

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

WRIT PETITION NO.4850 OF 2014

Vijay s/o Dnyaneshwar Thool
Age: 45 Yrs., occu. Service,
R/o 22, Ramdas Colony,
Jalgaon, District Jalgaon.

- PETITIONER

VERSUS

- 1) The State of Maharashtra
Through its Secretary,
Technical and Vocational
Education, Mantralaya,
Mumbai.
- 2) The Director of Vocational
Education & Training,
Maharashtra State,
Mumbai.
- 3) The District Vocational
Education & Training Officer,
Jalgaon.

- RESPONDENTS

Mr. SR Barling, Advocate for Petitioner;
Mr. NB Patil, AGP for Respondents.

**CORAM : S.S.SHINDE &
P.R.BORA,JJ.**

DATE OF RESERVING JUDGMENT: 26th MARCH, 2015

DATE OF PRONOUNCING JUDGMENT: 3rd JULY, 2015.

JUDGMENT (PER:- P.R.BORA,J.)

1) Heard. Rule, returnable forthwith by consent of parties. The petitioner has filed the present petition seeking quashment of order dated 16.1.2010 issued by Respondent No.2 to the extent it prescribes non-consideration of his past service.

The petitioner has also prayed for granting him benefits of continuation of service rendered by him from 1992 and also regularization of absence on account of his non-absorption and to pay him all consequential benefits.

2) The petitioner was appointed as Laboratory Technician on 12.10.1992 at Siddharth Junior college of Commerce and Science, Lakhandur, District Bhandara. He continued in the said college till 2001. The appointment of the petitioner from time to time was approved by the Deputy Director of Vocational Education & Training, Nagpur. The said college at Lakhandur was brought in E-category and the Course in which the petitioner was working was directed to be closed down. As stated in the petition, the petitioner was, therefore, declared surplus on 30th April, 2001. It is the case of the petitioner that though from 2001, he was continuously making correspondence with the respondents authorities and praying for absorption, till 2010 he was not absorbed and ultimately, vide the impugned order he came to be absorbed in Mulji Jetha College at Jalgaon, vide order passed by Respondent No.2. It

is the further case of the petitioner that while absorbing the petitioner in Mulji Jetha College at Jalgaon as Full Time Instructor in the trade of Medical Laboratory Technician, he has been illegally refused benefits of his past service. It is the contention of the petitioner that the impugned order dated 16.1.2010 is against the spirit of Rule 26 of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (hereinafter to be referred to as "the Rules of 1981"). It is the further contention of the petitioner that when the petitioner was declared as surplus on account of the inaction of the respondents, he ought to have been absorbed on a vacant post and till his absorption, his retrenchment was not permissible. As further contended by the petitioner, Respondent No.2 has acted contrary to the provisions of Rule 26, as a result of which, he has been deprived of the benefits of his entire past service. It is the further case of the petitioner that in similar circumstances, the respondents have granted benefit of continuation of service and all other consequential benefits, vide order dated 22.6.2012 to one Narendra G.Gulwe. According to the

petitioner, he also needs to be granted the similar reliefs as have been granted to said Shri Gulwe. The petitioner, has therefore, prayed for modification of the order dated 16.1.2010.

3) Shri Dilip Ananda Mahajan working as Inspector, District Vocational Education and Training office, Jalgaon, has filed affidavit in reply on behalf of the respondents. The respondents have denied the claim so raised by the petitioner. It is the contention of the respondents that the case of the present petitioner falls under Rule 25A of the Rules of 1981 and not under Rule 26 thereof. It is the further contention of the respondents that the services of the petitioner were terminated due to non-recognition of the school where he was serving at the relevant time, whereas Narendra Gulwe was declared surplus in view of new staffing pattern and, therefore, the petitioner cannot claim parity with said Gulwe. The respondents have, therefore, prayed for dismissal of the petition.

4) The question, which falls for our consideration in the present petition is, - Whether

the case of the petitioner falls under Rule 25A or 26 of the Rules of 1981?.

5) Para 3 of the affidavit in reply, filed by the respondents, reads thus, -

"3. I say that in view of G.R. Dated 22.4.1998 the inspection for grading of the institute was carried out through out the State. In the said inspection the institution, where present petitioner is working also inspected and the said institute was classified as E grade. As the said institute was classified as E grade, the courses conducted by the said institute was closed down and the said institute was also closed due to insufficiency of facilities in view of the G.R. mentioned above. Therefore, the said institution was derecognized by the authorities. Therefore, in view of Rule 25A of the M.E.P.S.(Condition of Service) Rules, 1981, the services of present petitioner are terminated as the said institution was de-recognized. Therefore, in view of Rule 25-A clause-2, the petitioner was taken on waiting list."

6) In so far as the parity sought by the

petitioner with one Narendra Gulwe is concerned, the respondents have in para 6 of the reply contended that the case of said Gulwe was different than the case of the petitioner since said Gulwe was declared surplus in view of new staffing pattern in view of Government Resolution dated 22.5.2008 and, therefore, in view of Rule 26 of the Rules of 1981, the consequential benefits came to be granted to said Shri Gulwe.

7) The contention raised, as aforesaid, by the respondents in para Nos.3 and 6 of their affidavit in reply, have not been denied or disputed by the petitioner. The petitioner has not filed any rejoinder to the affidavit in reply so filed by the respondents.

8) Applicability of Rule 25A and 26 of the Rules of 1981 is explained in the case of Mumbai Pradesh Arya Vidya Sabha Vs. Arun Sitaram Kuwar – 2006 (4) Mah.L.J. 237. It is observed in para 13 of the said judgment that Rule 25A applies when there is a closure of the school due to the abolition of posts where rule 26 applies when there is to

reduction in number of classes or fall in number of pupil.

9) As held by this Court in the case of Pujya. Sane Guruji Vidya Prasarak Mandal Vs. Prakash M.Patil, - 2002 (5) Mah.L.J. 149-SB, apparently, Rule 25A attracts in case of closure of the school whereas the provisions of Rule 26 can be attracted in a situation otherwise than the closure of the school itself. Under Rule 25A, the services of an employee can be terminated on account of, - i) voluntary closure of the school; or ii) closure of the school pursuant to the de-recognition. Under Rule 26 retrenchment can be on account of i) reduction in classes or divisions; ii) fall in number of pupils strength; iii) change in the curriculum affecting the number of certain category of employees; iv) closure of course of studies; v) any other bonafide reason of similar nature.

10) It is not in dispute that the institution, in which the petitioner was serving was derecognized. It is, therefore, further evident that the termination of the services of the petitioner would

fall under Rule 25A of the Rules of 1981. The case of the petitioner, therefore, cannot be equated with the case of Narendra Gulwe, as has been contended by the respondents in their affidavit in reply. We are, therefore, unable to accept the contention of the petitioner that his case falls under Rule 26 of the Rules of 1981.

11) However, we do not find any justification in denying the continuity of services to the petitioner. Admittedly, for de-recognition of the institute, where the petitioner was previously serving, the petitioner is not directly responsible, at least no such case is made out by the respondents. It is thus evident that for no fault on the part of the petitioner, his services were terminated in the year 2001 and he was not absorbed till the year 2010. The correspondence placed on record by the petitioner evinces that he was constantly and earnestly following his request to absorb him in some other institute on the similar post on which he was working in Siddharth Junior College at Lakhandur.

12) Sub-rule (2) of Rule 25A of the Rules of

1981 envisages that, the names of the employees in aided schools, whose services stand terminated in accordance with sub-rule (1) on account of de-recognition and who are not directly responsible for such de-recognition shall be taken on a waiting list 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 College of Education and same shall be recommended by him to the Managements of newly opened aided Schools or of the existing aided schools which are allowed to open additional Division or classes for consideration.

13) Sub-rules (1) and (2) of Rule 25A of the Rules of 1981 if conjointly read, though the employee concerned cannot be said to be entitled for back wages of the intervening period, the continuity of services cannot be in any case denied to such employee. In such circumstances, we find that the order dated 16.01.2010 issued by Respondent No.2 so far it denies the benefit of the past services to the petitioner, needs to be set aside and is accordingly set aside. It is made clear that the petitioner will not be entitled for any back wages. However, he shall be given benefit of continuity of

service and benefits related thereto. We direct Respondent No.2 accordingly. Rule is accordingly made absolute in the aforesaid terms with no order as to costs.

sd/-
(P.R.BORA)
JUDGE

sd/-
(S.S.SHINDE)
JUDGE

bdv/

fldr 24.6.15