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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2165 OF 2019

Surekha d/o Laxmanrao Sontakke
Age – 37 years, Occ – Service
as Assistant Teacher,
R/o Shivaji Nagar, Mudkhed,
Taluka – Mudkhed, District - Nanded

PETITIONER

VERSUS

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| 1. The State of Maharashtra
Through Secretary,
Department of School Education,
Mantralaya, Mumbai-32 | RESPONDENTS |
| 2. Education Officer (Secondary)
Zilla Parishad, Nanded | |
| 3. The Secretary,
Mahatma Gandhi Education Society,
Near Railway Station,
Mudkhed, Taluka – Mudkhed
District – Nanded | |
| 4. The Head Master,
Mahatma Gandhi Secondary and Higher
Secondary Vidyalaya,
Railway Station Road, Mudkhed
Taluka – Mudkhed, District – Nanded | |

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Mr. V. S. Panpatte, Advocate for the petitioner
Mr. S. S. Dande, AGP for respondent - State
Mr. R. R. Bangar h/f Mr. I. D. Maniyar, for Respondents No. 3 & 4

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[CORAM : SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ.]

DATE : 21st JANUARY, 2021

ORDER :

1. Heard learned advocates for the parties.
2. Mr. B. R. Kundgir, Education Officer (Secondary), Zilla Parishad, Nanded – respondent No. 2, is present before the court in due deference to order dated 11th March, 2020.
3. At the outset, Mr. Panpatte, learned advocate appearing on behalf of the petitioner, on instructions, does not press for prosecution of challenge in respect Exhibit-K, page 48, the absorption order of Mr. Patil Nitin Raosaheb, dated 11th February, 2019. As such, writ petition, so far as it relates to amended prayer clause C-1 is dismissed.
4. The petitioner has been appointed by respondents No. 3 and 4 as *shikshan sevak* for a period of three years with effect from 14th October, 2016. While approval to petitioner's said appointment had been sought, the same had been responded to by Education Officer under communication dated 28th February, 2017 rejecting the proposal having regard to government resolution dated 2nd May, 2012, imposing ban on appointments of teaching and non teaching staff, save certain exceptions, till absorption of surplus teachers and decision of this court at Nagpur, dated 17th June, 2016 in writ petitions No. 6606 of 2015,

6605 of 2015 and 156 of 2016. Said communication has been challenged under present writ petition.

5. Mr. Panpatte, vehemently contends that petitioner has been appointed after following due procedure, viz; advertisement, selection by duly constituted selection committee etc. He further submits that one Mr. R. V. Wanole had been wrongly shown to have been given absorption order in the school where petitioner has been appointed. He submits that subsequently, the mistake has been rectified by cancelling absorption order of Mr. Wanole and he has been repatriated. He further purports to refer to that since Mr. Wanole happens to be from scheduled caste category, he could not have been declared surplus teacher. He, therefore, urges to allow the writ petition.

6. On the other hand Mr. Dande, learned AGP submits that in the first place even seeking permission for issuing advertisement for filling up vacancies would not be said to be legitimate having regard to intention underlying 2nd May, 2012 government resolution, until absorption of all surplus teachers. He submits that over and above this while permission had been sought under communication dated 8th September, 2016, absorption order of Mr. Wanole had been passed on 15th September, 2016 and respondents No. 3 and 4 had been accordingly

communicated and in the circumstances, petitioner's appointment would not be said to be legitimate. He further purports to refer to that Mr. Wanole was not being allowed to join duty by respondents No. 3 and 4. An attempt to join in the school where he was to be absorbed, with the aid of government officer, did not bear fruits and the government officer had reported that respondents No. 3 and 4 had refused to let Mr. Wanole join. He refers to communication dated 19th October, 2016.

7. Learned AGP, on instructions, however, fairly refers to that since the mistake had been realized later, Mr. Wanole has been repatriated on 9th February, 2017. He, therefore, submits that petitioner's case for approval from 9th February, 2017 onward would be considered by the education officer and orders to such effect could be possible.

8. Having regard to aforesaid, we deem it appropriate that education officer takes decision in respect of proposal submitted for approval to appointment of petitioner, taking into account aforesaid position and would not decline approval to petitioner's appointment for the reasons given in the impugned order. Impugned order is set aside. Education officer to pass proper orders on the proposal in right earnest, preferably within a

period of a fortnight from the date of receipt of writ of this order. So far as grievance of the petitioner about payment for the period from 14th October, 2016 to 9th February, 2017 is concerned, the responsibility, it appears, will lie with respondents No. 3 and 4.

9. Writ petition is disposed of.

10. In view of aforesaid, interim order detaining operation of order dated 11th February, 2019 stands vacated.

[ABHAY AHUJA]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE