



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

WRIT PETITION NO. 4488 OF 2024

Prashant s/o. Pandurang Hingne,
Age 44 years, Occu. Service as Primary Teacher,
R/o. Behind Hotel Prasad, Sai Vihar Colony,
Sangamner, Tq. Sangamner, Dist.Ahmednagar .. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary
School Education Department
Mantralaya, Mumbai - 32
2. The Principal Secretary,
Rural Development and Panchayat Raj
Department, Mantralaya, Mumbai - 400 032
3. The Education Officer (Primary),
Zilla Parishad, Ahmednagar,
Taluka and District Ahmednagar
4. The Secretary,
Navin Marathi Shala Mandal, Sangamner,
Tq. Sangamner, District Ahmednagar
5. The Head Master,
Navin Marathi Shala, Sutar Galli,
Sangamner, Taluka Sangamner,
District Ahmednagar .. Respondents

Mr. H. P. Jadhav, Advocate for Petitioner;

Mr. D. R. Korade, A.G.P. for Respondents No.1 and 2;

Mr. S. B. Pulkundwar, Advocate for Respondent No.3;

Mr. S. T. Shelke, Advocate for Respondent No.4

**CORAM : S. G. MEHARE &
SHAILESH P. BRAHME, JJ.**

RESERVED ON : 15-01-2025

PRONOUNCED ON : 03-02-2025

JUDGMENT (PER : S. G. MEHARE, J.) :-

1. Rule. Rule made returnable forthwith. Heard finally, with consent of both parties.
2. The petitioner has impugned communications dated 06.11.2023 and 20.03.2024 of respondent No.3 / the Education Officer (Primary), Zilla Parishad, Ahmednagar, declaring the petitioner surplus and not granting benefits and protection as per the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, "**the Act**") and Government Resolution dated 28.08.2012.
3. In nut-shell, the petitioner was declared surplus teacher and he was posted to Padmarasik Shaha Vidya Mandir, Sangamner, as per roster. However, that school did not allow him to join. Hence, an action was proposed against that school. Thereafter, the petitioner was granted an opportunity to select the School. Respondent No.3 had no option but to absorb him to the school from the available vacant post. Therefore, respondent No.2 vide order dated 20.02.2024 directed the petitioner to join in Dada Waman Joshi Navin Marathi School, Shrirampur.

4. It is the contention of respondent No.3 that the petitioner did not join and remained absent unauthorizedly from duties. He was not following the orders of superior authorities. It is also the contention of respondent No.3 that the employee is not complying with the order of the respondent-authority. As per the Government Resolution dated 04.10.2017, such surplus teacher is not entitled for salary and wages. It is also the case of respondent No.3 that Government Resolution dated 04.10.2017 is applicable. Government Resolution dated 28.08.2012, relied upon by the petitioner was issued by respondent No. 2. Hence, it is not applicable.

5. It is not disputed that the petitioner was physically handicapped. The case revolves around the ground that the petitioner being handicapped, has been protected under the Act and Government Resolution dated 28.08.2012 and the Act.

6. The learned counsel for the petitioner has vehemently argued that the scheme of declaration of any employee surplus, do not applicable to physically handicapped person. Therefore, the Government Resolution dated 28.08.2012 is squarely applicable, but not the Government Resolution dated 04.10.2017. The said resolution is about absorbing excess teachers from private aided school to local Government School and vice-versa. The Government Resolution dated 28.08.2012 is specific, in which

the said Act has been considered. It has been decided that the employees who are physically handicapped having valid certificate, they should be eliminated from absorption process under the said Act and some immunities have been given to such employees.

7. He further argued that declaring the petitioner surplus by communication dated 06.11.2023 and rejecting his objection by impugned communication dated 20.03.2024, is in violation of the provisions of the Act. Government Resolution dated 28.08.2012 has not been correctly interpreted. The authorities misconstrued Government Resolution dated 04.10.2017. Hence, incorrectly applied it to the petitioner. The petitioner being physically handicapped, has been protected under the Act. General guidelines have been issued ignoring protection to the handicapped teachers. The principle of natural justice has also not been considered. By way of the impugned communications, the object of the Act has been frustrated. Hence, the petition deserves to be allowed.

8. *Per contra*, Mr. Pulkundwar, learned counsel for respondent No.3 submits that there was no special consideration for the handicapped teachers declared surplus. They were covered under the same law. Thereafter, the petitioner was a private employee. The Government Resolution dated 28.08.2012 does not cover the

teachers of private schools since the Government was overburdened with the salaries of the surplus teachers without services. Thereafter, the Government took a decision suited to the circumstances and issued Government Resolution dated 04.10.2017. The said Government resolution was squarely applicable to the petitioner. The first school where he was directed to be absorbed, refused to join him. The action was initiated against that school. However, the petitioner was immediately absorbed in the nearest school, the petitioner did not join. There was no protection to the petitioner being handicapped about surplus and absorption. He also submits that none of the provisions of the Act have been violated. There is no illegality in the impugned communications. Hence, the petition deserves to be dismissed.

9. Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 and Rules, 1981 (for short, "**Rules**") deals with retrenchment on account of abolition of posts. This provision would apply to the employees of the private schools. Sub-rule (3) thereof provides, in case any employee refuses to accept the alternative employment offered to him under clause (iii) of sub-rule (2), he shall lose his claim for absorption, and the Management of the school shall be allowed to retrench such employee from the services after completion of 3 months' notice. Sub-rule (4) thereof speaks that if the posts retrenched are

revived or additional posts for the same subject are created, the Management shall, by a registered post acknowledgment due letter addressed to the employee who is retrenched and absorbed in other school, give him the first opportunity of rejoining services in the school. Sub-rule (5) provides, the employee retrenched if absorbed in another school, has an option either to get repatriated to his original school or to continue in the school in which he has been absorbed.

10. Rule 27 thereof speaks of the principles of termination of service in the event of retrenchment. Clause (e) of Rule 27 immune the protection to the employees of backward classes already in service from retrenchment. However, the Rules are silent about any such immunities to handicapped persons. In some circumstances of the Surplus process, the employees are not retrenched. Hence, it is essential to absorb such employees in another school as they should not lose their bread and butter. Since absorption in another school was not suitable to the employees and their salaries were continued, they did not join the posts where they were absorbed. Therefore, the Government has set out the policy of transferring the teachers from the private schools and the local Government schools till the posts are again created in their original schools. In this resolution dated 04.10.2017, also no specific immunities to the physically handicapped persons.

11. The object of the Act was to eliminate the discrimination against the persons with disabilities. They were granted equality of opportunity, accessibility, equality between men and women. They are equal inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons, was also to be protected. The very title of the Act speaks of the equal opportunities, protection of rights and full participation. The discrimination on physical disability was eliminated by the Act. All barriers in the society in common field were also taken away. All restrictions and distinctions in relation to disability were also eliminated. However, the Act does not speak of any special concession in case of retrenchment or surplus.

12. Nowhere, it is the case that the petitioner having disability, has been discriminated in applying the Government policies on surplus. The Government also took care that such persons if transferred, should be transferred to the nearest place of their residence, subject to availability of the posts. Hence, we are not in agreement with the arguments of the learned counsel for the petitioner that the provisions of the Act have not been followed and he has been discriminated, being disabled.

13. As far as the facts of the case are concerned, initially the petitioner was accommodated in the same town. However, the school where he was directed to be absorbed, did not allow him to

join and as per his option, he was given another posting where he could be accommodated. An absorption is not a mechanical process. The various moderates are to be considered. The various factors like availability of the posts equal in rank and subject, are to be borne in mind. There is nothing on record that any discrimination, as such, was done with the petitioner. On the contrary, a care has been taken immediately. The petitioner was posted to the nearer school. The petition is completely silent, whether he joined the said school or not.

14. As far as the Government Resolution dated 28.08.2012 is concerned, it was about primary teachers of Zilla Parishads. The petitioner was not the employee of Zilla Parishad. Hence, it would not be helpful to the petitioner.

15. After having gone through the record with the able assistance of the respective learned counsels, we do not find any illegality and arbitrariness in the impugned communications.

16. In view of the above, the writ petition stands dismissed.

17. Rule stands discharged.

[SHAILESH P. BRAHME]
JUDGE

[S. G. MEHARE]
JUDGE