

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 WRIT PETITION NO.9367 OF 2023

Santosh S/o Navnath Parasur,
Age-34 years, Occu-Service,
R/o at Chasnali,
Tal.Kopargaon, Dist.Ahmednagar

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai

2. The State of Maharashtra,
Through its Secretary,
School Education and Sports Department,
Mantralaya, Mumbai

3. The Director of Education (Primary),
Maharashtra State,
Dr.Ani Bezant Marg, Central Building,
Pune 411001

4. Deputy Director of Education,
Pune Region, Pune

5. Chief Executive Officer,
Zilla Parishad, Ahmednagar

6. Municipal Council Education Circle,
Municipal Council Office, Kopargaon,
Dist. Ahmednagar

7. The Education Officer (Primary)
Zilla Parishad, Ahmednagar

-- RESPONDENTS

Mr.L.H.Kawale, Advocate for the Petitioner.
Mr.A.V.Deshmukh, AGP for the Respondent / State.
Mr.A.D.Aghav, Advocate for Respondent Nos. 5 and 6.

(CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRADE, JJ.)

DATE : OCTOBER 11, 2023

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner has put forth prayer clause B, C and D as under :-

"B. By issuing appropriate writ, order or directions in the like nature, may kindly direct to the respondents to consider the period in between 01.02.2013 to 18.09.2013 as a service period and pay the consequential benefits to the Petitioner and for that purpose issue necessary orders.

C. By issuing appropriate writ, order or directions in the like nature, may kindly be hold and declare that the period between 01.02.2013 to

18.09.2013 is not interruption in service period of the Petitioner and for that purpose issue necessary orders.

D. Pending the hearing and final disposal of this writ petition may kindly be direct to the respondents to decide the application submitted by the petitioner on 13.01.2017, 09.05.2022, 04.07.2023 and consider the period between 01.02.2013 to 18.09.2013 as a service period and pay the consequential benefits to the petitioner and for that purpose issue necessary orders."

3. The Petitioner was appointed as a "Shikshan Sevak" by Respondent No.6 vide an order dated 06.07.2010. On 17.01.2013, the Petitioner was declared surplus alongwith 5 other teachers. By the order dated 17.01.2013, these 6 teachers were declared to be absorbed (समावेशन) in Zilla Parishad, Pune. Respondent No.6 relieved the Petitioner on 31.01.2013. However, since there were no vacancies, the Education Officer (Primary), Zilla Parishad, Pune orally refused to allow the Petitioner as well as the other teachers, to report for duties, on 01.02.2013. They approached Respondent No.4, Deputy Director of Education, Pune. Respondent No.4 orally asked the Petitioner to discuss with the Education Officer. He tendered a written application on 06.02.2013. Yet, he was not allowed to join duties. Finally, the Petitioner was repatriated and was given a posting on 16.09.2013 at the

Zilla Parishad Primary School, Chasnali, Tal.Kopargaon, Dist.Ahmednagar. He joined the school on 19.09.2013. It is, in these circumstances, that he could not discharge his duties in between 01.02.2013 till 18.09.2013, apparently on account of no fault on his part. This can surely be termed as involuntary unemployment. The issue is as to whether this would amount to termination or break in service.

4. Having considered the submissions of the learned Advocates for the Respective sides and taking into account the facts and circumstances of the case, we are of the view that neither the principle of "*no work - no wages*", could be made applicable in this case, nor a break in service could be assumed, just because the Petitioner was not in imparting education in any school in either of the two Zilla Parishads. The fact remains that it was not the fault of the Petitioner. Having been declared surplus, he was directed to be absorbed. The absorption took time due to lack of vacancies and in peculiar circumstances, he was repatriated to Zilla Parishad, Ahmednagar. This cannot be termed as a break in service. No judicial pronouncement is cited before us holding that a surplus teacher is deemed to be

terminated or out of employment for the period till he is absorbed or that this would amount to break in service.

5. An order dated 03.08.2021 issued by the Zilla Parishad, Ahmednagar placed before us (marked as X-1 for identification), indicates that teachers in similar situations, who have been waiting for absorption for more than 7-8 months, were granted continuity in employment by the Zilla Parishad.

6. There is a distinction between a person being terminated and he being temporarily without any assignment under fortuitous circumstances. A person who is terminated or discharged or removed from employment or compulsorily retired, would be rendered out of employment. A person, who is under suspension or a person who is declared surplus, is not deemed to be a terminated employee. A surplus teacher continues to have lien over his employment, albeit, he is not in a position to impart education until he is absorbed. His absorption is possible only because he is in permanent employment. We, therefore, conclude that a person who is declared surplus is not to be treated as being terminated and the period of his being relieved till

he is absorbed, would not be considered to be a break in his service. He would be deemed to be in continuous employment.

7. In the matter of **Dr.Ambedkar College of Commerce and Economics and another Vs. Mrs.Sharmila Bose and Others [1998(3) Bom.C.R. 270]**, this Court had recorded that a permanent teacher cannot be terminated only because he is rendered surplus. Those who are rendered surplus are to be absorbed in other affiliated colleges in the event such surplus teacher is found to be eligible for absorption. Such a post cannot be abolished only because the teacher has become surplus.

8. In **Laxmi Education Society and Others Vs. The State of Maharashtra and Others [2010(3) Bom.C.R. 390]**, it was held that untill the closure permission is granted to a College, the surplus employees have to be absorbed. They cannot be terminated merely because they have become surplus.

9. In **Sindhudurg Zilla Shikshan Sanstha Vs. Union of India and Others [2016(1) ABR 801]** it was ordered that the services of the

surplus permanent teachers are protected to the extent of providing them the financial benefits till they are continued in the same school or they are accommodated or absorbed elsewhere or declared surplus. The surplus declared headmasters are entitled for their salaries as of Head Master though required to work as a Senior Teacher in the school.

10. In view of the above, **this Petition is allowed** in terms of prayer clauses 'B' and 'C'. Rule is made absolute in the above terms.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)