

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO.3105 OF 2023

VIVEKANAND JAGANNATH HONRAO
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr.A.D. Pawar, Advocate for the Petitioner.
Mr.S.K. Tambe, AGP for Respondent/State.
Mr.S.S. Dambe, Advocate for Respondent No.2.
Mr.S.T. Shelke h/f Mr. D.P. Munde, Advocate for Respondent Nos.3
& 4.

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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 19th APRIL, 2023.**

PER COURT :-

1. Considering the order that we are passing in the light of the statement of the Education Officer (Primary) that the impugned order is being withdrawn, we are not required to advert to the entire submissions of the learned Advocates for the respective sides. Suffice it to say that the Petitioner was absorbed in Respondent No.4 School around 11 years ago. A Division was shifted from Respondent No.5 to Respondent No.4 along with the Petitioner. For 11 years he has been working with Respondent No.4, on being absorbed. He is due to retire in another five years at the age of 58.

2. By the impugned order, dated 1st March, 2023, the Education Officer (Primary), on receiving a communication from Respondent No.5 dated 18th July, 2022, moved the Petitioner out of

Respondent No.4 school and directed him to report to the Respondent No.5 School. This is apparently against the law laid down by this Court in **Secretary, Paramhansa S.P.M. and another Vs. Nagappa Ramchandra Teerth and others, 2022(4) Mh.L.J. 473**, the relevant paragraph nos. 10 and 11 read thus :-

“10. The Rules clearly indicate that, if an employee opts to continue with the new school where he has absorbed, he would continue in that school. Rule 26(5) can be so interpreted that, once he exercises his option/makes a choice of continuing with the new school, not to return to the old school, he is not to be compelled to come back to old school, inasmuch as, the old school, thereafter need not again invite his choice, if any vacancy occurs in future, as the employee has already chosen his option and has elected not to come back to the old school. Such exercise is not to be repeated once an option is exercised under Rule 26(5).”

11. It is nowhere prescribed under the Rules that the surplus teacher has to be confronted repeatedly for seeking his view on whether he desires to join the old school, as and when vacancies continue to be available. Logically, this would not be of any advantage as it would actually create a situation, wherein, the old school Management continues to approach its teacher who has been rendered surplus and absorbed elsewhere. This also creates an atmosphere of uncertainty because the new school would continue to speculate as to whether the absorbed teacher might leave the school and go back to the old school.”

3. It is undisputed that the Petitioner was not granted an opportunity of hearing, much less, called upon to elect a choice as to whether he would desire to continue in Respondent No.4 where he has been absorbed or go back to Respondent No.5 which was his

parent school, 11 years ago.

4. After hearing the learned Advocates for the respective sides, we are convinced that this is a fit case for imposing costs since the Education Officer (Primary), high handedly passed the impugned order without even having a look at Rule 26(5) of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and the law laid down in ***Secretary, Paramhansa S.P.M. (supra)***. Merely because Respondent No.4 contended on the basis of the Government Resolution dated 02.08.2016, that the reservation roster is affected due to the absorption of the petitioner since 11 years, that the impugned order was passed. However, he submits that the impugned order would stand withdrawn forthwith and a notice would be issued to the Petitioner for granting him an opportunity of hearing.

5. The learned Advocate representing Respondent No.4 school which had absorbed the Petitioner 11 years ago, submits that it should also get an opportunity of hearing since it desires to rely upon the Government Resolution dated 02.08.2016.

6. Despite service of court notice, Respondent No.5 has not appeared in this proceeding.

7. In view of the above, **this petition is disposed off** since the Education Officer has declared that the impugned order dated 01.03.2023 shall stand withdrawn. In view thereof, we are issuing the following directions :-

(a) The impugned order stands set aside since the Education Officer has withdrawn the same forthwith.

(b) The Petitioner shall stand reinstated in his original position with Respondent No.4 and he would be entitled for salary for the period during which he has been ousted from Respondent No.4.

(c) Respondent No.4 shall permit the Petitioner to report for duties on 27.04.2023. His salary bills for the month of March and April, 2023 shall be forwarded to the Education Officer, since we hold that he is entitled for the salary, in the light of the protection for salary granted by this Court in ***Rizwan Hawaldar Khan Vs. Deputy Director of Education and others, 2012(6) Mh.L.J. 799.***

(d) Respondent No.2 shall issue a notice to the Petitioner under Rule 26(5) listing out the reasons for the proposed action and allow him to express his choice.

(e) Respondent No.2 shall also issue notice to Respondent Nos.3, 4 and 5 in order to enable them to express their views.

(f) After a combined hearing by involving all these parties and after granting them a reasonable opportunity of hearing, Respondent No.2 shall pass a reasoned order, on or before 30th April, 2023. The

Education Officer shall convey his decision to the respective sides.

(g) Any aggrieved party would be at liberty to avail of a remedy as may be permissible in law.

(h) Since the learned Advocate Shri Dambe has urged us to refrain from imposing costs, and more so, since the Education Officer has withdrawn this order forthwith, that we are not imposing costs.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

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