

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6971/2019

Namrata D/o Gajananrao Metkar
Aged about 29 years, Occ.: Service,
R/o At Post Parsapur, Tq. Achalpur,
Dist. Amravati.

.... **PETITIONER**

// VERSUS //

1. Director of Education (Primary), Pune,
2. Education Officer (Primary),
Zilla Parishad, Amravati.
3. Superintendent of Pay Unit,
Walgaon Road, Amravati,
4. Bal Shikshan Mandal's
Mai Harshe Primary School,
Through its Head Master,
Someswar Chowk, Bhaji Bazaar,
Amravati, Tq. & Dist. Amravati.

.... **RESPONDENTS**

Shri K. P. Mahalle, Counsel for petitioner.
Smt. K. R. Deshpande, Assistant Government Pleader for
respondent no.1.
Shri T. M. Zaheer, Counsel for the respondent no.2.
Shri R. M. Tahaliyani, Counsel for the respondent no.4.

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATED : 23/10/2020

ORAL JUDGMENT : (Per : SUNIL B. SHUKRE, J.)

1. Heard. Rule. Rule made returnable forthwith.
2. Heard finally by consent.
3. The petitioner was an Assistant Teacher teaching 5th to 7th Standard Classes in Late Meenatai Thakre Primary School, Wadali, Amravati. In 22/07/2016, the petitioner was declared surplus and her absorption order was issued by the respondent no.2 on 22/07/2016 in respondent no.4 – School. In pursuance of absorption order dated 22/07/2016, the petitioner joined the respondent 4 – School. However, it turned out that in the school where the petitioner was directed to be absorbed by the Education Officer i.e. respondent no.2 did not have any vacant sanctioned post and, therefore, the petitioner could not have been absorbed in that school, which is respondent no.4. There were only four sanctioned posts of Assistant Teachers in respondent no.4 – School and all the posts were already filled up. But, there being an absorption order passed by respondent no.2 directing respondent no.4 to absorb the petitioner in that school, the petitioner was allowed to join and perform her duty. At the same time, respondent no.4 experienced difficulty in preparing pay bills of the petitioner and sending them for approval and sanction to the respondent nos.2 and 3, there

being no sanctioned post to show against which the petitioner was absorbed and resultantly, no salary was paid to the petitioner by respondent no.4 from 30/07/2016 and on wards.

4. It is the submission of the learned Assistant Government Pleader that there being no sanctioned post available for absorption of the petitioner in respondent no.4 – School, respondent no.2 ought not to have passed the absorption order dated 22/07/2016. She submits that after having noticed the illegality committed by the respondent no.2 in the matter, respondent no.1 reopened the whole case and held a detailed hearing to revisit the issue of absorption. She submits that the petitioner was given an opportunity to present her case and accordingly, she was also heard by the respondent no.1. The respondent no.1 also heard the Education Officer and other necessary parties, and after hearing and perusing the record, the respondent no.2 by the order passed on 18.02.2020, recalled the order of absorption passed by the respondent no.2, so submits the Learned Assistant Government Pleader. According to learned Assistant Government Pleader, in these circumstances respondent nos.1 and 3 could not be directed to sanction and pay the salary to the petitioner and if at all, it is to be paid, it would be the sole responsibility of respondent no.4.

5. Shri Zaheer, learned Counsel for the respondent no.2 submits that when the initial order of absorption itself was illegal, no right would accrue to the petitioner and, therefore, petitioner is not entitled to receive any salary, at least from the respondent nos.1 to 3. He submits that even otherwise, the petitioner coming from Partly Aided School to 100% Aided School, was not eligible to be absorbed in respondent no.4 – School. Learned counsel for the respondent no.4 submits that the whole issue arose because of the mistake committed by respondent no.2 and therefore, it would be proper that interests of the petitioner as well as respondent no.4 are balanced by passing suitable order.

6. So far as, the issue of percentage of aid received by Late Meenatai Thakre Primary School is concerned, we find that the school received 100% grants for the 6th and 7th standards on 21/07/2016. We further find that the order of absorption passed by respondent no.2 was of the date of 22/07/2016. This would only show that from the date on which the absorption of the service of the petitioner in respondent no.4 – School was directed by the respondent no.2, the earlier school where the petitioner rendered her service as Assistant Teacher was already brought on 100% grant-in-aid basis. So, we find that the argument that the

absorption of the petitioner from Partly Aided School to fully Aided School was not permissible does not survive any longer. Even otherwise, this issue has already been settled in many of the judgments rendered by different Division Benches by this Court, but now it is not necessary for us to go into those judgments.

7. Now, coming to the facts of this case, we find that the absorption order dated 22/07/2016 has been cancelled by the respondent no.1 by his order passed on 18/02/2020. This order having adverse civil consequences would take its effect only from the date on which the order was passed i.e. 18.02.2020 and would not have any retrospective effect. This order has been challenged by the petitioner by filing separate petition. The question that would arise in this petition, therefore, would be about the entitlement of the petitioner to receive the salary for the service rendered by her in respondent no.4 – School from 30.07.2016 till 17.02.2020.

8. In our considered view, the petitioner would be entitled to receive the salary for the aforesaid period for several reasons. Firstly, the order dated 18.02.2020 cancelling absorption order cannot operate retrospectively. Secondly, there is no dispute about

the petitioner having rendered her service as Assistant Teacher in respondent no.4 – School. Thirdly, the petitioner is entitled to a legal protection available to her under Rule 26 (2) sub-clause (iii) of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (for short the “Rule of 1981”). Sub-Clause (iii) of Rule 26 (2) of the Rules of 1981 prescribes that the Management shall not effect retrenchment of any surplus employee till the absorption order is issued by registered post with acknowledgment due by the competent Authority. In other words, till the petitioner here was directed to be absorbed in respondent no.4 – School, the petitioner had a right to receive salary from her earlier school which was Late Meenatai Thakre Primary School and after her joining the new school, the petitioner would have had further right to receive salary in the school in which she would have been absorbed. In the present case, the petitioner did join respondent no.4 – School following absorption order dated 22/07/2016, and so the petitioner would be entitled to receive salary from the respondent no.4 – School for the period referred to by us earlier.

9. Respondent no.4 – School, without any dispute, is a fully Aided School and therefore, it would also be responsibility of the

respondent nos.1 to 3 to ensure that the salary for the aforesaid period is paid to the petitioner without any mistake. If the absorption order erroneously passed by the respondent no.2 has been cancelled later on by the respondent no.1, a poor teacher like the petitioner cannot be held ransom for the mistake committed by the respondent no.2. The order dated 18/02/2020 cancelling the absorption order dated 22/07/2016, appears to have taken note of this fact as well when the respondent no.1, the Deputy Director, held that the then Education Officer (Primary), Zilla Parishad, Amravati being responsible for passing an erroneous absorption order, would have to be made accountable for whatever financial loss the Government would be incurring owing to such mistake. Accordingly, the respondent no.1 has held the then Education Officer as responsible for the financial loss occasioned by the Government. This would also show that impliedly, the respondent no.1 has accepted the fact that the salary is liable to be paid to the petitioner from 30/07/2016 till 17/02/2020 for which, the fault lay, not at the feet of the petitioner, but, on the shoulders of the then Education Officer (Primary), Zilla Parishad, Amravati.

10. In the result, we are inclined to allow the petition and it is allowed accordingly.

11. The respondent no.4 is directed to submit the pay bills of the petitioner for the period from 30/07/2016 till 17/02/2020 to respondent nos. 2 and 3 and the respondent nos. 2 to 4 are directed to approve, pay and release the salary of the petitioner for this period, within six weeks from the date of the receipt of the order.

Rule is made absolute in the above terms. No costs.

(AVINASH G. GHAROTE, J)

(SUNIL B. SHUKRE J.)