

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No. 3474/2018

Prafulla Chauthmalji Lodha

Vs.

State of Maharashtra, through its Secretary, Department of Education, Mantralaya, Mumbai & others.

*Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

Court's or Judge's Orders

**CORAM: B.P.DHARMADHIKARI and
 S.M.MODAK, JJ.**

DATE : 22.10.2018

Heard Shri A.D.Mohgaonkar, learned Advocate for petitioner, Shri A.M.Kadukar, learned AGP for respondent nos.1 to 3, Shri A.N.Dharkar, learned Advocate for respondent nos.4 & 5, Shri M.A.Vishwarupe, learned Advocate for respondent nos. 6 & 7 and Shri Anand Parchure, learned Advocate for respondent no.8.

2. Learned AGP, upon instructions, at threshold sought adjournment to enable respondent no.2 to pass fresh orders. His request is strongly opposed by Advocate Mohgaonkar. He pointed out that petitioner has not received salary from January 2018 and the Deputy Director of Education is seeking adjournment only to correct apparent wrong order passed by him.

3. Advocate Dharkar submits that the petitioner was declared surplus as per law and thereafter, he is working with respondent nos. 6 and 7 in vacancy which became thereafter available. The department forwarded respondent no.8 and respondent no.8 is currently working. He, therefore, submits that no interference is called for in the impugned order.

4. Advocate Vishwarupe and Advocate Parchure submit that the petitioner has joined respondent nos. 6 and 7 and is working in that establishment. Advocate Parchure appearing for respondent no.8 points out that respondent no.8 is also a surplus employee absorbed in respondent no.5-School as per law. He invites attention to certain observations contained in the impugned order to show that the relationship between the parties there does not appear to be cordial. Hence, present position needs to be continued. He further adds that because of absorption of respondent no.8 in respondent no.5-School, the roster equation has been satisfied.

5. After hearing respective counsel, we find that the provisions of Rule 26(4) of the Maharashtra Employees of Private School Rules, 1981 are very clear. Respondent nos. 4 and 5 have to first extend opportunity to petitioner to go back and if that opportunity is not taken, then they can ask respondent nos. 1 to 3 to send another surplus teacher to them. Here, this procedure has not followed.

6. The impugned order dated 27.04.2018 rejects an express request made by the petitioner pointing out its obligation. We therefore find the impugned order not only legally unsustainable, but also constituting an abuse of provisions by seeking leave to pass fresh orders.

7. We therefore quash and set aside the impugned order dated 27.04.2018.

8. The petitioner shall be permitted to join back with respondent nos. 4 and 5. Respondent no.8 may continue there or in other vacancy, if available, or be absorbed elsewhere as per his choice. Suitable orders in this respect shall be passed by respondent no.2 within **four weeks** from today.

9. The respondent no.2 shall however arrange to pay arrears of salary of petitioner from January 2018 till date, within **one week**.
10. Rule is made absolute in the aforesaid terms. No costs.

JUDGE

JUDGE

Andurkar