

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

938 WRIT PETITION NO. 12870 OF 2018
WITH
CIVIL APPLICATION NO.15156 OF 2022
IN WP/12870/2018

DHARMARAJ HANMANTRAO JADHAV
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

...
Advocate for Applicant : Mr. Sunil B. Kakde
AGP for Respondent No.1: Mr. S.P. Tiwari
Advocate for Respondent No.2 : Mr. V. M. Chate
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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 21st APRIL, 2023.**

PER COURT :-

1. None present for Respondent No.3, Management.
2. We have considered the strenuous submissions of the learned advocate for the Petitioner, the learned A.G.P. and the learned advocate representing Respondent No.2, Education Officer (Primary).
3. A short issue is raised before us, vide prayers B, C and D, as under:-

"B. By issuing appropriate writ of mandamus or any other appropriate writ, order or direction in like nature,

respondents may kindly be directed to absorb the petitioner being surplus teacher on vacant post in respondent No.3 school or respondent No.2 Zilla Parishad School in Beed District and release regular salary with back wages to the petitioner as per law and such exercise of absorption may please be done within the period of 4 weeks.

- C. By issuing appropriate writ of mandamus or any other appropriate writ, order or direction in like nature, respondents may kindly be directed to make a payment of salary of petitioner since from 2003 to till this date in accordance with law as expeditiously as possible.
- D. By issuing appropriate writ of mandamus or any other appropriate writ, order or direction in like nature, respondent No.2, Education Officer, Zilla Parishad Beed may kindly be directed to take strict action in respect of absorption of petitioner and submit the compliance report in the present matter accordingly.”

4. The Petitioner was selected and appointed on 18.10.1993, as an untrained teacher. While in service, he completed the postal D.Ed. course in the month of April, 2003. He was terminated on 15.07.2003. He approached the School Tribunal which dismissed his appeal No. 21 of 2004, on the ground of delay caused in preferring the appeal, by the first order dated 24.02.2006. The Petitioner had approached this Court by filing Writ Petition No. 4734 of 2006. The learned Single Judge of this Court allowed the Writ Petition and condoned the delay caused in filing the appeal, vide order dated 06.02.2007. The Respondent management had

preferred Letters Patent Appeal No. 4 of 2008, before the Division Bench of this Court, challenging the order dated 06.02.2007 passed by the learned Single Judge, in writ Petition No. 4734 of 2006. The said Letters Patent Appeal also came to be dismissed by order dated 02.02.2009.

5. The School Tribunal subsequently passed an order on 01.11.2010, allowing the appeal. The Respondent management preferred Writ Petition No. 743 of 2011. By order dated 21.03.2011, the appeal was restored and remanded for rehearing. The Tribunal again dismissed the appeal.

6. Finally, in Writ Petition No. 6365 of 2011 filed by the Management, this Court passed an order on 01.10.2013, concluding that the judgment of the School Tribunal was bad in law. The appeal was partly allowed. The oral termination was quashed and set aside, without back wages. This Court declared the Petitioner as a surplus candidate and directed that he would be entitled for salary from the date of absorption, in any institution. Till the date of his absorption, he will not be entitled for any salary or monetary claims.

7. The learned advocate representing the Education Officer submits that the management did not send a letter to the Education Officer, declaring him to be a surplus teacher. We are utterly surprised by such an explanation by the Education Officer. Less said

better. The Education Officer apparently did not understand the order of this Court, wherein it was clearly stated that the Petitioner is declared to be surplus and he would be entitled for absorption and only after absorption, he would be entitled for salary.

8. The learned advocate for the Education Officer then submits that there would be several surplus teachers. We are once again surprised by this statement. When this Court declared the Petitioner to be surplus, the Education Officer should have noted his date of employment so as to consider his seniority as amongst the surplus teachers and based on his seniority, he should have been absorbed in service. It is an irony that this Petitioner is awaiting absorption since 2013.

9. In view of the above, **this Petition is disposed off** with a direction to the Education Officer that he would record the Petitioner's name, who belongs to open category, in the list of surplus teachers, by considering his first date of appointment. Based on his seniority, wherever the vacancy is available in any Zilla Parishad Primary Schools in Beed district, the Petitioner shall be forthwith absorbed under the orders of the Education Officer. The school/institution, wherein such vacancy is available, would be under an obligation to obey the orders of the Education Officer.

10. In view of the above, civil application No. 15156 of 2022, would not survive and stands disposed off.

11. The Education Officer (Primary), Zilla Parishad, Beed shall submit a compliance report to this court, on 15.06.2023.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

rlj/