



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2852 OF 2024

**SHRUTIKA SHANTILAL DHUMAL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**AND
WRIT PETITION NO. 5472 OF 2024**

**LAHU RAMRAO TANDALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Mr. D. K. Rajput, Mr. J. A. Menezes, Advocates for Petitioners in
respective Petition

Mr. S. J. Salgare, AGP for Respondent – State

Mr. P. B. Vikhe, Advocate for Respondent Nos. 2 to 5 in
WP/2852/24

Mr. V. P. Narwade, Advocate for Zilla Parishad, Jalna

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 12.06.2024

PER COURT :-

1. The Petitioners in both these Petitions are identically
placed. The Zilla Parishads are of Parbhani and Jalna.

2. In our order dated 15.03.2024 passed in Writ Petition
No.2896 of 2024 (Sharad Gangadhar Hudge and others Vs. the

State of Maharashtra and others), we had considered the effect of the Government Resolution dated 18.05.2011 and had observed in paragraph Nos. 1 to 4 as under:-

“1. We have referred to the Government Resolution dated 18/05/2011, wherein the State Government has mandated to the Zilla Parishads to ensure and confirm the strength of the students (Adhar Card verified) till 30th September of that academic year and based on the same, the staffing pattern shall be declared by 30th November of each year. Thereafter, the list of surplus teachers is to be formalized.

2. In this case, what has happened is that, the Education Officer of Respondent/Zilla Parishad, who was supposed to carry out the Adhar Cards verification of the students admitted, by considering the cut-off date 30th July, upto 30th September, has not completed this exercise. This has had a cascading effect. This list of the Adhar Card verified students has been sent to the Director of Education, Pune in December 2023, and no decision is still taken for almost 75 days. The staffing pattern should have been formalized immediately by 30th November considering the cut-off date of admitting the students as being 31/07/2023, and the verification of the student's Adhar Link should have been completed by 30th September. It is based on these figures that the staffing pattern is to be formalized and then the Department has to decide whether a teacher would become surplus.

3. The learned Advocate for the Respondent/Zilla Parishad submits on instructions that, until Respondent No.3/Director of Education, Pune completes the exercise of formalizing the staffing pattern, further steps of declaring any teacher surplus, shall not be initiated.

4. This was a fit case for referring the delay in discharge of duties by the Education Officer (Primary), Zilla Parishad and the Director of Education, Pune, to the appropriate Authorities for action under Section 10 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay In

Discharge of Official Duties Act, 2005 (for short, 'the 2005 Act'). The learned Advocate Shri. Bondar appearing for Respondent/Zilla Parishad and the learned A.G.P, have pleaded before us that this is a first instance pertaining to the Zilla Parishad, Latur, and henceforth, it would be ensured that, no such delay would occur any time in future, that we have decided to show sympathy and refrain from issuing orders under the 2005 Act."

3. Considering the facts in the case of Sharad (supra), we then issued directions in paragraph No.5, which read thus :-

"5. To put the whole issue in proper perspective, we direct the Principal Secretary, School Education and Sports Department, Mantralaya, Mumbai, to issue directives to all the Chief Executive Officers of all the Zilla Parishads in the State of Maharashtra and all Departments of Education, to ensure that the Adhar Card verifying scrutiny of the admitted students, considering the cut-off date of admission being 31st July of each year, should be completed at the School level on or before 30th September and Director of Education shall ensure that the staffing pattern is formalized by 30th November of each year in the light of the Government Resolution dated 18/05/2011."

4. In yet another case filed by Bhagwat Sudamrao Shinde and others Vs. the State of Maharashtra and others (Writ Petition No.2756 of 2024), we had passed an order on 12.03.2024, which reads thus:-

"1. Yesterday, when the matter was called out, we granted time to the learned Advocate representing Zilla Parishad, Parbhani to take instructions and posted the matter for hearing today."

2. *Issue notice to the respondents, returnable on 22nd March, 2024. The learned AGP waives service of notice on behalf of Respondent Nos. 1, 2 and 3. Learned Advocate Mr. Vikhe waives service of notice on behalf of Respondent Nos. 4 to 19.*

3. *The issue is as regards absorption of surplus teachers. All these Petitioners before us are now declared as surplus. All of them have been permanent in their service. All these Petitioners are working under Zilla Parishad, Parbhani as Primary Teachers and Primary Graduate Teachers in Purna, Palam, Gangakhed, Parbhani, Sonpeth and Selu Talukas in Parbhani District. Vide a letter dated 7th March, 2024, issued by the Chief Executive Officer, Zilla Parishad, Parbhani, addressed to the Block Development Officer of various Panchayat Samitis, considering the pupil teacher ratio as on 30th September, 2022, absorption of excess teachers is to be undertaken. The impugned letter dated 7th March, 2024, is posted on the official WhatsApp group created by the Education Department of Zilla Parishad on 8th March, 2024 in the night. 8th March, 2024 was a holiday on the occasion of 'Mahashivratri'. The Block Development Officer of Purna, Palam, Gangakhed, Parbhani, Sonpeth and Selu published the list of excess teachers on the WhatsApp group on 9th March, 2024 at 5.00 pm which was a second Saturday.*

4. *The grievance of the Petitioners is that after the impugned communication to the Block Development Officers dated 7th March, 2024 was published at 4.00 pm on 8th March, 2024, there was a direction issued that the procedure for declaring teachers surplus and their absorption was to be completed by 6.00 pm on 11th March, 2024. It is further stated that the surplus teachers will be subjected to district level absorption procedure on 12th March, 2024 at 10.00 am. Hence, the further grievance of the Petitioners is that they hardly got any opportunity to undergo the counselling sessions which began from 10.00 am on 11th March, 2024.*

5. *We, prima facie, find that the Zilla Parishad has acted in a very hasty manner. The Taluka level counselling has already taken place. The documents were uploaded on holidays i.e. Mahashivratri – Friday 8th March, 2023 and second Saturday - 9th March, 2023. There was hardly any time for the Petitioners and it is possible that there could be many such/similarly situated candidates who did not get time to express their objections and undergo counselling.*

6. *In the matters of declaring a candidate surplus, one cannot overlook the agonies that would be suffered by permanent teachers who are declared to be surplus. Their agonies and hardships do not end here. After being declared surplus, they have to suffer loss of actual work for quite some time and there have been instances before us in various petitions where candidates have been sitting idle for a period ranging from three years to ten years. In such matters, the Zilla Parishad should tread cautiously and instead of adopting a pedantic approach, it must exhibit pragmatism.*

7. *At this ad-interim stage, we need to balance the equities. Hence, we direct that these Petitioners and similarly situated persons who may not have got an opportunity to express their objections, should be permitted by the Zilla Parishad through its respective officers, to tender their objections in pursuance to the communication dated 7th March, 2024 on 12th March, 2024 until 15th March, 2024 upto 6.00 pm. Thereafter, the counselling for such candidates under Court orders would commence on 18th March, 2024 and would end on 20th March, 2024.*

8. *We are informed that the Zilla Parishad and the Block Development Officers have officially created a WhatsApp group of such teachers. Besides publishing this time table under our orders, the same would also be posted on the official WhatsApp*

group. We further direct that no transfer order shall be issued until the next date of hearing. If any candidate has been issued with any appointment or transfer order, such candidate shall not join until the next date.

9. List this Petition on 22nd March, 2024 in the 'urgent order' category. Considering the apprehension expressed by the learned Advocate for the Zilla Parishad, we record that if the Code of Conduct is imposed on account of the expected Lok Sabha elections, the same would not be an impediment in such matters."

5. The learned Advocates appearing on behalf of both the Zilla Parishads submit on instructions that the Petitioners are being declared surplus and the order of absorption of surplus teachers is being passed on the basis of the Aadhar verified admitted students as on 31.07.2022 and not 31.07.2023. The mandate of the Government Resolution dated 18.05.2011 has been considered in our above reproduced orders, which would mandate the Zilla Parishads to ensure that the staffing pattern has to be declared prior to 30th November of each year taking into account the Aadhar verified admitted students as on 31st July of each year and such verification has to be completed till 30th September of that year.

6. As such, the impugned action can be faulted on the ground that the petitioners are being declared as surplus teachers in

2024, on the basis of the Aadhar admitted students on 31.07.2022 and not 31.07.2023.

7. In view of the above, **both these Writ Petitions are partly allowed.** Both the Zilla Parishads are directed to complete the verification of the Aadhar verified students as on 31.07.2023 and thereafter formalize the staffing pattern, within a period of 30 days from today. Needless to state, no orders of declaring teachers surplus on the basis of the Staffing pattern of 2022, would be passed until the above exercise is complete.

8. Considering the directions set out in paragraph 5 of the order dated 15.03.2024, we call upon the Principal Secretary, School Education and Sports Department, Mantralaya, Mumbai, to submit a compliance report before us, on or before 15.07.2024.

9. The learned Registrar (Judicial) of this Court shall place a copy of this order before the Principal Secretary, School Education and Sports Department, urgently.

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]