

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION {STAMP} NO.23271 OF 2019**

Devidas Bhagwan Shinde

.... Petitioner

Vs.

The Ratnagiri Zilla Parishad & Others

.... Respondents

Mr. S.D. Rupwate for the Petitioner.

Mr. B.V. Samant, AGP, for Respondent Nos.3, 4 & 7.

Mr. Rakesh Bhatkar for Respondent No.6.

**CORAM:** S.C. DHARMADHIKARI &  
R.I. CHAGLA, JJ.

**DATE :** NOVEMBER 25, 2019

**P.C:**

1. Heard both sides.

2. We do not think that any reply affidavit is required from any official other than respondent Nos.3 and 4, who have already placed on record their affidavit in reply.

3. The petitioner before us says that he is duly qualified to teach Physical Training Course and was appointed as such on 16-8-1996 in a post reserved for the Scheduled Castes. He was appointed in P.K. Sawant High School, Adare, Chiplun, a fully aided school established and managed by the 6th respondent.

4. The 1st respondent before us is the Ratnagiri Zilla Parishad, the 2<sup>nd</sup> respondent is the Chief Executive Officer and the 3<sup>rd</sup> respondent is the Education Officer (Secondary) of the Ratnagiri Zilla Parishad whereas the 4<sup>th</sup> respondent is the Deputy Director of Education, Kolhapur Region. The respondent No.6 is the Chairman of the educational institution which runs the P.K. Sawant High School, of which the 5<sup>th</sup> respondent is the Headmaster.

5. Though the writ petition challenges order dated 9-8-2019 declaring the writ petitioner as a surplus teacher in place of the other teacher, namely, Sachinkumar Sangayya Shinge, who has not been impleaded as a respondent, after some arguments and on taking instructions from the petitioner present in Court, Mr. S.D. Rupwate, learned counsel appearing for him, says that the petitioner is presently not seeking any relief so as to quash and set aside the order of absorption or the declaration of the petitioner as a surplus teacher. For that relief, he has filed an Appeal which is pending before the Deputy Director of Education of the concerned region.

6. The petitioner is ready and willing to abide by the order passed declaring him as surplus teacher and seeking to absorb him in some other school. That school, on the own

showing of the petitioner, is one whose details are mentioned in the affidavit in reply. That school is Patwardhan High School, Ratnagiri.

7. Mr. Rupwate says that without prejudice to the rights and contentions of the petitioner, he is ready and willing to abide by the absorption order and report for duties at the Patwardhan High School, Ratnagiri. However, he could not immediately report for duties in pursuance of the order of absorption because he is ill and suffering from cancer. At the relevant time he was down with fever and a certificate of medical practitioner was also produced.

8. We have heard this petition for some time and at some length. We have also perused the petition, the annexures to the memo of the petition and the affidavit in reply.

9. Exhibits 6 and 7 to the affidavit in reply are copies of the letter/application dated 10-8-2019 of the petitioner along with the Medical Certificate.

10. The order of absorption of the petitioner is dated 9-8-2019. The petitioner stands relieved from the school, namely, P.K. Sawant High School for being absorbed as a surplus teacher in the Patwardhan High School at Ratnagiri. The petitioner has made the application annexing the Medical

Certificate on the very next date. However, the petitioner was informed that since he has not reported for duty on the given date and time, now he cannot be absorbed.

11. We are of the opinion that a more sympathetic consideration was expected when the petitioner says that he is taking treatment for cancer. The petitioner was also down with fever, which is evidenced by a Medical Certificate. In the circumstances, joining time was required to be given to him. If sufficient and adequate time had been given, possibly he would not have moved the petition. In the whole process, his Appeal has also not been decided by the Deputy Director of Education.

12. For all these reasons, this writ petition deserves to be disposed of by recording the statement of Mr. Rupwate, learned Advocate appearing for the petitioner that the petitioner, who is present in Court, will report for duties at the Patwardhan High School, Ratnagiri on 27-11-2019 at 11:00 a.m.. We expect the Education Officer (Secondary), Zilla Parishad, Ratnagiri as also the Headmaster of Patwardhan High School to allow the petitioner to join the school subject, of course, to his legal rights and contentions. The petitioner be permitted to teach the students and be assigned teaching duties.

13. Within three months from today, the Deputy Director

of Education shall dispose of the petitioner's Appeal on merits and in accordance with law, after extending an opportunity of personal hearing to the petitioner. He shall pass a reasoned order as well.

14. Without expressing any opinion on the rival contentions insofar as merits of the Appeal, we dispose of this writ petition. There will be no order as to costs.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)