

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8696 OF 2021

Mohan Pramod Rathod And Anr

...Petitioners

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. Narendra Bandiwadekar, Senior Advocate a/w Mr. Vinayak Kumbhar, Mr. Rajendra Khaire, Mr. Aniket Phapale i/b Ashwini Bandiwadekar for the Petitioners.

Mr. S.B. Kalel, AGP for Respondent/State.

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**CORAM : NITIN JAMDAR AND
M.M. SATHAYE, JJ.**

DATE : 22 AUGUST 2024

P.C. :

. Heard learned counsel for the parties.

2. By the impugned order dated 13 October 2021 the proposal submitted by Petitioner No.2-Management in respect of the Petitioner No.1 Assistant Teacher to be transferred from unaided to aided division within the Institution, was rejected. The ground of rejection was that Petitioner No.1 had not completed 5 years of service on unaided post when the transfer was effected.

3. When the petition came up on board on 23 September 2022,

the Division Bench specifically directed the learned AGP to ascertain whether at the relevant time or today surplus candidates are available. No reply was filed for almost two years. Then on 4 July 2024, the following order came to be passed.

*“ In spite of taking time since September 2022, no instructions are given to the office of the Government Pleader as per the order dated 23 September 2022. The Respondent No.2 – Deputy Director of Education will give necessary instructions to file affidavit to the office of the Government Pleader as per the order before the next date.
2. Stand over to 2 August 2024.”*

4. Thereafter, reply is filed on 1 August 2024. Various grounds are taken in the reply. However, question specified in the order dated 23 September 2022 has not been addressed. The learned AGP states that order dated 23 September 2022 was specifically brought to the notice of Respondent No.2 Mr. Mahesh Chothe, the Deputy Director of Education, however, no instructions have been given and therefore, reply had to be filed as it is. When the transfer was effected, the Petitioner was 9 months short of 5 years of services on unaided post. Such a proposal ought not have been submitted in the first place. However, the reason why the Division Bench by order dated 23 September 2022 called upon to take instructions regarding surplus candidates was because by that time, the Petitioner had completed 5 years of service on the unaided post and there was no impediment to consider the proposal.

5. In spite of the opportunity given and specifically so informing

by the office of the Government Pleader, the Deponent-Deputy Director of Education has avoided to place on record the factum of surplus teachers. Therefore, we have no option but to proceed on the basis that there are no surplus teachers. If the position is found to be contrary, it shall be solely the responsibility of the Deponent Mr. Mahesh Chothe, Deputy Director of Education.

6. Accordingly, Petitioner No.2 will submit a proposal relating to the date on which Petitioner No.1 had completed 5 years on the unaided post within a period of 2 weeks. Thereafter, Respondent No.2/Competent Authority as the case may be will decide the proposal on its own merits, within a period of 8 weeks and communicate the decision, subject to earlier time bound directions.

7. Writ Petition is disposed of in above terms.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)