

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

WRIT PETITION NO. 1271 OF 2018

Vitthal Ravanrao Damodare .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Ajay D. Pawar, Advocate for the Petitioner.

Shri A. S. Shinde, A.G.P. for Respondent Nos. 1 to 4.

Shri P. R. Nangare, Advocate for the Respondent No. 5.

Shri K. P. Rodge, Advocate for the Respondent No. 6.

**CORAM : S. V. GANGAPURWALA AND
 S. G. DIGE, JJ.**

DATE : 14TH FEBRUARY, 2022.

FINAL ORDER :

1. Mr. Pawar, the learned advocate for the petitioner submits that, the petitioner was declared surplus and was directed to be absorbed in the respondent No. 6 school. The petitioner approached the respondent No. 06 school on 01st February, 2012, but the respondent No. 6 school did not allow the petitioner to join. Subsequently, the petitioner is absorbed in a school at Bavi, Tq. and Dist. Osmanabad. The petitioner is not paid salary for the period from 01.02.2012 to 10.07.2012, nor he is given further benefit of the same.

2. Mr. Rodge, the learned advocate for the respondent No. 6 submits that, at the relevant time when the orders were passed

directing the petitioner to absorb in the respondent No. 6 school, the respondent No. 6 school did not have vacant posts. As such the petitioner could not be absorbed. Fault does not lie with the respondent No. 6. The respondent No. 6 cannot be directed to pay the salary to the petitioner.

3. Mr. Nangre, the learned counsel appears for the respondent No. 5 and submits that, the petitioner was legitimately declared surplus because of the reduction in the posts.

4. We have also heard the learned Assistant Government Pleader for respondents/State. According to the learned A. G. P. salary has to be recovered from the respondent No. 6 school, as the respondent No. 6 did not allow the petitioner to join, though the orders were passed by the authority. The learned A. G. P. further submits that, the petitioner has remedy of appeal before the Assistant Commissioner Social Welfare.

5. It appears that, all the respondents were under bonafide mistake. The respondent No. 6 has filed affidavit stating that at the relevant time there was no vacant post available. In absence of the vacant posts, the respondent No. 6 could not accommodate the petitioner. It further appears that, the respondent authority directed the petitioner to join the school at Bavi. The only dispute is for a period of 01.02.2012 to 10.07.2012. Admittedly, the petitioner could not work during the said period.

6. Considering the fact that, the claim is of the year 2012, it would be equitable to pass following order.

7. The respondent authority shall consider the period from 01.02.2012 to 10.07.2012 as in service period. The same shall be counted for the purpose of continuity and for all further benefits including increments as are admissible. We have not passed order for payment of salary during the said period as the claim is of almost six years back and further that the petitioner though for no fault of his has not worked.

8. In the light of the above, the writ petition is disposed of. No costs.

[S. G. DIGE, J.]

[S. V. GANGAPURWALA, J.]

bsb/Feb.22