

FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAYAPPELLATE SIDE, BENCH AT AURANGABADWRIT PETITION NO. 6435 OF 2011(Vijay Bhaurao Jadhav vs. The State of Maha.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and the Registrar's orders.	<p>Court's or Judge's orders</p> <p>Coram: A.S. Oka, and</p> <p>Sunil P. Deshmukh, JJ.</p> <p>Date: 30.04.2012</p>

Shri Ramesh T. Rathod Advocate for the Petitioner.

Shri N.B. Patil, A.G.P. for the Respondent No.1 and 2.

Shri S.S. Panhale, Adv. for Respondent No. 3 and 4.

1. Heard learned Counsel appearing for the petitioner, learned A.G.P. for 1st and 2nd Respondents and learned Counsel appearing for the 3rd and 4th Respondents.

2. According to the case of the petitioner, in the year 1973, he was appointed as Assistant Teacher in Saras Vidyalaya (English medium) Mandvi, Taluka Kinvat, District Nanded. It is a school which is not receiving grant-in-aid. At

the relevant time, qualification of the petitioner was only H.S.C. Case of the petitioner is that in July 1997 he completed C.T.C. and became qualified as Trained Teacher. According to the petitioner, assurance was given to him that he will be absorbed in Marathi Medium School of the same Institute, which is receiving grant-in-aid. It is pointed out that the petitioner made representations not only to the management, but also to the 2nd Respondent seeking directions for transferring him to the Marathi Medium school, receiving grant-in-aid. The first prayer in the petition is for direction to the 3rd Respondent to consider petitioner's representation for appointing him on a vacant available post in Saras Vidyalaya (Marathi Medium).

3. We have perused the affidavit in reply filed by the Education Officer (Secondary) Zilla Parishad, Nanded. In paragraph 6 of the affidavit, it is stated that there is a vacant post in Saras Vidyalaya (Marathi Medium) and that the petitioner is the seniormost teacher in English Medium school. In paragraph 7, it is pointed out that the 2nd Respondent had directed the management to appoint one

Yadhav Mohansing Rathod on the vacant post of Physical Education Teacher in Saras Vidyalaya (Marathi Medium). However, the said direction was not followed and, therefore, said Yadav Mohansing Rathod had filed writ petition in this court, being writ petition No. 6192 of 2011.

4. In paragraphs 8 and 9 of the affidavit, the 2nd Respondent has stated thus:

"8. It is submitted that the service conditions of the teaching and non-teaching staff are slight differ than the service conditions in an unaided schools. The salaries of the teaching and non-teaching staff working in aided school are directly deposited in their bank accounts, in order to avoid exploitation. The staff of the aided school is only entitled for pensionary benefits and also the advantage of absorption in case of he becomes surplus. All these things are not getting the teaching and non-teaching staff of un-aided schools.

9. It is pertinent to note here that the respondent management is bound to consider the representation of the petitioner in the light of the provisions of MEPS Act 1977 and rules framed there under as well as the Government Resolution Circular dated 08.11.1994, and transfer him in the aided school of the management. It is

submitted that the management can not compel to the teaching and non-teaching staff to work in the non-aided school permanently, although there is a vacant post in the aided school, when the management running two schools and one is aided and another is non-aided."

5. Thus, from the stand of the 2nd Respondent, it is very clear that it will be for the management of the school to take a decision on the representation of the petitioner for transfer to Marathi Medium school receiving grant-in-aid. If the management takes a decision to post the petitioner in such school, the management will have to submit necessary proposal to the 2nd Respondent for grant of approval. As stated in the affidavit filed by the 2nd Respondent, at this stage, it is not necessary for the management to take consent of the 2nd Respondent for submitting proposal for appointment of the petitioner to Marathi Medium school, receiving grant-in-aid.

6. Hence, we dispose of the petition by passing following order.

(i) The 3rd Respondent-Management shall decide the representation of the petitioner seeking appointment

on available vacant post in Saras Vidyalyaya (Marathi Medium) in accordance with law within a period of three months from today.

(ii) The decision so taken on the representation of the petitioner shall be communicated to the petitioner within a period of one week from the date on which it is taken.

(iii) If the Management passes an order of transfer / appointment of the petitioner as prayed by him, it will be the Management who shall submit proposal for the approval to the concerned authority.

7. Writ petition is disposed of in aforesaid terms without making adjudication on entitlement of the petitioner.

(Sunil P. Deshmukh, J.)

(A.S. Oka, J.)