

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

**WRIT PETITION NO.1181/2015**

**Bhartiya Shikshan Sanstha Bhishi, through its President Bhagwan Dinbaji**  
**Jambhule**  
**...Versus...**  
**Deputy Director of Education, Nagpur Region, Nagpur and others**

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

Shri N.D. Khamborkar, Advocate for petitioner  
Shri N.S. Khubalkar, AGP for respondent nos.1 and 2  
Shri M.B. Turankar, Advocate for respondent no.3

**CORAM : SMT. VASANTI A. NAIK AND**  
**A. S. CHANDURKAR, JJ.**

**DATE : 01.03.2016**

1. Heard.
2. The challenge in the present writ petition is to the order dated 12.12.2014 passed by the respondent no.1 thereby directing the absorption of the services of the respondent no.3 with the petitioner – Institute.
3. It is the case of the petitioner that the services of one Shri S.N. Lambat who was holding the post of peon in the School run by the petitioner – Society came to be terminated on 9.8.1998. After a period of about 3 years, said Shri S.N. Lambat filed an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. In the meanwhile, the respondent no.3 was appointed on the post of

Peon and joined his services. In the appeal preferred by said Shri S.N. Lambat in which the respondent no.3 was also impleaded, by the order dated 2.7.2007 the School Tribunal set aside the order of termination and directed reinstatement of the appellant therein. The Management therein challenged the order passed by the School Tribunal in Writ Petition No.3281/2007 but the said writ petition came to be withdrawn. On 29.5.2010 the respondent no.1 passed an order directing the services of said Shri S.N. Lambat to be permitted to be discharged in the erstwhile Management. As the said employee was not paid salary, he had approached this Court in Writ Petition No.3293/2010, wherein a direction was issued to the Management to forward his pay bills for necessary action. Thereafter, on 12.12.2014 the respondent no.1 passed the impugned order directing absorption of the services of the respondent no.3 with the petitioner – Institute on the ground that the services of the respondent no.3 had been rendered surplus. This order is under challenge in the present writ petition.

4. Shri N.D. Khamborkar, the learned Counsel for the petitioner submitted that no directions could have been issued by the respondent no.1 to the petitioner to absorb the services of the respondent no.3. It was submitted that the respondent no.3 was not entitled to be absorbed under the provisions of either Rule 25 A or Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, the Rules of 1981). It was submitted that the petitioner had moved a representation before the respondent no.1 and without considering the same, the impugned order had been passed. It

was further submitted that the appointment of respondent no.3 was on the post that was initially occupied by Shri S.N. Lambat who had succeeded in the appeal filed by him and therefore, the services of the respondent no.3 ought to have been terminated by the said Management. It is, therefore, submitted that on these counts the impugned order is liable to be set aside.

5. Shri N.S. Khubalkar, the learned Assistant Government Pleader for the respondent nos.1 and 2 by relying upon the affidavit dated 26.2.2016 submitted that the respondent no.1 had subsequently found that the issue raised by the petitioner deserves consideration and therefore, the respondent no.1 was prepared to hear the parties and passed a fresh order.

6. Shri M.B. Turankar, learned Counsel for the respondent no.3 supported the impugned order and submitted that his absorption had been rightly directed by the impugned order. He submitted that the respondent no.3 was duly qualified to hold the post of peon and therefore, it was not open for the petitioner – Institute to challenge the order of absorption. He submitted that the order dated 12.12.2014 was binding on the petitioner.

7. Having heard the respective Counsel and having perused the documents on record, we find that the challenge to the order dated 12.12.2014 at the instance of the petitioner is not liable to be entertained. It is not the case of the petitioner that the respondent no.3 is not duly qualified to hold the post of peon on which he has been sent for being absorbed. It is not open for the petitioner to challenge the absorption of the respondent no.3 on the ground that the requirements of Rule 25 A or Rule 26 of the

Rules of 1981 have not been complied with. The employee in question whose services were terminated had filed the appeal after a period of more than three years from the date of his termination and the appointment of the respondent no.3 was pursuant to an advertisement that was issued by the said Management after which he was appointed on 6.9.1998. It is, therefore, clear that since his appointment the respondent no.3 had put in considerable period of services after which the order dated 12.12.2014 came to be passed. In the absence of any legal right with the petitioner to challenge the order of absorption, the said challenge at the behest of the petitioner cannot be entertained.

8. In view of aforesaid, the writ petition is dismissed with no order as to costs.

**JUDGE**

**JUDGE**

Wadkar