



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.579/2024

(Ku. Swati Rajesh Khadse Vs. The Education Officer (Primary), Zilla Parishad, Nagpur and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.Z. Jibhkate, Advocate for the petitioner.
Mr. Sheikh Majid, Advocate for respondent No.1.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.

DATED: 5.12.2024.

Heard Mr. Jibhkate, learned Advocate for the petitioner.

2. The prayer in the petition is for quashing the impugned order dated 12.1.2024 and a part of the decision dated 11.1.2024 to the extent of rejection of the claim of petitioner.

3. Mr. Jibhkate by drawing support from the provisions of rule 26(2)(i) and rule 27(e) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "Rules of 1981") would try to canvass that the petitioner's services cannot be declared to be surplus as she belongs to reserved category. According to him, not only principle of seniority is required to be observed but also the percentage of reservation has to be considered from the date of entry in the service and not from the date of order of retrenchment or on such date when the excess staff would be assessed.

4. We have considered the said submission in the light of the provisions of rule 26(2)(i) and rule 27(e) of the Rules of 1981.

5. It appears that the petitioner is declared surplus having regard to the fact that she was appointed from a reserved category. Already there exists two Teachers who are senior to the petitioner and were

appointed from the very same category. As a sequel of continuation of the petitioner from the reserved category, the fact remains that the percentage of reserved category prescribed for that category in the case in hand exceeds.

6. Rule 26(2)(i) in general directs the principle of seniority to be observed, however, such rule does not appear to be mandatory particularly having regard to the nature of employment. Apart from above, the respondents have declared petitioner as surplus having noted that reservation in the institution in which the petitioner was working, was exceeding the prescribed limit.

7. That being so, there is no substance in the petition. It is accordingly dismissed.

(MRS.VRUSHALI V.JOSHI, J.)

(NITIN W. SAMBRE, J.)