

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7155 OF 2014

SHAIKH NISAR ABDUL QUADER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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WITH
WRIT PETITION NO. 7156 OF 2014

FIROZ KHAN YUNUS KHAN DURANI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

WITH
WRIT PETITION NO. 7181 OF 2014

SHAIKH RAHIMA BEGUM MAINODDIN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for petitioners : Mr. V. D. Gunale
AGP for respondent Nos. 1 and 2 : Mr. S.S. Tope
Advocate for respondent No. 3 : Mr. U. B. Bondar

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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 28th JULY, 2015

P.C. :-

1. Mr. Gunale, the learned counsel submits that the petitioners are the permanent employees of respondent No. 5 School. The said School is de-recognized in the year 2010. It is because the basic amenities were not provided, so also, the students were not there, the School is de-recognized. The petitioners were illegally

terminated by the institution in the year 2007. The petitioners filed an appeal. The School Tribunal allowed the appeal directing reinstatement and payment of full back wages. The institution has assailed the said order before this Court. This Court has granted stay to the back wages only. The learned counsel submits that the petitioners are initially appointed in the year 2004. The full back wages are also awarded from the date of termination till the date of reinstatement. According to the learned counsel, in view of Rule 26 of the Maharashtra Employees of Private School (Condition of Service) Rules, 1981, the petitioners are required to be absorbed. The petitioners were working in respondent No. 5 grant-in-aid School.

2. Mr. Bonder, the learned counsel for respondent Education Officer, submits that in view of the provisions of Rule 25(A) of the MEPS Rules, the petitioners are not entitled to be absorbed in any other institution. The petitioners are also responsible for de-recognition of the School. There was internal dispute amongst the teachers also. The litigations were pending. Teachers have also contributed to invite orders of de-recognition of the School. In view of that, the petitioners cannot be absorbed. The Divisional Deputy Director of Education has rightly considered the said aspect.

3. We have considered the submissions. The reason for de-recognition appears to be lack of students. Though it is Urdu Medium School, majority of the students did not know to write their names in Urdu. The School did not have a permanent structure, nor the basic amenities were available in the School. As such, the School is de-recognized. There was certainly a dispute between the management and the teachers for which, teachers have to file appeal before the School Tribunal and writ petition filed by the management is pending before this Court. The petitioners were not in service because of the order of termination which is subsequently set aside. The institution is directed to reinstate the petitioners with full back wages meaning thereby that the continuity is also awarded to the petitioners. The petitioners are appointed in the year 2004. They would be deemed permanent. In view of that, Rule 26 of the MEPS Rules would squarely apply and the respondents are required to absorb the petitioners.

4. In light of that, we pass the following order.

ORDER

- I. The respondent Education Officer shall place the petitioners in the list of surplus teachers, who are required to be absorbed in other grant-in-aid School and orders of absorption shall be issued to the petitioners as per their

turn in the list of surplus teachers. The respondent shall take steps in this regard at the earliest. The petitioners will be entitled for the salary from the date of their absorption. However, the period, till the absorption, shall be counted for the purpose of continuity and other benefits.

II. The writ petitions are accordingly disposed of. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

vre/-