

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

WRIT PETITION NO. 2786 OF 2013

Mohammad Abdul Jaleel Abdul

Gani Hippargi

.. Petitioner

Versus

The State of Maharashtra and Others

.. Respondents

Shri A. G. Talhar, Advocate for the Petitioner

Smt. S. D. Shelke A. G. P. for the Respondent Nos. 1 and 2

Shri Amol Gandhi, Advocate for the Respondent No. 3

CORAM : S. V. GANGAPURWALA AND

V. L. ACHLIYA, JJ.

DATE : 20TH JANUARY, 2015.

PER COURT :

1) Mr. Talhar the learned counsel submits that, the petitioner was declared surplus in the year 1998 and was absorbed in the year 2005. The petitioner is required to be paid salary during the interregnum period that is from the date the petitioner was declared surplus till the date petitioner was absorbed in service. According to the learned counsel in such case Rule 26 of the MEPS Rules, shall apply and the petitioner

would be entitled for the benefit of salary during the said period. Reliance on Rule 25A of the MEPS Rules by the Education Officer is misplaced.

2) The learned counsel further submits that even proposal has been submitted to the Education Officer for considering the period the petitioners service with the earlier institution. Further the said proposal is not yet decided.

3) We have heard the learned A. G. P. and Mr. Gandhi the learned counsel for the Respondent.

4) The petitioner is declared surplus on account of closure of the school even as has been stated by the petitioner in the petition. In case of closure of school Rule 25A of the MEPS Rules would come into effect and not Rule 26. The said aspect has been made clear in the judgment of the learned Single Judge in a case of **Pujya Sane Guruji Vidya Prasarak Mandal and Others V/s Prakash M. Patil and Another** dated 16/08/001 in Writ Petition No. 1607 of 2001.

5) Perusal of Rule 25A and Rule 26 of the MEPS Rules there is no manner of doubt that both the Rules operate in

different contingencies.

6) In case Rule 25A applies the employee stands terminated and the procedure is prescribed so as to give an opportunity to the department to rehabilitate the employees. In case of Rule 26, employee is retrenched, however, prior to that steps are to be taken for the absorption of the employee.

7) Considering the fact that it was a case of closure of school Rule 25A of the MEPS Rules would apply wherein all facets laid down in said rule will have to be complied. In view of that the prayer of the petitioner for salary during the period 1998– 2005 can not be considered.

8) As far as the proposal forwarded by the institution seeking consideration of his earlier service is concerned, the Education Officer shall decide the said proposal on its own merits after hearing the parties expeditiously, preferably within six (6) months from the date of this order. No costs.

[V. L. ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]