



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 5483 OF 2016

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| 1. Shri. Shivaji Education Society |) |
| At and post Bawda, Tal – Indapur, |) |
| District – Pune |) |
| 2. The Headmaster, |) |
| Shahajirao Patil Secondary School |) |
| Shahaji Nagar, Tal – Indapur, |) |
| District – Pune. |) |
| (Through their secretary) |) |
| | Petitioners |

Versus

- | | |
|--------------------------------------|-------------|
| 1. State of Maharashtra |) |
| (Notice to be served upon the |) |
| Assistant Government pleader |) |
| High Court, Appellante side |) |
| Mumbai) |) |
| 2. The Education Officer (Secondary) |) |
| Zilla Parishad, Pune. |) |
| 3. Shri Devidas Madhukar Mane |) |
| Age about 40 years. Occ – Service, |) |
| Residing at – At & Post Bhandgaon |) |
| Tal – Indapur, Dist – Pune. 413 103 |) |
| | Respondents |

Mr. Ajit J. Kenjale a/w Mr. Sai Rajendra Kadam, Mr. Azharuddin Khan, Advocates for the Petitioners.
 Mr. P. V. Nelson Rajan, AGP, for Respondent Nos.1 & 2 – State.
 Mr. Vishwanath S. Talkute i/b Mr. Sukumar R. Ghanavat, Advocates

Shantanu Dhudum
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for Respondent No.3.

CORAM : R. M. JOSHI, J.

DATE : 28th AUGUST, 2024.

P.C. :

1. By consent of both sides heard finally.
2. This petition takes exception to order dated 11/12/2014 passed in Appeal No.6 of 2013 by school Tribunal allowing the Appeal.
3. Petitioner No.1 is a Public Trust as well as a Society under the Bombay Public Trust Act, 1950 and the Societies Registration Act, 1860, running and managing number of schools and other educational institutions within the district Pune. Petitioner No.2 is the Headmaster of Shahajirao Patil Secondary School, Shahajinagar, Taluka - Indapur, District – Pune, which is recognized school by the State Government. It is however, recognized permanently on non grant-in-aid basis. The school has now started getting grant-in-aid partially in view of the change in policy of the Government. Respondent No.3 is the employee in services, who was terminated and he had challenged the said termination before the Tribunal.

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3. It is further case of the Petitioners that in the year 2004, Respondent No.3 was appointed as Assistant Teacher in contemplation of three divisions being sanctioned by the State Government for 5th to 7th standard. Respondent No.3 was appointed as Assistant Teacher, he being qualified as B.Sc., B.P.Ed. It is claimed by the Petitioners that at the time of the appointment of Respondent No.3, there were two other teachers having similar qualification and therefore, the Respondent No.3 according to the Petitioners could not have been regularized in service. It is claimed that proposal was sent for approval of the appointment of Respondent No.3 to Education Officer. Respondent No.3 was given approval by Education Officer when grant-in-aid was received by the school with six teacher being approved out of which 5 from 8th to 10th standard and one trained graduate from 5th to 7th standard. It is claimed that Respondent No.3 being appointed as 7th teacher rendered excess in the category of trained graduate teacher. It is claimed that the Petitioners after coming to know about the said position sought transfer in some other school subject to approval of Education Officer. The Petitioners claim that there upon Respondent No.3 was transferred in another grant-in-aid school where the post was vacant.

The said transfer, however, was not allowed by Education Officer on the ground that Respondent No.3 is B.P.Ed. by qualification and in the said school post is not available. It is claimed that consequential approval was refused by the Education Officer and Respondent No.3 was required to go back to his original post. It is further contention of the Petitioners that Respondent No.3 being rendered surplus in the school, was given notice of termination on account of surplus as well as not holding qualification B.P.Ed. and was not holding requisite qualification. This order was challenged by filing Appeal No.10 of 2012 before school Tribunal. School Tribunal allowed the Appeal and directed reinstatement of the Respondent No.3 in service with observations that the backwages and other benefits are not considered as the said issue is subjudice before the High Court in Writ Petition No.2959 of 2010.

4. Learned counsel for the Petitioners submits that the Respondent No.3 was not holding requisite qualification for the purpose of his original appointment as well as for confirmation in the service. It is his submissions that since the Respondent No.3 was rendered excess, the Petitioners have no other option but, to terminate his services for both reasons. According to him, the

Tribunal ought to have held that the appointment of Respondent No.3 is not valid for want of required educational qualification. In support of his submissions, learned counsel for the Petitioners relied on the case of *Charudatta Ramchandra Bagadi Vs. Secretary, Shetkari Shikshan Mandal*¹.

5. Learned counsel for the contesting Respondent No.3 supported the impugned judgment and order. In support of his submissions, he relied on the judgment in case of *Malanbai d/o Tukaram Satpute Vs. Deputy Director of Education, Aurangabad and Ors.*²

6. Perusal of record indicates that the order of termination of Respondent No.3 was passed for two reasons i.e. not holding requisite qualification as well as becoming surplus. Respondent No.3 had filed proceedings before this Court against the Petitioners. He was working as a Assistant Teacher since 2002 and has continuously worked in both aided as well as unaided school. The issue arises for consideration is as to whether the appointment of Respondent No.3 was on clear vacant and permanent post and whether he has become surplus.

1 [2023] 2 BomCR 406

2 [2002(5)Mh.L.J. 137]

7. According to the Petitioners, Respondent No.3 was given appointment on two occasions i.e. on 8th October, 2002 and 13th June, 2004. The second appointment was initially for the period of two years on probation. In this order, there is specific mention about the appointment being made on a vacant post from 14th June, 2004 and therefore, an approval was granted for the academic years 2004 and 2005. The documentary evidence on record therefore, suggests that Respondent No.3 was regular employee of Petitioner's School.

8. Now question arises as to whether it is permissible for Petitioner's school to terminate the services of Respondent No.3 on the ground that he has become surplus. As, Respondent No.3 was become surplus since 2009, the Petitioner had taken efforts to absorb any in another school on vacant post but the same could not be succeeded. Once it is a case of Petitioners that Respondent No.3 has become surplus, provision of Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 & Rules, 1981, Rule 26 would come in play. Rule 26 which reads thus:

² [26. Retrenchment on account of abolition of posts

- (1) A permanent employee may be retrenched from service by the Management after giving him 3 months' notice, on any of the following grounds, namely:

- (i) reduction of establishment owing to reduction in the number of classes or divisions;
 - (ii) fall in the number of pupils resulting in reduction of establishments;
 - (iii) change in the curriculum affecting the number of certain category of employee;
 - (iv) closure of a course of studies;
 - (v) any other *bona fide* reason of similar nature.
- (2) The retrenchment from services under sub-rule (1) shall be subject to the following conditions, namely :-
- (i) The principle of seniority shall ordinarily be observed;
 - (ii) Prior approval of the Education Officer in the case of Primary and Secondary Schools or, of the Deputy Director in the case of Higher Secondary Schools and Junior Colleges of Education shall be obtained by the Management in each case of retrenchment including such cases in which the principle of seniority as proposed to be departed from and a senior member of the staff is proposed to be retrenched when a junior member should have been retrenched, stating the special reasons therefor;
 - (iii) The employees from aided schools, whose services are proposed to be retrenched shall be absorbed by the Education Officer in the case of Primary and Secondary Schools or by the Deputy Director in the case of Higher Secondary Schools and Junior Colleges of Education. The order of absorption of such employees shall be issued by registered post acknowledgment due letter, and till they are absorbed, the Management shall not be permitted to effect retrenchment on account of any reasons mentioned in sub-rule (1).

- (3) 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 period.
- (4) 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 service in the school. For this purpose, the employees shall communicate to the Management, his address and availability for the job every year before April by a letter sent by registered post acknowledgment due.
- (5) The retrenched person who may have been absorbed in other school shall have an option either to get repatriated to his original school or to continue in school in which he has been absorbed.
- (6) If the employee opts to continue in the school in which he has been absorbed, or if no written reply is received from the employee within a fortnight from the date of receipt of the letter addressed to him by the Management regarding the offer for re-appointment or repatriation to the school or on refusal by him to receive the letter containing such offer, the Management shall be free to fill the post or posts by appointing some other qualified person or persons.
- (7) In the event of the employee opting to get repatriated to the original school, he shall be restored to his original position in pay, seniority etc.
- (8) In the event of the employee opting to continue in the school in which he has been absorbed, and even during the intervening period when he has not been given an opportunity to rejoin his previous school, his services shall not be terminated by the Management under sub-

rule (1) of rule 28 by treating him as temporary. If the services of such an absorbed employee are required to be terminated under rule 25A or he is to be retrenched under this rule, the procedure prescribed under rule 25A or, as the case may be in this rule shall apply. However, his seniority for the purpose of promotion in the school in which he is absorbed shall be fixed in the respective category from the date of his absorption.

- (9) In case, the fall in the number of pupils, classes or divisions affects the scale of the employee or his status, the facility of absorption admissible as per provisions of clause (iii) of sub-rule (2) shall not be admissible to him and he shall have to work on the lower scale or lower post or part-time post, as the case may be. In the event of such an employee showing unwillingness to work on such a post, the authorities mentioned in clause (iii) of sub-rule (2) shall permit the Management to retrench him after giving him three months' notice or, as the case may be, after completion of the notice period if already given.]

9. It is thus clear that for the purpose of retrenchment of a permanent employee, the management has to give three months notice on the ground of reduction in the number of classes and divisions resulting in reduction of the posts in the establishment. It also requires prior approval of Education Officer for the said purpose. It is thus clear that the employee, whose services are proposed to the retrenchment in case of Primary and Secondary School, the Society has to take a prior approval of Authority seeking permission to effect such retrenchment. Admittedly, here in this case,

there is no permission sought by the Petitioners from Education Officer in this regard. In such circumstances, the school Tribunal has held that for want of prior approval of Education Officer to retrench the Respondent No.3 the order of termination is illegal.

10. Having regard to the facts of the case, this Court does not wish to cause interference therein in exercise of writ jurisdiction under Article 227 of the Constitution of India for want of perversity in the order.

11. As a result of this, petition stands dismissed.

(R. M. JOSHI, J.)