

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 756 OF 2008

Shri Arun Joma Thakur .. Petitioner

Vs.

Tambe Education Society & ors. .. Respondents

WITH

WRIT PETITION NO. 804 OF 2008

Shri More Janardan Jayaram .. Petitioner

Vs.

Tambe Education Society & ors. .. Respondents

WITH

CIVIL APPLICATION NO. 2490 OF 2012

IN

WRIT PETITION NO. 804 OF 2008

Shri More Janardan Jayaram .. Petitioner

Vs.

Tambe Education Society & ors. .. Respondents

WITH

WRIT PETITION NO. 819 OF 2008

Lokhande Rajendra Kisan .. Petitioner

Vs.

Tambe Education Society & ors. .. Respondents

WITH

WRIT PETITION NO. 820 OF 2008

Shri Thakur Gajanan Shankar .. Petitioner

Vs.

Tambe Education Society & ors. .. Respondents

**WITH
WRIT PETITION NO. 1062 OF 2008**

Shri Patil Suresh Pandurang	.. Petitioner
Vs.	
Tambe Education Society & ors.	.. Respondents

**WITH
WRIT PETITION NO.2153 OF 2008
(NOT ON BOARD)**

Shri Janardan Babu Patil	.. Petitioner
Vs.	
Tambe Education Society & ors.	.. Respondents

Smt. Anita A. Agarwal, for the Petitioners.
Mr. Madhav J. Jamdar, for Respondent no.1.
Ms. K. R. Kulkarni, AGP for Respondent nos. 3 to 6.

**CORAM : A.A.SAYED AND
M.S.KARNIK, JJ.**

24th JULY, 2017

P.C. :

The petitioners were working in the schools run by respondent nos.1 and 2 at Pahur and Bhale as Assistant Teachers for number of years. The schools were closed down. Admittedly the said schools were unaided schools. The petitioners are aggrieved by the closure of the schools and the consequent loss

of their employment after putting in several years of service. The petitioners have filed these Petitions inter alia to declare Rules 25A, 26 and 27 of the Maharashtra Employees of Private School (Condition of Service) Rules, 1981 (MEPS Rules) as ultra vires and also to absorb them and treat them as surplus and accommodate them in some other aided schools.

2. In Housa K. Patil (Kum) v. State of Maharashtra (2002 II CLR 894) the Division Bench of this Court has considered the validity of Rules 25 (A) and 26 of MEPS Rules and held in para 6 and 7 as follows :-

“6. The legal position contained in Article 14 of the Constitution is now crystal clear. The State shall not discriminate between identically situated persons in the matter of grant of equal protection of law. The State accordingly is bound constitutionally to grant equal protection of law to all similarly situated persons. Equally clear is the position in law that Courts in whatever hierarchy cannot mandate the State to legislate on a particular issue though they are competent to do so. Thus the discretion of the State to legislate or only to legislate on a particular subject cannot be interfered with

or enforced by a writ of mandamus or by any order or any direction. The power of the Court to strike out discriminatory action or legislation is also undisputed. In the present case no discrimination as such is practising. It will be seen that in exercise of its powers under the beneficial legislation in the Act of 1977, the Government in exercise of its rule making power under S.16 of the Act framed certain Rules in 1981 though omitted to introduce Rule 25(A) and substitute Rule 26 to take care of the rights of persons who are surplus in the establishments either by reason of closure or by reason of retrenchment necessitated by the cause mentioned in Rule 26. In so doing, it is provided that names of the employees in aided school whose services can terminate because of the closure of the school due to derecognise by the department of education and shall be recommended by him to the management of the newly opened aided school or other existing aided school for recruitment of those employees. Similar is the provision of retrenchment in Rule 26. The argument of the learned counsel on behalf of the petitioner is that whether closure of the school is due to derecognition by the department or by school, consequence is only one namely rendering surplus teachers so employed by the school. That being so, we are unable to accept this contention for the reason that

factually what has been done by the State in this case is that a provision is made for employees of aided school in the event of closure of the school whether voluntary or by derecognition and no such provision is made for employees of private schools which are not aided. Therefore making of beneficial provision for one class without making it for another class though similarly situated, cannot be called discrimination to be hit by Art.14 of the Constitution.

7. Assuming it as the duty of the State to so provide the provision made by them for employees of private schools cannot be struck down for the reason that similar provision has not made for others. Equally true is the provision, and what can be done by this Court is to issue a direction to the State to consider the case of the employees of private school which are not aided for the similar protection granted by section 25(A) or 26 for the employees of private aided school teachers. We accordingly do so.

3. In these circumstances, it being an admitted position that the schools in question were unaided, the prayers sought in the Petitions by the petitioners cannot be granted. We have not

been shown any provisions which have been contravened in respect of closure of the schools. In the facts and circumstances of the case, we expect the respondent nos.1 and 2 who are stated to be running several other schools to sympathetically consider the case of the petitioners to accommodate them in some other schools run by them upon representations being made by the petitioners if such representations are made within 6 weeks from today. We also grant liberty to the petitioners to make representations to the State Government to consider their case to accommodate them in some other schools.

4. The Petitions are disposed of in the aforesaid terms. Subject to the above, rule to stand discharged.

5. In view of the disposal of the Petitions, Civil Application No.2490 of 2012 would not survive and to stand disposed of.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)