

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

WRIT PETITION NO. 13883 OF 2018

Vidya Vijaykumar Dhobale
Age 39 years, Occu: Service,
R/o Shrikrushna Colony,
Near Bharat Nagar, Deopur,
Dhule 424002

... Petitioners

VERSUS

1. The State of Maharashtra
2. The Education Officer (Secondary)
Zilla Parishad, Dhule,
3. The Chairman/President,
Shri Shivaji Vidya Prasarak Sanstha
Near Gandhi Statute, Above Patil Bandhu
Office, Dhule.

4. The Headmaster,
Jijamata Kanya Vidyalaya and Kanishtha
Mahavidyalaya, Near Old Collector Office,
Dhule

... Respondents

Mr. B. R. Waramaa, Advocate for the petitioner,
Mr. S. B. Yawalkar, AGP for respondent Nos.1 and 2
Mr. S. S. Patil, Advocate for respondent Nos. 3 and 4

**CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.**

DATE : 2nd January, 2020

ORDER:

1. By consent of the parties, the petition is taken up for final disposal at the admission stage.
2. The petitioner, who entered in service of respondent No.3 Society as a teacher in respondent No.4 School, by way of the present

writ petition, challenged the orders of Education Officer dated 26.11.2018 and secondly the order dated 27.11.2018, whereby the petitioner is directed to be absorbed in a school namely Pandit Nehru S. Sheti Vidyalaya, Navalnagar. It may not be necessary to refer to the facts in detail, suffice to say, the petitioner was initially appointed in the year 2007 and acquired seniority in her long tenure of service.

3. In the first round of litigation, the petitioner was required to approach this Court by filing Writ Petition No. 9644/2016 raising challenge to declaration of the petitioner being surplus employee. The petitioner submitted before this Court that even though she was the senior most employee, by retaining other junior employees, the petitioner was subjected to an order declaring the petitioner as surplus employee. It was also submitted before this Court that while passing the order, the authority committed breach of principles of natural justice as no opportunity of hearing was granted to the petitioner. The Division Bench of this Court, considering the submission of breach of principles of natural justice, on the backdrop of the application submitted by the petitioner to the Education Officer, thought it fit to remit the matter to the Education Officer for passing appropriate order by giving opportunity of hearing to the petitioner. The Division Bench, in order dated 17th October, 2014 also expected of the Education Officer to consider the issue on the backdrop of provisions of law and the Education Officer was directed to take decision within stipulated period

of four weeks from the date of order and the parties were directed to maintain status quo till the decision by the Education Officer.

4. Learned counsel Mr. Waramaa, by inviting our attention to the order of the Education Officer, submitted that the order of the Education Officer only refers to the rejection of the objections without assigning any reason in the order. Mr Waramaa then invited our attention to the order of the Division Bench of this Court dated 14.03.2019 in Writ Petition No.13498/2016 and other connected matters to submit that the petitioner is similarly circumstanced with those petitioners.

5. Learned AGP supported the order of the Education Officer.

6. On perusal of the material placed on record as well as the order of this Court dated 14.03.2019 on the back drop of the rival submissions of the learned counsel for the respective parties, we are of the opinion that learned counsel Mr. Waramaa appearing for the petitioner made out a case for allowing the petition in terms of prayer clauses (B) and (C).

7. Bare perusal of the order of the Education officer dated 26.11.2018 clearly show that the Education Officer only refers to the submission of the petitioner and other employees who were before the Education Officer and then decision of this Court, whereby the Education Officer was directed to take decision afresh and in one sentence, the order is passed by the Education Officer stating that on

hearing and perusal of the record, objections raised by all the objectors i.e. teachers at Serial Nos. 1 to 11 are rejected.

8. Mr. Waramaa was justified in making submission before this Court that the Education Officer ought to have assigned some reasons to show at least application of mind by the authority to the facts, submission of the parties and consideration of record. It was also submitted by Mr. Waramaa, that this Court in its judicial decision, while dealing with the orders passed by the quasi judicial authorities, expected of the brief reasoning so as to show application of mind by the authority and there could have been such a minimum expectation from the Education Officer who was hearing the parties on the direction of the of this Court and this Court also further directed the Education officer to pass orders in accordance with law. Mr. Warmaa, the learned counsel for the petitioner was justified in submitting before this Court that the order passed by the Education officer is nothing but an empty formality without considering the order of this court dated 17.10.2014 in letter and spirit.

9. It will not also be out of place to refer to the observation of the Division Bench of this Court in order dated 14th March, 2019 while accepting the submission of Mr. Warmaa that the petitioner is similarly circumstanced with those petitioners, who were before this Court in bunch of petitions. The Division Bench was pleased to refer to the relevant provisions namely Rule 27 of the M.E.P.S. Rules in para 6 of

the order and then the Division Bench specifically observed that the order passed by the Education Officer is bereft of considerations as enshrined under Rule 27 of the M.E.P.S. Rules. It may be useful for our purpose to refer to the observation of the Division Bench and the same reads thus:

“7. The primary consideration while declaring persons surplus is that the junior most teacher in the category shall be declared surplus and if the member from the reserved category is to be declared surplus then as per sub-rule (e) of Rule 27, they are not required to be retrenched unless there strength in the school does not exceed the percentage of reservation prescribed in the sub-rule (7) or Rule 9.

8. Perusing the order of Education Officer it does not transpire that the Education Officer has undertaken said exercise. The order has been passed bereft of the considerations as enshrined under Rule 27 of the MEPS Rules.”

10. We see no reason to take a different view than the view adopted by this Court in the order dated 14.03.2019. Resultantly, we allow the petition.

11. The order impugned in the petition rejecting objection of the petitioner is quashed and set aside. The Education Officer shall consider Rule 27 of the M.E.P.S. Rules.

12. The petitioner may appear before the Education Officer on 03.02.2020 and put-forth her stand.

13. The Education Officer shall, after considering the order of this Court dated 14.03.2019 as well as Rule 27 in its proper perspective, pass order afresh on its own merits within a period of two months from the date of appearance of the petitioner.

14. Till the Education Officer decides on the objection of the petitioner afresh, the order directing absorption of petitioner in other school under order dated 27.11.2018 shall not take effect.

15. Writ petition is accordingly disposed of.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)

JPC