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

7 WRIT PETITION NO.1735 OF 2019

RUPALI RAMESHWAR PHULARI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. Yashodeep P. Deshmukh, Advocate holding for Mr.
Anand D. Kawre, Advocate for petitioner;
Mrs. M.A. Deshpande , A.G.P. for respondent nos.1 to 3;
Mr. R.D. Khadup, Advocate for respondent no.4;
Mr. V.S. Bedre, Advocate for respondent no.6

**CORAM : A.S. GADKARI
AND
S. G. MEHARE, JJ.**

DATE : 24th January, 2022

P.C.

1. Heard learned counsel for the respective parties.
Perused record.
2. Petitioner was working as an Assistant Teacher in
respondent no.4 school at Parali Vaijnath. She was declared
surplus teacher and was directed to be absorbed with
respondent no.6 school. It is the case of the respondents
that, the said decision to declare her surplus was taken in
view of the seniority list maintained by respondent no.4 and
approved by the Education Officer (Secondary), Zilla

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Parishad, Beed. The petitioner therefore preferred a representation/appeal dated 5.12.2018 with respondent no.3. As per paragraph no.5 of affidavit dated 4.4.2019 filed by Mohan Kakade, Deputy Education Officer (Secondary), Zilla Parishad (page 97), it is categorically averred that, the petitioner was heard on 5.12.2018 and thereafter her representation was decided. Prima facie it appears that, the record indicates contrary. Page no.20 annexed to the petition indicates that, on 8.12.2018 the Education Officer (Secondary), Zilla Parishad, Beed had issued a notice dated 8.12.2018 calling upon the concerned to give their explanation with respect to seniority list prepared by the concerned authority.

3. Be that as it may. The impugned order dated 9.12.2018 clearly indicates that, it is not a reasoned order. Respondent no.3 in his said affidavit dated 4.4.2019 has relied on a Circular dated 22.12.2016 issued by the Commissioner of Education, Maharashtra State (Pune). The said Circular prescribes various guidelines for deciding appeals/representations made by teachers being aggrieved by the seniority list prepared by the Education Officer.

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Paragraph 5 of the said Circular directs the Education Officer to hear the matter after calling the concerned personally and after taking into consideration principles of natural justice, provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, Rules framed thereunder and various Government Resolutions issued thereof and to pass a reasoned order. Paragraph 6 of the said Circular provides for appellate forum for the teachers if they are aggrieved by the order passed by the Education Officer.

Bare perusal of impugned order dated 9.12.2018 would clearly indicate that, it is not only unreasoned order but an order without any basis and reason mentioned therein. It may be noted here that, we are unable to accept the contention of respondent no.3 that he received the representation of the petitioner on 5.12.2018 and immediately gave hearing thereof to her. It appears that the contesting respondents herein were not called for hearing before passing the impugned order dated 9.12.2018. As noted earlier, impugned order dated 9.12.2018 is not in consonance with paragraph 5 of Circular dated 22.12.2016

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issued by the Commissioner of Education.

4. We therefore have no hesitation in setting aside the impugned order dated 9.12.2018 and remanding the appeal of the petitioner before respondent no.3 for hearing it afresh by following the Circular dated 22.12.2016 in its strict sense.

It is to be further noted here that, though the petitioner had filed representation on 5.12.2018, it appears from record that, respondent no.3 had construed and considered it as an appeal preferred by her.

5. In view thereof, we hereby set aside the impugned order dated 9.12.2018 and remand the appeal of the petitioner before respondent no.3. In addition to the representation dated 5.12.2019, petitioner is granted liberty to file an elaborate appeal memo with respondent no.3 within a period of seven days from the date of uploading of the present order on High Court website. Respondent no.3 is directed to hear the petitioner and other necessary parties to the said appeal in consonance with Circular dated 22.12.2016 and in particular paragraph 5 thereof, within a period of four weeks from today.

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6. If the decision of respondent no.3 in the appeal preferred by the petitioner is adverse to her, petitioner will be at liberty to file further appeal before the Authorities established under the Circular dated 22.12.2016 and as mentioned in para No.6 therein.

7. Petition is allowed in the aforesaid terms.

(S. G. MEHARE, J.)

(A.S. GADKARI, J.)

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