

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

923 WRIT PETITION NO.8887 OF 2022

DEVIDAS RAOSAHEB JADHAV
VERSUS
THE STATE OF MAHARASHTRA,
THROUGH ITS PRINCIPAL SECRETARY AND OTHERS

...
Advocate for Petitioner : Mr. S. S. Thombre.
AGP for Respondent Nos.1 to 3 : Mr. S. K. Tambe.
Advocate for Respondent Nos.4 & 5 : Ms. Uma S. Bhosale.
...

CORAM : **RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 09th February, 2023.

Per Court:

1. We have considered the extensive submissions of the learned advocates for the respective sides on 8th February, 2023 and 9th February, 2023.

2. Considering the order that we intend to pass, we are not required to advert to the extensive submissions of the learned advocates. Suffice it to say that the impugned order dated 21st June, 2022 appears to be cryptic and un-reasoned in view of the following aspects:-

- a) Out of the 4 surplus teachers, admittedly, the petitioner is at serial No.3.

- b) The management has taken a stand that the candidates at serial Nos.1 and 2 in the surplus list, have been absorbed elsewhere.
- c) The petitioner, at serial No.3, having the qualification of M.Com. and M.A. with B.Ed., has been absorbed in a junior college in the commerce faculty in the light of the retirement of Vanjare Milind Tukaram on 30th April, 2022.
- d) The petitioner was absorbed directly in place of Vanjare Milind Tukaram in the junior college in the commerce faculty.
- e) The existing pay scale of the petitioner at the time of being surplus, was in S-14 class and by absorbing him and posting him in the junior college, he would directly be entitled for the pay scale of S-16 and
- f) Whether such absorption of the petitioner and the pay scale from S-14 to S-16, is permissible.

3. All the above issues were neither addressed by the management vide it's proposal to the Deputy Director of Education nor were these aspects brought to his notice. We wonder as to why the management has not placed these aspects before the concerned authority. Had this been done, he could have arrived at a different conclusion.

4. The learned advocate for the petitioner has strenuously canvassed that the Government Resolution dated 24th April, 2020 specifically provides for continuance of the payment of salary that was last drawn, when the decision of the Government was taken in 2020-21 to close down the 5th standard, which had rendered the petitioner and similarly situated 3 employees surplus. The Government Resolution provides for continued payment of last drawn salary from the salary grants. This aspect needs to be considered by respondent No.2 Deputy Director of Education, Aurangabad.

5. In these circumstances, this petition is partly allowed by quashing the order dated 21st June, 2022. We issue further directions as under:-

A) The management shall submit a proper proposal covering all the aspects reproduced in paragraph No.3 and 4 hereinabove and take a clear stand in the matter. Let such proposal be placed before respondent No.2, on or before 24th February, 2023.

B) After receipt of the proposal, respondent No.2 shall follow the due procedure laid down in law and consider the said proposal in the light of the record available. If required, he shall direct the management to produce

such record, which he finds necessary for arriving at a decision and the management shall render whole hearted co-operation.

- C) Respondent No.2 would also consider as to whether the Government Resolution dated 24th April, 2020 would entitle the petitioner for the last drawn salary for the period from the date of being declared surplus and then absorbed.
- D) We make it clear that respondent No.2 is at liberty to render an opportunity of hearing to the litigating parties, if felt necessary, and arrive at his decision, on or before 15th April, 2023.
- E) In the event, the petitioner is held entitled for salary, for the duration of surplusage and/or after having been purportedly absorbed, the said authority would issue appropriate directions for releasing the said salary, in accordance with the Government Resolution dated 24th April, 2020.