, he was entitled to payment from the public exchequer. The Petition is therefore dismissed. In view of disposal of Writ Petition, Civil Application does not survive and accordingly stands disposed of.

8] Since the issue with regard to the Petitioner's absorption was pending before this Court, the salary bills of the Petitioner for the period till 30th April 2018 shall be submitted by the Respondent Nos.6 and 7.

9] Needless to state that from 1st May 2018 the Petitioner to join Bharatratna Dr. Babasaheb Ambedkar High School, Tamgaon, Taluka Karvir and thereafter his salary would be drawn from that school.

[SMT. BHARATI H. DANGRE, J.]

[B. R. GAVAI, J.]