

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

124 WRIT PETITION NO.3892 OF 2019

PRIYANKA BHASKAR SOJWAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr Shaikh Joyeb I
AGP for Respondents State: Mr. S B Yawalkar
Advocate for Respondents 6 & 7 : Mr Suvarna M Zaware
Advocate for Respondent No.8 : Mr S H Pathan
Advocate for Respondent No.9 : Mr V. B Munot

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

DATE : 13th February, 2020

ORDER:

1. The petitioner assails the order dated 19.12.2018 directing the petitioner to be absorbed in Savita Ramesh Firodia Shala, Ahmednagar. Learned counsel for the petitioner submits that the petitioner was appointed with Praja Jagruti Shaikshanik Sanstha primary school, Rahata. The same is a minority institution. The petitioner is declared surplus and directed to be absorbed in Savita Ramesh Firodia Shala, Ahmednagar. 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 petitioner 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 petitioner is 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 petitioner as such was required to be absorbed in a private aided institution. The same cannot be said to be an illegal order. The petitioner cannot claim to earn salary without work. That would tantamount to unjust enrichment.

6. Another limb of the argument of the petitioner 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 petitioner for repatriation.

8. With this observation, writ petition stands disposed of.

(SHRIKANT D. KULKARNI, J.)

(S.V.GANGAPURWALA, J.)