

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7093 OF 2005

Dadasaheb Appaji Gaikwad .. Petitioner

vs.

The President,

Jai Bhavani Education Society, Girvi

Tal. Phaltan, Dist. Satara and ors. .. Respondents

Mr. Gautam Bhagwat a/w. Ms Saroj Ghatge i/b Divekar Bhagwat & Co. for the Petitioner.

Mr. Vijay Patil a/w. Mr. Nikhil Chavan for Respondent Nos.1 and 2.

Ms Vaishali Nimbalkar, AGP for Respondent No.3.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 26 February 2015

Date of Pronouncing the Judgment : 13 March 2015

JUDGMENT :-

1] This petition is directed against the order dated 15 June 2005 made by the School Tribunal, Kolhapur (Tribunal) dismissing the petitioner's appeal, questioning termination order dated 1 June 2000.

2] On 16 July 1992, the petitioner was appointed as a Lecturer at the respondent No.2 School (said school) to take lectures in the vocational stream. In the year 2000 or thereabouts, by which time, the petitioner had served at the school for over eight years, by communication dated 23 May 2000, the Deputy Director of

Vocational Education and Training, Pune (respondent No.3) cancelled the permission to continue with vocational courses, as the college and management had failed to rectify certain deficiencies which were, from time to time pointed out to them. Relying upon the same, the school management, by order on 12 June 2000, issued the petitioner an order dated 1 June 2000, being three months notice of termination. In effect, however, the petitioner was not permitted to sign the muster roll from 12 June 2000 itself, which was the beginning of academic year 2000-2001. The petitioner instituted an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (MEPS Act) before the School Tribunal. The School Tribunal, by the impugned order dated 15 June 2005 has dismissed the appeal. Hence, the present petition.

3] During pendency of the present petition, the State was directed to explore the possibility of absorbing the petitioner in some other schools/institution consistent with the provisions of Rule 25A(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (MEPS Rules). Such proposal was favourably considered by the State and there is no dispute that with effect from 4 July 2006, the petitioner was absorbed in some other

schools/institution. Accordingly, Rule was issued in this petition to consider the question of backwages for the period between 1 June 2000 and June 2006.

4] Mr. Gautam Bhagwat, learned counsel for the petitioner has made the following submissions in support of the petition:

(a) This was not a case of closure of entire school, but only a portion thereof, i.e., vocational stream. Accordingly, the provisions of Rule 26 of the MEPS Rules, which mandate absorption of services in the same or other institutions were attracted. There was, accordingly, no reason to terminate the petitioner's services ;

(b) In any case, the matter is governed by the decision of this Court in case of *Chandrakant Shikshan Sanstha, Talkamptee vs. Rajendra s/o. Ramaji Belekar & ors.*¹, which lays down the scheme of Rule 25A of MEPS Rules is not complete and is subject to Rule 27 of MEPS Rules.

5] Mr. Vijay Patil, learned counsel for respondent Nos.1 and 2, i.e., School, submitted that in the present case, the entire vocational school had to be closed down due to de-recognition by the

¹ 2010(1)Mh.L.J.391

department. Several efforts were made to restart the course and the petitioner was also called upon to cooperate in the matter by furnish of affidavits as required by the authorities. The petitioner was also required to remain present when the Deputy Director was due to visit the institution in order to examine the feasibility of recommencement of the courses. However, the petitioner failed to respond or turn up for the inspection. In such circumstances, the learned counsel submitted that the school had no option than to terminate the service of the petitioner and in such a situation, there arises no question of payment of any backwages.

6] The rival contentions now fall for the determination.

7] Rule 25A of the MEPS Rules provide that the services of permanent employee may be terminated by the management on account of abolition of posts due to closure of the schools after giving him intimation of three months to the effect that in the event of closure of schools, 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 employee after the receipt of a show cause notice from the Deputy Director. The explanation to the Rule

provides that the expression '*closure of the school*' shall include the 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 closure of the school due to de-recognition by the Department.

8] Sub- rule (2) of Rule 25A of the MEPS Rule provides 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 management of newly opened aided schools or of the existing aided schools which are allowed to open additional divisions or classes for consideration. Thus in a situation where termination is brought about for reasons set out in sub-rule (1) of Rule 25A of the MEPS Rules, there is no obligation as such on the part of the Department to absorb the employees, but there is obligation to make recommendations to managements of newly opened schools or

institutions or existing school and institutions which are allowed to open additional divisions or classes, for their consideration.

9] Rule 26 of MEPS Rules concerns with the situation of retrenchment of a permanent employee after giving him three 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 employees;
- (iv) closure of a course of studies;
- (v) any other bona fide reason of similar nature.

10] Sub-rule (2) of Rule 26 of MEPS Rules provides that retrenchment from services under sub-rule (1) of Rule 26 of MEPS Rules, shall be subject to the following conditions.

- (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 therefore;

- (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 with acknowledgement due and till they are absorbed, the management shall not be permitted to effect retrenchment on account of any reasons mentioned in sub-rule (1).

11] Thus, in case of retrenchment under Rule 26(1) of the Said Rules, there is an obligation on the part of department to absorb the permanent employees. Further, until such permanent employees are

absorbed, the school management shall not be permitted to effect retrenchment on account of reasons referred to in sub-rule (1) of Rule 26 of MEPS Rules.

12] Rule 27 of the MEPS Rules lists out the principles to be observed in matters of retrenchment. Sub-rule (d) of Rule 27 of MEPS Rules, *inter alia*, provides under sub-rule (d), which read thus:

(d) In case the management runs more than one school and in case the retrenchment is to be effected 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 the 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 alongwith the above principles.

13] In case of *Chandrakant Shikshan Sanstha, Talakamptee* (*supra*), the Division Bench of this Court, in the context of Rules 25A, 26 and 27 has observed as follows:

“13. The perusal of Rule 27 shows that it prescribes principles of termination where retrenchment was to be effected from service. In its opening part, it mentions that

while terminating the services of employee “under the preceding rule”, the “following principles” shall also be observed. Though, we are not concerned with the principles as such, the reference to preceding rule therein is to Rule 26. The School Tribunal has found that the petitioner – management has not complied with sub-rule(d) of rule 27 and the said sub-rule(d) reads as under :

“(d) In case the Management runs more than one school and in case the retrenchment is to be effected 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 the 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.”

The perusal of sub-rule, therefore, shows that it gets attracted when the management runs more than one school. It is also clear that it mentions retrenchment to be effected under Rule 26 in any one of its school and then it also mentions the closure of one of school either due to withdrawal of recognition or due to decision of management to close it. The petitioners are objecting to these rules in sub-rule (d). The mention of rule 26 or preceding rule, according to us, in the scheme of rule 27, is not very relevant. The contingencies contemplated by it are important and the principles mentioned therein need to be followed whenever the retrenchment is to be effected. It is important to note that Rule 25A(1) vide its sub-clause (I) contemplates voluntary closure by the Management and there is nothing in sub-rule (2) thereof to show that names of employees so terminated are also to be taken on waiting list maintained under that sub-rule.

14. It is to be noted that when management is running more than one school and only one school or one branch is sought to be closed, there may be senior employees in such school which is being closed voluntarily by the management. It is not in dispute that Rule 12 read with Schedule F, Note 5 requires such management running more than one school to maintain combined seniority list. Rule 41 permits management to

transfer teaching and non teaching staff from one school to another in the interest of administration. Hence, to hold that because of Rule 25A employees in school, voluntarily closed down by the management, though senior will be required to be terminated and juniors in other schools will not be affected sounds highhanded and paradoxical. It is to be noted that in scheme of Rule 25A itself, when employees are being terminated on account of de-recognition by department, names of employees not responsible for de-recognition are directed to be kept on waiting list. The scheme of rule 25A(2) is entirely different. In view of the de-recognition and consequent termination, it is apparent that if such employee is not found responsible for de-recognition, his name is to be kept on waiting list. If such employee placed on waiting list happened to come to unfortunate School on transfer, he would be penalized for no fault. Some managements may also victimize unwanted employees. All this shows that Rule 25A (1)(i) is not complete and it is subject to rule 27. 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.

14] In the present case, the petitioner contends that since only the vocational courses/stream was closed, there was no question of applicability of Rule 25A of the MEPS rules, which applies to closure of the entire school. On the contrary, the petitioner contends that the provisions of Rule 26 were attracted, because Rule 26(1)(iv) makes reference to retrenchment on the ground of 'closure of a course of studies'. In such a situation, the petitioner contends that there was no question of termination and the services of the petitioner ought to have been absorbed in the same school or some other school. The

school management, on the other hand contends that since the entire vocational stream was itself closed down, the provisions contains in Rule 25A were attracted and there was no obligation of absorption.

15] There is, in the facts of the present case, no necessity to decide the aforesaid issue. This is because the petitioner has already been absorbed in some other schools/institutions from 4 July 2006. Besides, as has been held by the Division Bench of this Court in case of *Chandrakant Sanstha (supra)*, even Rule 25A (1)(i) of the MEPS Rules is not complete and the same is subject to rule 27 of the said Rules. In other words, though it has been placed in Rule 25A of the MEPS Rules, contingencies contemplated therein are carved out from Rule 26 of the MEPS Rules itself and hence the termination of service on account of abolition of posts as contemplated therein, is subject to Rule 27 of the MEPS Rules, particularly where the management is running more than one school. Admittedly, in the present case, there has been no compliance with the provisions contained in Rule 27 of the said Rules. Even if, the contentions of the management that the vocational courses was a different and distinct school is to be accepted, there is no gain saying that the school management was operating and continues to operate the school,

even after the closure of vocational stream. In such a situation, in applying the law laid down by the Division Bench of this Court in case of *Chandrakant Sanstha (supra)*, compliance with the provisions contained in Rule 27 of the MEPS Rules was necessary.

16] Accordingly, it is necessary that some backwages are due and payable for the period between June 2000 and June 2006. However, in the facts and circumstances of the present case, it cannot be said that backwages are due and payable for the entire period. This is because before the School Tribunal, there was no statement made by the petitioner that he was not gainfully employed. Further, in the affidavit filed by and on behalf of the school management, there is reference to correspondence, by which the school management time and again requested the petitioner's cooperation in the matter of re-start of the vocational courses, however, the petitioner refused to cooperate. The petitioner insisted that he be paid arrears of salary as condition precedent for such cooperation. Finally, the petitioner has eventually been absorbed and continues to be in service from 4 July 2006. Therefore, upon cumulative consideration of such facts and circumstances, interest of justice would be met if the petitioner is awarded backwages for a period of two years and further the period

between June 2000 and June 2006 is taken into consideration notionally for the purposes of payment of retiral benefits.

17] Accordingly, the impugned order is modified. The impugned termination order is set aside. The respondents are directed to pay to the petitioner arrears of backwages for a period of two years (as per scale prevalent between June 2000 and June 2006) within a period of eight weeks from today. The period between June 2000 and June 2006 shall, however, be taken into consideration notionally for the purposes of fixing the payment of retirement benefits.

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

(M. S. SONAK, J.)

19] At this stage, learned counsel for respondent Nos.1 and 2 submitted that the period of eight weeks for compliance be extended to twelve weeks. Accordingly, said period is extended to twelve weeks from today.

(M. S. SONAK, J.)