



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

WRIT PETITION NO.110 OF 2023

Pankaj Moreshwar Kinekar, aged 39
years, Occ : Service, R/o Plot No.7,
Waghapur Road, Behind Udyog Bhawan,
Paras Nagar, Yavatmal, Tah. & Dist.
Yavatmal.

... PETITIONER

VERSUS

1. The State of Maharashtra, through
its Secretary, Department, of School
Education, Mantralaya, Mumbai- 32.
2. The Director of Education,
Maharashtra State, Pune - 30
3. The Deputy Director of Education,
Amravati Division, Amravati.
4. Zilla Parishad, Yavatmal, through its
Chief Executive Officer, Tq. And Dist.
Yavatmal.

... RESPONDENTS.

Shri S.S. Shingane, Advocate for the petitioner.
Shri Thakare, Assistant Government Pleader for the State.

CORAM : VINAY JOSHI AND SMT. M.S. JAWALKAR, JJ.
DATED : 28.06.2024.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **RULE.** Rule is made returnable forthwith.

2. The matter is taken up for final disposal by consent of the parties.

3. The petitioner has been appointed as a Primary Teacher at District Education and Training Centre, Yavatmal running under the Government Practical School, Yavatmal. The Government has taken a decision to close the Practice School that is why the petitioner was absorbed on the same post in Zilla Parishad School, Yavatmal. The petitioner has challenged his absorption on two counts, that said absorption is not permissible in terms of Section 242 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (hereinafter referred to as “the Act”) and secondly, despite existence of vacancies in other government school at Amravati and Yavatmal, the petitioners’ urge for absorption has not been considered. Learned Counsel appearing for the petitioner has pointed out two instances, where similarly situated primary teachers have been absorbed elsewhere even on the higher posts.

4. The State has resisted this petition by contending that the

petitioner being D.Ed., he was appointed as a Primary Teacher with the Practice School. Since number of D.Ed. Schools are available, it was decided to close down the Practice Schools. The Government has taken a decision vide Government Resolution No.2020/Pra.kra.52/Prasha-5 dated 15.09.2020 to absorb these teachers elsewhere. The clarification has been issued on 04.05.2022 indicating that these teachers can be absorbed in the School run by the local body i.e.Zilla Parishad. In accordance with that the petitioner has been absorbed and now, he has already joined and serving in the Zilla Parishad School.

5. The petitioners' first challenge is that the clarification issued by the Government permitting absorption is against the provisions of Section 242 of the Act. Besides that the petitioner has prepared a Chart showing that there were vacancies in the Government School. The State has taken stand that the petitioner was working in the pay-scale of primary teacher and thus, absorption in the same cadre and pay-scale is necessary. The Government has categorically stated that there is no vacancy available in the Government School on the same pay-scale and in same cadre. In order to protect the services of the petitioner, he has been absorbed in Zilla Parishad School. It has been brought to the notice that the petitioner was at the pay-scale of Rs.5200-20200/- whilst in other Government School, pay-scale is

Rs.9300-34800/-. Unless the pay-scale is same, he cannot be absorbed in other School and according to the State, there are no such a vacancies.

6. In the circumstance, the decision taken by the State for absorption of the petitioner cannot be faulted with. Moreover, merely because the petitioner has acquired the higher qualification, he cannot claim his absorption in Government School. Clarification is based on public policy for the betterment and to protect the interest of primary teachers.

7. In view of that, we are not inclined to entertain the petition, hence the same is dismissed.

8. The respondents are at liberty to decide the petitioners' representations dated 27.04.2016 and 20.07.2016 within a period of six months from today, if occasion arises so.

9. As regards to arrears of salary, the said aspect is kept open.

(SMT. M.S. JAWALKAR, J.)

(VINAY JOSHI, J.)

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