



Judgment

118 wp3901.22

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

WRIT PETITION NO.3901 OF 2022

Sanjay Sudhakar Nikure,
aged about 36 years,
occupation : service,
r/o post Shirpur, tahsil Chimur,
district Chandrapur.

..... **Petitioner.**

:: V E R S U S ::

1. State of Maharashtra,
through its Secretary, Education
and Sports Department,
Mantralaya, Mumbai-32.

2. Deputy Director of Education,
Nagpur Division, Nagpur.

3. Education Officer (Secondary),
Zilla Parishad, Chandrapur.

4. Pay Unit, through its
Superintendent, Chandrapur,
district Chandrapur.

5. Gaurav Bahu Uddeshiya Shikshan
Sanstha, through its Secretary,
Warora, district Chandrapur.

6. Adarsh Vidyalaya, Wadala
(Paiku), through its Headmaster,
Chimur, district Chandrapur.

7. Ku.Harsha Tulsiram Bothley,
aged about 37 years,
occupation : service,
r/o c/o Adarsh Vidyalaya,
Wadala (Paiku), Chimur,
District Chandrapur.

..... **Respondents.**

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Shri A.D.Mohgaonkar, Counsel for the Petitioner.
Shri N.S.Rao, Assistant Government Pleader for respondent
Nos.1 to 4.
Shri N.D.Khamborkar, Counsel for Respondent Nos.5 & 6.
Shri Uday Changle, Advocate h/f Shri Anand Parchure,
Counsel for Respondent No.7.
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CORAM : PRITHVIRAJ K.CHAVAN & URMILA JOSHI-PHALKE, JJ.
CLOSED ON : 13/10/2023
PRONOUNCED ON : 19/10/2023

JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. Heard learned counsel Shri A.D.Mohgaonkar for the petitioner; learned Assistant Government Pleader Shri N.S.Rao for respondent Nos.1 to 4; learned counsel Shri N.D.Khamborkar for respondent Nos.5 and 6, and Advocate Shri Uday Changle h/f learned counsel Shri Anand Parchure for respondent No.7.

2. **Rule.** Rule made returnable forthwith. Heard finally by consent of learned counsel appearing for parties.

3. The petitioner is aggrieved by order passed by the Education Officer (Secondary), Zilla Parishad, Chandrapur dated 5.5.2022 declaring him as surplus and protecting respondent No.7 who is junior to him.

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4. The petitioner was appointed as Assistant Teacher on 26.6.2010 for teaching subjects Mathematics, Physics, and Chemistry as he holds qualification B.Sc. Mathematics with Physics and Chemistry as well as B.Ed.. The respondent No.5 is Management and runs school namely Adarsh Vidyalaya, Wadala (Paiku). The respondent No.6/school runs sections from Std.VIII to X. The appointment of the petitioner was duly approved by the Education Officer in the year 2016. Initially, the school was admitted to 20% grant which was subsequently increased 40%. In the year 2016-17, one post of Assistant Teacher was reduced. It is contended that respondent No.7 Ku.Harsha Bothley was appointed on 12.7.2014 as language teacher as she was holding qualifications B.A. and B.Ed. Thus, respondent No.7 Ku.Harsha is junior most assistant teacher working in the school. The seniority list also shows that respondent No.7 Ku.Harsha is junior to the petitioner. The Management proposed to declare Ku.K.D.Nandurkar as surplus who is senior to respondent No.7 Ku.Harsha as well as the petitioner. On her raising objection to the Education Officer, the education department called upon including the petitioner for

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hearing. The Education Officer without giving reasons declared the petitioner surplus and, therefore, the petitioner has challenged the order of the Education Officer preferring Writ Petition No.4077/2019. By order dated 19.4.2022, this court holding the principle of seniority requires to be observed quashed order dated 19.3.2019 declaring the petitioner surplus. This court further directed the Education Officer (Secondary), Zilla Parishad, Chandrapur to take a decision afresh as to who should be declared to be surplus from amongst teachers working on the establishment of respondent Nos.5 and 6 keeping in view the rule of seniority as prescribed under Rule 26(2)(1) of the MEPS Rules in accordance with law within a period of two weeks. This court further directed respondent Nos.5 and 6 to pay salary together with admissible arrears of salary within a period of four weeks from the date of decision from respondent No.3.

5. The petitioner, thereafter, made representations to the Education Officer continuously on 15.10.2019 and 17.10.2019 and also to the Deputy Director of Education on 17.10.2019. Surprisingly, no cognizance was taken either by the Management or the Education Department and, therefore,

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the petitioner preferred Contempt Petition No.181/2020 as *interim* order of this court was not obeyed. In the meantime, the writ petition was disposed of and respondent No.3 was directed to take a decision afresh and the parties were directed to appear before respondent No.3 on 25.4.2022.

6. The petitioner, thereafter, gave an application to the Education Officer on 22.4.2022 and brought to the notice of the Education Officer the directions given by this court along with operative part of the judgment. The respondent No.3 vide letter dated 2.5.2022 called upon the Management, Shri R.K.Khobragade, the petitioner, respondent No.7 Ku.Harsha Bothley, Ku.K.D.Nandurkar, and the headmaster for hearing on 4.5.2022. The grievance of the petitioner was only with reference to respondent No.7 Ku.Harsha Bothley. However, the Education Officer called other employees also. The matter was heard on 4.5.2022 and nothing was communicated by respondent No.3. Thereafter, the petitioner preferred an application before respondent No.3 making out grievance that he had not received copy of the decision. On receipt of the said letter, respondent No.3 attempted to send copy of order dated 5.5.2022 on WhatsApp. The petitioner

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immediately gave an application and the copy of order dated 5.5.2022 was served upon the petitioner on 8.6.2022. Again, the petitioner was declared as surplus and, therefore, the petitioner has challenged the said order by preferring this writ petition.

7. As per contentions of the petitioner, the Education Officer has not considered the seniority list as well as failed to consider provisions under Rule 26 of the MEPS Rules as well as Government Resolution dated 28.8.2015 and reiterated earlier order dated 19.3.2019. The petitioner contended that the entire conduct of the Education Officer is suspicious and he has not passed the order on the basis of record, but only to favour respondent No.7 Ku.Harsha Bothley. Thus, the petitioner preferred this petition for quashing and setting aside order dated 5.5.2022 and also for direction to the respondents to pay his salary as per his entitlement.

8. The petition is opposed by respondent No.4 on the ground that the petitioner has failed to make out any grievances against answering respondent and prays for dismissal of the petition.

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9. The response filed by respondent No.7 Ku.Harsha Bothley shows that the grievance of the petitioner that he is the only teacher teaching subject of Mathematics and not to be declared as surplus is erroneous. It is clear from the facts that employee by name Shri R.K.Khobragade, who is science teacher, can also teach subject of Mathematics and belongs to Scheduled Caste and, therefore, he cannot be declared surplus. She is a junior most teacher teaching subject of English and there is no other teacher to teach subject English. She belongs to O.B.C. Category. In view of that, the order passed by the Education Officer is legal and proper one and the writ petition is liable to be dismissed.

10. As per respondent No.3, the claim of the petitioner is based upon hypothesis and misconception. As per Government Resolution dated 28.8.2015, which contemplates that for existing school comprising Standards IX and X, if strength of students is above 40, 3 teachers are permissible i.e. one post for language, one post for science and Mathematics and one post for Social Science. Shri Khorbagade was appointed as Science Teacher and, therefore,

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the petitioner is declared as surplus and, therefore, the writ petition deserves to be dismissed.

11. Learned counsel for the petitioner, invited our attention to order passed by this court on 19.6.2023 and submitted that by taking cognizance of the entire episode, this court has directed the Deputy Director of Education, Nagpur Division, Nagpur to conduct an enquiry to consider who is senior and who is to be declared as surplus. The Deputy Director of Education has also not conducted the enquiry impartially, and, therefore, this court by order dated 25.8.2023 directed the Deputy Director of Education at Amravati to conduct the enquiry. In view of the said order, the Deputy Director of Education at Amravati conducted the enquiry by giving an opportunity to all the concerned and concluded that the petitioner is senior to respondent No.7 Ku.Harsha Bothley and respondent No.7 Ku.Harsha Bothley requires to be declared as surplus. Learned counsel for the petitioner submitted that in view of the report of the Deputy Director of Education at Amravati, the order passed by respondent No.3 deserves to be quashed and set aside and the salary requires to be released in favour of the petitioner.

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12. Learned counsel for respondent Nos.5 and 6 submitted that by issuing a communication they requested to declare Ku.K.D.Nandurkar as surplus teacher. The Management never proposed to declare the petitioner as surplus and, therefore, Zilla Parishad, Chandrapur is liable to pay the salary.

13. Learned Assistant Government Pleader for respondent Nos.1 to 4 submitted that in view of the enquiry report, respondent No.7 Ku.Harsha Bothley is now required to be declared surplus. He further submitted that as far as issue regarding release of salary is concerned, respondent No.6/school is admitted on 40% grant. In view of that, respondent Nos.3 and 5 should jointly pay the salary.

14. Learned counsel for respondent No.7 Ku.Harsha Bothley submitted that respondent No.7 Ku.Harsha Bothley is intending to challenge the said order and, therefore, the petitioner is not entitled for any relief.

15. Having heard learned counsel appearing for the respective parties at length and perused the entire record available, there is no dispute that the petitioner was appointed

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as Assistant Teacher on 26.6.2010 for teaching subjects Mathematics, Physics, and Chemistry. Whereas, respondent No.7 Ku.Harsha Bothley was appointed on 12.7.2014, which was subsequently to the petitioner. As per the seniority list, produced along with the earlier petition, the petitioner was senior to respondent No.7 Ku.Harsha Bothley. The Management proposed to declare Ku.K.D.Nandurkar, who was senior to the petitioner, as well as Ku.Harsha Bothley as surplus. On her raising objection, the petitioner as well as Ku.K.D.Nandurkar were called for hearing and the Education Officer issued an order declaring the petitioner surplus. The said order was challenged by the petitioner by preferring Writ Petition No.4077/2019. This court, observed Rule 26 of the MEPS Rules, which is in respect of retrenchment on account of abolition of post. Sub rule (1) of Rule 26 speaks about the grounds on which a permanent employee may be retrenched from services by the Management after giving him/her three months' notice. In view of the principle of seniority, which requires to be observed, the order passed by the Education Officer dated 19.3.2019 was quashed and set aside. While allowing the petition, this court directed the Education Officer

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to take a decision afresh as to who should be declared to be surplus from amongst teachers working on the establishment of respondent Nos.5 and 6 keeping in view the Rules of seniority as prescribed under Rule 26(2)(1) of the MEPS Rules and directed to take decision within a period of two weeks. This court further directed to pay the unpaid salary with admissible arrears of salary within a period of four weeks from the date of the decision of respondent No.3.

16. In view of the said order, the petitioner again approached the Education Officer. The Education Officer has again declared the petitioner surplus by passing order dated 5.5.2022. The Education Officer assigned the reason that GR dated 28.8.2015 envisages three teachers; one for language, one for science/mathematics and one for social science. The Education Officer reasoned that since the senior most teacher Shri Khobragade is the science teacher, if the petitioner, who is teaching mathematics is retained, such retention shall be in breach of the said Government Resolution.

17. Learned counsel for the petitioner submitted that in view of the provisions of the Maharashtra Secondary and

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Higher Secondary Education Boards Regulations, 1977, particularly conditions of Recognition and Regulation 28(12) (iv)(c)(ii), one of conditions is that trained teachers, possessing degree or any other equivalent qualification in the subject which they teach, should be provided for the secondary school standards. Learned counsel further submitted that science teacher Shri Khobragade has not obtained qualification for subject Mathematics after 12th and if subject Mathematics is assigned to Shri Khobragade, condition of recognition may be breached. Admittedly, respondent No.7 Ku.Harsha Bothley is junior to Ku.K.D.Nandurkar, who is teaching subjects Social Science and Marathi and, therefore, retention of respondent No.7 Ku.Harsha Bothley would be contrary to the Government Resolution since there would be two teachers teaching languages.

18. Considering the submissions made by learned counsel for the petitioner, this court by order dated 19.6.2023 observed that the Deputy Director of Education shall look into the matter and directed to conduct an enquiry. The Deputy Director of Education, Nagpur was directed to conduct the enquiry and parties were directed to appear before him on

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1.7.2023. Despite the said directions, the Deputy Director of Education conducted the enquiry on 30.6.2023, though the parties were directed to appear on 1.7.2023. The enquiry was conducted on 30.6.2023 in absence of the petitioner and respondent No.5 only by hearing respondent No.7. The petitioner has brought this fact to the notice of this court and, therefore, by observing the conduct of the Deputy Director of Education, Nagpur is not justified one directed the Deputy Director of Education at Amravati to conduct the enquiry.

19. Pursuant to the order passed by this court, the Deputy Director of Education at Amravati has conducted the enquiry after hearing the petitioner, respondent No.7 and respondent Nos.5 and 6. The Education Officer, Chandrapur remained absent. The Deputy Director of Education, Amravati had considered the entire record and observed that Shri Khobragade, who is teaching subject Science, is unable to teach subject Mathematics as he has not given any option of Mathematics, the appointment of respondent No.7 Ku.Harsha Bothley is subsequent in time, in view of Rule 26(2)(1) of the MEPS Rule, the petitioner, who was appointed prior to respondent No.7 Ku.Harsha Bothley, cannot be declared as

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surplus and it is respondent No.7 Ku.Harsha Bothley who is to be declared surplus. It is further observed by the Deputy Director of Education that though there was no sufficient work load, respondent No.7 Ku.Harsha Bothley was appointed and, therefore, she is to be declared as surplus.

20. We have perused Government Resolution dated 28.8.2015. Clause 2.3.2 and Clause 3 of the said Resolution are relevant and the same are reproduced for reference, as under:

२.३.२. सध्या अस्तित्वात असलेल्या शाळांमध्ये इयत्ता ९ वी व १० वी चे दोनही वर्ग मिळून ४० पेक्षा अधिक विद्यार्थी असल्यास ३(१ भाषा, १ विज्ञान/गणित, १ समाजशास्त्र) शिक्षक अनुज्ञेय राहतील.

३. उपरोक्त प्रमाणे विद्यार्थ्यांच्या संख्येनुसार शिक्षकांची संख्या मंजूर करताना शिक्षक अतिरिक्त ठरण्याची शक्यता आहे. अशा शिक्षकांना अतिरिक्त ठरविताना संबंधित शाळेमध्ये प्रत्येक विषयाचे शिक्षक उपलब्ध राहतील आणि आरक्षण धोरणांची काटेकोरपणे अंमलबजावणी करण्यात येईल याची दक्षता घ्यावी. तसेच शिक्षकांच्या समायोजनाबाबत महाराष्ट्र खाजगी शाळा कर्मचारी (सेवेच्या शर्ती) नियमावली, १९८१ मध्ये तरतूदी आणि त्यानुषंगाने निर्गमित करण्यात आलेले प्रचलित निकष कायम राहतील.

21. The Education Officer's order retaining respondent No.7 Ku.Harsha Bothley is contrary to the Government Resolution since there would be two teachers for teaching

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languages. Thus, the observation of the Education Officer retaining respondent No.7 Ku.Harsha Bothley on the basis of the Government Resolution is misconceived and, therefore, the Deputy Director of Education at Amravati in his report had considered Rule 26(2)(1) of the MEPS Rules and held that respondent No.7 Ku.Harsha Bothley is to be declared as surplus.

22. In view of the said report of the Deputy Director of Education at Amravati, the petition deserves to be allowed by quashing order dated 5.5.2022 passed by respondent No.3 - Education Officer (Secondary), Zilla Parishad, Chandrapur. In the result, we proceed to pass following order:

ORDER

1. The writ petition is **allowed**.
2. The impugned order dated 5.5.2022 passed by respondent No.3 - Education Officer (Secondary), Zilla Parishad, Chandrapur is quashed and set aside.
3. The petitioner is entitled to be retained in respondent No.6 school.

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4. The respondent Nos.3 and 5 shall pay unpaid salary together with admissible arrears of salary to the petitioner as per the statement showing the pay bill from 1.1.2019 to 31.12.2021, considering that respondent No.5 is admitted on 40% of grant-in-aid, within a period of four weeks from the date of decision of this writ petition.

Rule is made absolute in the above said terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(PRITHVIRAJ K.CHAVAN, J.)

!! BrWankhede !!