

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 1749 OF 2014**

Shri Vijay Kumar Nimbalkar .. Petitioner
versus
State of Maharashtra & Anr. .. Respondents

WITH
CIVIL APPLICATION NO. 722 OF 2015
IN
WRIT PETITION NO. 1749 OF 2014

Shri Milind Sadashiv Gande .. Applicant
versus
The State of Maharashtra & Ors. .. Respondents

Mr. S. A. Rajeshirke for Petitioner in WP and for Applicant in CA.
Mr. C. P. Yadav – AGP for State.

CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.
DATE : 19 SEPTEMBER 2016

P.C.:

1] The petitioner, who claims himself to be a teacher at night school, questions constitutional vires of Rule 22(e) and (g) and Rule 23 of The Maharashtra Employees of Private Schools (Conditions of Service) Regulations Rules 1981 (said Rules).

2] Mr. Rajeshirke, learned counsel for the petitioner submits that in view of the provisions contained in Article 21-A of the Constitution of India and The Right of Children to Free and Compulsory Education Act

2009 (RTE), there is necessity for appointment of '*full time teachers*' at night schools, particularly since the period of night schools has been increased from 27 yours to 45 hours per week. The learned counsel submits that the said Rules in fact prohibit full time teaching staff from accepting any part time employment. However, quite unreasonably, the exception is carved out in the matter of full time teaching staff accepting employment at night schools. According to the learned counsel, taking into consideration the march of events since 1981, including in particular the introduction of Article 21-A in the Constitution and the enactment of RTE, the impugned rules, which permit full time teaching staff in the schools to accept part time employment at night schools is arbitrary, *ultra vires*, null and void.

3] Mr. C. P. Yadav, the learned AGP for the State has submitted that there is nothing arbitrary or unreasonable in the impugned rules. In order that the night schools have the benefit of experienced teachers, exception has been made to the general rule that full time teaching staff shall not accept any part time employment, when it comes to part time employment at night schools. Mr. Yadav submitted that this is purely a matter of policy and there is nothing arbitrary or unreasonable in the policy so formulated. Mr. Yadav also submitted that the impugned rules neither infringe Article 21-A of the Constitution of India nor the provisions of RTE. If at all, the impugned rules in fact promote attainment of objective of Article 21-A and the RTE. Accordingly, Mr. Yadav submitted that the present petition be dismissed.

4] We have considered the submissions made by the learned counsel for the parties. Upon such consideration, we are satisfied that the present petition is not required to be entertained.

5] In the first place the petitioner, who claims to be a teacher at night school, has neither pleaded nor demonstrated, in what manner, the impugned rules affect him or his conditions of service. Faced with the apparent lack of *locus standi*, the learned counsel for the petitioner submitted that civil application no. 722 of 2015 has been filed by one Milind Sadashiv Gande, who 'was' a student of night school, seeking impleadment in this petition. Since, we are satisfied that the present petition does not deserve to be entertained, there is no question of entertaining any application for impleadment and that too, by some alleged ex-student of a night school. It is obvious that the petitioner, upon realising that he lacks locus, has attempted to involve said Mr. Gande in the matter. If the application for impleadment is perused, it is again not at all clear as to how, the said Mr. Gande is affected by the impugned rules. At the behest of the petitioner or for that matter the proposed intervenor, we do not deem it appropriate to examine issues of constitutional vires. We accordingly, deem it appropriate to dismiss the petition on this ground itself.

6] Even otherwise, at least *prima facie*, we are not satisfied that there is anything unreasonable, arbitrary or unconstitutional in the impugned rules. The reliefs prayed for by the petitioner are in fact in wide terms. If rule 22(e) and (g) and rule 23 are struck down, as prayed for by the petitioner, the effect might as well be to permit teachers to take coaching classes or private tuitions. The manner in which the petition is drafted or reliefs claimed, leaves a lot to be desired and the prayers, as applied for, if granted, might lead to consequences, which are perhaps not even intended by the petitioner himself.

7] At the behest of such petitioner and on the basis of such a petition, we do not deem it appropriate to examine challenges to the constitutional vires of the impugned rules. Such an exercise is likely to prove counter productive.

8] For the aforesaid reasons, we dismiss this petition. There shall be no order as to costs.

9] In view of dismissal of the petition, the civil application does not survive and the same also stands disposed of.

CHIEF JUSTICE

(M. S. SONAK, J.)

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