

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5383 OF 2009

Mrs. Gangubai Madhukar Jagdhane .. Petitioner  
vs.  
Sardar Pratapsingh Education Society and ors. .. Respondents  
WITH  
WRIT PETITION NO. 5384 OF 2009

Mrs. Jaivantabai Motiram Naik .. Petitioner  
vs.  
Sardar Pratapsingh Education Society and ors. .. Respondents

Mr. Makarand Kale i/b M/s. M.P. Vashi & Associates for the petitioner  
in both petitions.  
Mr. A.G. Kothari for Respondent No.1 in both petitions.

**CORAM : M. S. SONAK, J.**

Date of Reserving the Judgment : 30 January 2015.

Date of Pronouncing the Judgment: 04 February 2015.

**JUDGMENT :-**

1] These two petitions can be disposed of together as they involve substantially common issues of law and fact.

2] Some time in the year 1980, both the petitioners came to be appointed as Class-IV employees in the school established and managed by respondent Nos.1 and 2. It is the case of the petitioners that since they filed complaints/petitions for payment of salary as per 5<sup>th</sup> Pay Commission Scale, with effect from 13 June 2002 the petitioners were not permitted to resume duties upon the school reopening after summer vacation. In deference to the legal notice served by the petitioners through their advocate, the petitioners

were permitted to resume duties for a couple of months. However, by notice dated 1 August 2002, the petitioners were informed that respondent Nos.1 and 2 have decided to close down the school and that the services of the petitioners were being terminated on account of abolition of posts due to closure of the school. The notices which were received by the petitioners only on 1 October 2002, were accompanied by cheques in amounts corresponding to three months salary. Such cheques were encashed by the petitioners, before filing of appeals before School Tribunal on 10 February 2003 impugning the order of termination. The Tribunal, by order dated 9 February 2004, declined to condone the delay in filing the appeals. This Court, however, set aside the order, condoned the delay and restored the appeals to the file of the School Tribunal for decision in accordance with law.

3] The School Tribunal, by separate orders dated 23 September 2008, has dismissed the two appeals. Hence, the two separate petitions.

4] Mr. Makarand Kale, learned counsel for the petitioners in both petitions, with considerable ability submitted as follows:-

(a) That the termination order dated 1 August 2002 was in breach of Rule 25-A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (said Rules), inasmuch as no advance intimation of three months was given by the School Management to the petitioners as mandated by the said Rules;

(b) That in the light of decision of the Division Bench of this Court in case of *Chandrakant Shikshan Sanstha, Talkamptee vs. Rajendra s/o. Ramaji Belekar & ors.*<sup>1</sup>, Rule 25-A is required to be considered alongwith Rules 26 and 27 of the said Rules. In the present case, there has been no compliance whatsoever with the provisions contained in Rules 26 and 27, both of which are mandatory. The termination orders are, therefore, legally infirm;

(c) That the Management, in the present case operated two schools, one in English Medium and other in Gujarathi Medium. Upon closure of the English Medium School, almost all employees except the petitioners were absorbed in the Gujarathi School. The petitioners, therefore, have clearly been discriminated against in the matter of their termination.

5] Mr. Kothari, learned counsel for the school countered the submissions made by Mr. Kale by urging following:

(a) The school has, admittedly paid to the petitioners three months salary in lieu of advance intimation. The cheques in this regard were encashed by the petitioners without any protest. The petitioners are accordingly, estopped from complaining about any deficiency in advance intimation;

(b) In any case, the requirement to furnish advance intimation of three months referred to in Rule 25A of the said Rules is not a mandatory requirement. In this case, there has

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been substantial compliance and further the petitioners have demonstrated no prejudice for the alleged want of such advance intimation. There is, accordingly, no breach of Rule 25-A of the said Rules;

(c) The petitioners, neither in their appeals before the School Tribunal, nor in these petitions have ever raised the issue of alleged breach of Rules 26 and 27 of the said Rules. On oath, it has been stated that no employees from the English Medium School, consequent upon its disclosure were absorbed or reemployed in the Gujarathi Medium School. In such circumstances, this Court ought not to entertain any plea of alleged breach of Rules 26 and 27 of the said Rules, at this stage;

(d) Even, the Gujarathi Medium School, which was an aided school, has close down with effect from 30 April 2004. Therefore, relief has to be restricted during the period 1 August 2002 and 30 April 2004 only. This is assuming without in any manner admitting that there was any irregularity in the matter of compliance with the Rules 25A and Rule 27 of the said Rules.

6] Attempts were made by the parties to explore the possibility of some settlement. However, although the school management, without prejudice to their rights and contentions had expressed willingness to offer upto Rs.1,25,000/- per petitioner, the petitioners

were unwilling to settle the matter, unless they were to receive an amount of Rs.50 Lacs.

7] In order to appreciate the first contention, reference shall have to be made to Rule 25A of the said Rules, which reads thus:

***25A. Termination of Service on account of abolition of posts:***

*(1) The services of permanent employee may be terminated by the Management on account of abolition of posts due to closure of the school after giving him advance intimation of three months to the effect that in the event of closure of the school, his services shall automatically stand terminated. In the case of closure of school due to de-recognition, such advance intimation of three months shall be given by the Management to the permanent employees after receipt of a show cause notice from the Deputy Director.*

*Explanation: For the purpose of this sub-rule, the expression 'closure of the school' shall include,-*

- (i) voluntary closure by the Management of the entire school if it is imparting instruction through one medium or a part of the school comprising one or more media of instruction if it is imparting instruction through more than one medium ; and*
- (ii) Closure of the school due to de-recognition by the Department.*

*(2) 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 divisions or classes for consideration.*

8] The aforesaid Rule 25A of the said Rules makes reference to “*advance intimation of three months*” to the effect that in the event of closure of the school, services of the employee shall automatically stand terminated. In contrast, Rule 26 of the said Rules, which deals with a retrenchment on account of abolition of posts provides for “*retrenchment from service by management after giving three months notice*”. In the context of Rule 26 of the said Rules, the Supreme Court in case of *Secretay Akola Taluka Education Society and anr. vs. Shivaji and ors*<sup>2</sup>, has held that order of retrenchment without giving three months notice was bad in law. There is, however, difference in the phraseology employed in the Rule 25A and Rule 26 of the said Rules. As such, it is not possible to accept Mr.Kale's contention that the decision of the Supreme Court in case of *Secretary Akola Taluka Education Society (supra)* would *ipso facto* apply in the matter of interpretation of Rule 25A of the said Rules, as well.

9] As noticed earlier, Rule 25A of the said Rules provides for giving of advance intimation of three months notice, as opposed to the phraseology employed in Rule 26 of the said Rules of the said Rules, which provides that a permanent employee may be retrenched from service by the management after giving him three months notice and upon grounds specified in sub-clauses (i) to (v). In the present case, though no advance intimation can be said to have been given to the petitioners, nevertheless, notice/order dated 1 August 2002 was accompanied by salary in lieu of three months notice. Such salary in lieu of three months notice was accepted by the petitioners without any protest. There is nothing in Section 25A

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of the said Rules which prevents the adoption of such a course of action. At the highest, it may be said that the notice/order dated 1 August 2002 can bring about termination of the petitioners' services after three months, i.e., by 1 November 2002 and that the petitioners would be entitled to salary upto 1 November 2002. This precisely what the school management has done in the present case. Accordingly, it can be said that there has been substantial compliance with the requirement of advance intimation of three months as contemplated by Rule 25A of the said Rules. The purpose of such advance intimation, is obviously to enable the employee concerned from making some alternate arrangement. At least *prima facie*, in case of voluntary closure by the management of the entire school, there is no obligation upon the Department of Education to absorb the employees of private schools or to recommend their appointments to management of newly opened aided schools or to existing aided schools which are allowed to open additional divisions or classes for their consideration. Such requirements/obligation may arise where closure of the school is due to de-recognition by the Department and where the employees are not directly responsible for such de-recognition. This is in fact, not even the case of the petitioners. In the facts of the case, therefore, it shall have to be held that there has been substantial compliance with the requirement of Rule 25A of the said Rules, in the matter of furnish of advance intimation of three months. Further, this is not a case where the petitioners have either pleaded or established any prejudice on account of failure on the part of the school management to strictly adhere with the requirement of advance intimation of three months. On the contrary, there is no dispute that the petitioners accepted

three months salary in lieu of advance intimation, without any protest or demur. Accordingly, there is no force in the first contention of Mr. Kale.

10] So far as second contention of Mr. Kale is concerned, it is true that this Court in case of *Chandrakant Shikshan Sanstha (supra)*, has ruled that Rule 25A(1)(i) of the said Rules is not a complete and it is subject to the provisions contained in Rule 27 of the said Rules. In other words, though it has been placed in Rule 25A, contingencies contemplated therein are carved out from Rule 26 itself and hence the termination of service on account of abolition of posts as contemplated therein is subject to Rule 27 when the management is running more than one school.

11] Although, it is true that such an issue was not raised by the petitioners either before the School Tribunal or in very clear terms before this Court, nevertheless, there are averments, both in the memo of appeals before the School Tribunal as also in these petitions that the school management was running an English Medium School and Gujarathi Medium School. In fact, this position is not disputed by the school, which admits that the English Medium School was closed down on 1 August 2002 and the Gujarathi Medium School closed down on 30 April 2004. Thus, on the date, on which the English Medium School was closed down, the Gujarathi Medium School was very much in operation. In such circumstances, as has been held by the Division Bench of this Court in the case of *Chandrakant Shikshan Sanstha (supra)*, it was obligatory on the part

of the school to apply the principles referred to in Rule 27 of the said Rules. There is no material on record to establish such compliance.

12] Rule 27(d) of the said Rules provides that in case the management runs more than one school and in case the retrenchment is to be effect under Rule 26 in any one of the schools, run by it or in case any one of its schools is required to be closed either due to withdrawal of recognition or due to decision of the management to close it while effecting retrenchment, the principle of common seniority of employees working in all the schools conducted by it shall be observed along with the above principles referred to in the earlier sub-clauses of Rule 27 of the said Rules. The Division Bench of this Court has interpreted the Rule 27(d) by observing that the mention of Rule 26 or the preceding Rule therein, is not very relevant. The contingencies contemplated by it are important and principles mention therein need to be followed whenever the retrenchment is to be effect due to the decision of the management to close down any one of its schools, where such management operates more than one school.

13] The school, there is no doubt, denied that any of the employees from the English Medium School were absorbed in the Gujarathi Medium School. However, there is nothing to show that the principle of common seniority of employees working in both the school was observed, prior to terminating the services of the petitioners, on the ground that closure of the English Medium School, when admittedly at the time of such closure, Gujarathi

Medium School was very much in operation. To this extent, it can be said that there is some infirmity in the impugned termination orders.

14] Normally, in the absence of very categorical pleadings regarding breach of Rule 27, it would have been appropriate to remand the matter to the School Tribunal, so that the school is afforded an opportunity to establish compliances with the provisions of Rule 27(d) of the said Rules. However, in the present case, the petitioners were terminated wayback on 1 August 2002. The Gujarathi Medium School has also closed down from 30 April 2004. In such circumstances, a remand at this juncture, would hardly meet the ends of justice. At this point of time, there is no question of consideration of any relief of reinstatement, because admittedly the English Medium School has closed down with effect from 1 August 2002 and the Gujarathi Medium School has closed down with effect from 30 April 2004. It would instead be appropriate, if considerable compensation is offered to the petitioners.

15] In the facts and circumstances of the present case, the suitable compensation shall be the amount of salary which the petitioners may have drawn between the period 1 August 2002 and 30 April 2004, i.e., salary for about 20 months. There is material on record that the salaries payable to the petitioner at the time of their termination, were about Rs.5700/- per month. If the same are rounded upto Rs.6,000/- per month, then the compensation payable to the petitioners comes to about Rs.1,20,000/-. Further taking into consideration the time lapse between the year 2004 when the amounts were due and the year 2015, it would be appropriate if the

petitioners are paid compensation of Rs.2 Lacs each in full and final settlement of their claims.

16] Accordingly, the impugned orders made by the School Tribunal are modified. It is directed that respondent Nos.1 and 2 pay to each of the petitioners an amount of Rs.2 Lacs within a period of four weeks from today. Respondent Nos.1 and 2 shall pay this amount directly to the petitioners or to deposit such amounts in this Court. Upon deposit, the petitioners shall be at liberty to withdraw the same.

17] In case, the said amount is not paid or deposited within a period of four weeks from today, then the same shall carry interest at the rate of 9% per annum from the date of this judgment and till actual payments.

18] Rule is made absolute to the aforesaid extent in both the petitions. There shall be no order as to costs.

(M. S. SONAK, J.)

19] At this stage, learned counsel for respondent Nos.1 and 2 submits that time for payment be extended upto twelve weeks instead of four weeks from today. The request is reasonable, accordingly, the amount as aforesaid shall be paid by respondent Nos.1 and 2 within a period of twelve weeks from today, instead of four weeks.

(M. S. SONAK, J.)