

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

WRIT PETITION NO. 6794 OF 2018

(Ansar Ahmed Khan s/o Sabir Khan & Anr. vs. The State of Maharashtra thr. its Secretary,
Department of Social Education & Ors.)

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 &
S.M. MODAK, JJ.
OCTOBER 16, 2018.**

Heard Shri R.D. Karode, learned counsel for the petitioners and Shri N.R. Patil, learned AGP for respondent Nos. 1 to 3 & 5.

2. The petitioners claim to be declared surplus and have joined employment provided in terms of the order dated 21.06.2016. They are getting their salary after joining. Now prayer is to pay to the petitioners arrears from 27.06.2011 till joining i.e. 03.05.2017.

3. The learned AGP has invited our attention to the orders dated 07.12.2015 in Writ Petition No. 3255 of 2011. Those orders show that after the petitioners were declared surplus, they were offered work in Municipal Council Schools in Umarkhed but the petitioners refused to join there.

4. The petitioners have not produced before us an order under which they were declared surplus. Hence, their

right to absorption or salary, even though they have not worked, cannot be ascertained. If the petitioners were declared surplus because of reduction in strength of the students, they could have claimed salary without work and the State Government would have been under obligation to release salary grants to their earlier establishment. Claim for salary, therefore, would have formed subject matter of earlier writ petitions. The claim is also time barred to certain extent.

5. We, therefore, find that the provisions of constructive res judicata as also Order 2, Rule 2 of Civil Procedure Code and period of limitation bars the claim. This is in addition to our observations that the petitioners have not demonstrated their entitlement to salary without work.

6. Accordingly, writ petition is rejected. However, there shall be no order as to costs.

JUDGE

JUDGE

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