

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

921 WRIT PETITION NO.766 OF 2015

Sudhir s/o. Babanrao Deshmukh,
Age – 30 years, Occu. Nil,
R/o. Hasta, Tq. Kannad,
District – Aurangabad.

... Petitioner

VERSUS

1. Late Shankarrao Patil
Secondary and Higher Secondary School,
Ranjangaon Shenpunji, Tq. Gangapur,
District : Aurangabad.
Through its Head Master.
2. Suyog Shikshan Sanstha,
Through its Secretary,
B.P. Karale,
R/o. 'Suyog', Plot No.66,
Near Rathod Plotting Center,
Gajanan Colony, Aurangabad.
3. Shri Sadguru Shikshan Prasarak Mandal,
Waluj MIDC, Aurangabad.
Through its President, Sominath s/o. Shankar Bankar,
R/o. Shri Dattakrupa Shetki Farming,
Bankarwadi, Behind Plot No. 4/22,
Waluj M.I.D.C., Aurangabad.
4. Deputy Director of Education,
Aurangabad Region, Aurangabad.
5. Education Officer (Secondary),
Zilla Parishad, Aurangabad.
6. The State of Maharashtra,
through its Secretary,
School Education Department,
Mantralaya, Mumbai.
(Copy to be served on Government
Pleader, High Court of Bombay
Bench at Aurangabad).

... Respondents

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Advocate for Petitioner : Mr. Deshmukh Vijay Vasantrao And
Dnyaneshwar J. Patil

AGP for Respondent – State : Mr. S.N. Morampalle

Advocate for Respondent No. 3 : Mr. V. D. Hon senior counsel h/f. Mr.
S.G. Rudrawar

Advocate for Respondent No. 2 : Mr. R. J. Godbole

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**CORAM : T.V. NALAWADE &
SUNIL. K. KOTWAL, JJ.**

DATE : 06th March, 2019

ORAL JUDGMENT (Per T. V. Nalawade, J.) :

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2. The submissions made show that the petitioner was working as a peon with respondent No. 2 - School. This school came to be transferred to other institution i.e. respondent No. 3. It is the contention of the petitioner that he ought to have been absorbed by Respondent No. 3 at the transferred place but he was not absorbed and so he was required to approach School Tribunal. It is not disputed that the School Tribunal had decided the matter in favour of the present petitioner and direction was given to see that the petitioner is absorbed in the new school. The said decision came out on 01.12.2016 but till today the petitioner is not absorbed. As per the policy also which can

be seen from the Government Resolution. It was necessary for officers of Government to see the staff of the previous school is absorbed by the new institution. There is also the communication of Additional Secretary of School Education and Sports Department of the Government dated 26.08.2014 made in the present matter showing that absorption of previous staff was necessary. The submissions made show that the aforesaid order of School Tribunal is challenged by previous management and new management by filing two separate Writ Petitions but no interim relief is granted in both the matters in favour of the managements. Thus, it was necessary for the management to absorb the petitioner as per the order made by the School Tribunal but that is not done.

3. If the previous staff is not absorbed, action like cancellation of transfer of the school is also possible as per the scheme of the Government. The learned senior counsel representing the new management submitted that initially, as per the staffing pattern there was only staff of 8 employees sanctioned for the school which included two peons and in the list supplied by the previous management, the name of the present petitioner was not appearing and the names of the other two peons were supplied and that is why the new school did not absorb the petitioner. This contention is not acceptable in view of the decision given by School Tribunal. The learned senior counsel then

submitted that if the petitioner is absorbed, one employee or person need to be declared as surplus and that decision needs to be taken by the competent authority. That submission can be considered and for that first there needs to be absorption of the petitioner by new management. The authority will take into consideration the decision of the School Tribunal rendered in the past with regard to the present matter and it will be up to that authority to decide as to whether and which staff member needs to be declared as surplus. So this Court is hereby directing the respondent No. 3 to immediately absorb the petitioner at the new place. The proposal if required can be made by the management for declaration of surplus staff and competent authority is expected to take decision on that point after giving hearing to both sides and after considering the relevant orders made by the Tribunal/Courts. The decision in respect of declaration of surplus staff will also include the entitlement of the petitioner to get the back wages.

4. In the aforesaid terms, the petition is partly allowed and disposed of.

5. The decision will be subject to the decision of the writ petition pending before this Court.

6. The authority will decide the liability of the institution also

to make the payment of the salary in accordance with the order made by the School Tribunal. This is to be done within 45 days from today.

7. Authenticated copy to both the sides.

(SUNIL. K. KOTWAL, J.)

(T.V. NALAWADE, J.)