

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

82 WRIT PETITION NO.3852 OF 2019

MINA CHABURAO DUSHING
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Shaikh Joyeb I
AGP for Respondents State: Mr. S. B. Narwade
Advocate for Respondent No.6 & 7 : Mr. P. V. Tapse Patil

WITH

83 WRIT PETITION NO.3955 OF 2019

SUARNAMALA SHARADRAO PARADHE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Shaikh Joyeb I
AGP for Respondents State: Mr. S. P. Tiwari
Advocate for Respondents 6 & 7 : Mrs. Manjushri Shendage-Narwade

CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.

DATE : 20th January, 2020

ORDER:

1. The petitioners assail the order dated 19.12.2018 directing the petitioners to be absorbed in Navin Marathi School, Shrirampur. Learned counsel for the petitioners submits that the petitioners were appointed with Praja Jagruti Shaikshanik Sanstha primary school, Rahata. The same is a minority institution. The petitioners are declared surplus and directed to be absorbed in Navin Marathi School under the impugned communication.
2. The learned counsel submits that the respondents failed to consider Circular dated 27th October, 2016. Surplus employees of minority institution can only be absorbed in minority institution and if vacancy is not available in another minority institution, to be absorbed in the schools run by local self government or local authority.
3. The learned counsel submits that the petitioners could not have been absorbed in a private aided school. Learned counsel further submits

that vacancies would be created at parent institution Praja Jagruti Shaikshanik Sanstha. The petitioners are required to be repatriated to parent institution.

4. The Circular dated 27th October, 2016 prescribes guidelines. Normally, surplus employee from minority institution is required to be accommodated in another minority institution. However, the minority institution cannot be compelled to absorb surplus employees. In that event, if vacancies are available in the institution run by local authority, surplus employee of minority institution can be absorbed in the institution run by local authority.

5. In the present matter we do not find that vacancy is available at the institution run by the local authority. The petitioners as such were required to be absorbed in a private aided institution. The same cannot be said to be an illegal order. The petitioners cannot claim to earn salary without work. That would tantamount to unjust enrichment.

6. Another limb of the argument of the petitioners is that the vacancy would occur in their parent institution. The surplus employee is entitled to be repatriated to parent institution upon vacancy being available.

7. Today the vacancy does not exist. As and when the vacancy occurs in the parent institution, the Education officer shall consider the application of the petitioners for repatriation.

8. With this observation, writ petitions stand disposed of.

(SHRIKANT D. KULKARNI, J.)

(S.V.GANGAPURWALA, J.)

JPC