

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3213 OF 2001

The Principal, Karmaveer Bhaurao Patil, Sangli & Anr.	...Petitioners
Vs.	
Shri Tanaji Virupaksha Swami & Anr.	...Respondents

Mr.Milind Deshmukh for Petitioners.
Mr.C.G. Gavnekar with Suhas Deokar and G.S. Hiranandani for Respondent No.1.
Ms.Vaishali Nimbalkar, AGP for Respondent No.2.

CORAM : S.C. GUPTE, J.

DATE : 29 JUNE 2018 & 6 JULY 2018

P.C. :

Heard learned Counsel for the parties.

2 The subject matter of challenge in the present petition is an order passed by the School Tribunal on 22 March 2001 in an appeal filed by Respondent No.1 herein under Section 9 of the Maharashtra Employees of Private Schools (conditions of Service) Regulation Act, 1977 (“MEPS Act”) challenging the action of the school management in not continuing him as a teacher on the ground that he was rendered surplus.

3 Respondent No.1 was appointed as a teacher in the first Petitioner school and junior college run by the second Petitioner. For the year 1997-98, Respondent No.1 was declared a surplus teacher. The relevant rule, namely, Rule 26(2)(iii) of the MEPS Rules, provides that

when there is a reduction in teachers in the establishment due to fall in the number of pupils, classes or divisions, the decision to retrench an employee cannot be made unilaterally by the school management; prior approval of the competent authority, which is the Education Department, is a mandatory condition. In case of aided schools, the employee is required to be absorbed in an alternative establishment and in an exceptional case, where the facilities of absorption are not admissible, such employee has to be given opportunity of work on a lower scale or on a part-time post. Considering this provision, an application was made by the management in the present case to the Deputy Director of Education, Kolhapur for declaring Respondent No.1 as surplus. Though the Deputy Director had originally communicated his approval for declaring the teacher to be surplus, based on which Respondent No.1 was discharged from service by the Petitioners by a subsequent communication dated 23 November 1998, the Deputy Director called upon the Petitioner management not to act further in pursuance of discharge of Respondent No.1 on the ground of his being surplus. The order declaring Respondent No.1 as surplus was thereafter pending consideration with the Deputy Director of Education, Kolhapur. By his further communications (letters dated 2 December 1998 and 7 December 1998), the Deputy Director even directed the Principal to draw salary of Respondent No.1 from the first Petitioner college. The cumulative effect of all these communicators was that Respondent No.1 continued in his employment with the Petitioner management and the order of surplus was not approved by the Deputy Director of Education and could not be implemented. This was acknowledged by the Tribunal whilst allowing the appeal. The Tribunal was also of the view that the principle of seniority was not observed in retrenching Respondent No.1. The Tribunal also took into account the fact that there was earlier an order declaring

Respondent No.1 to be a surplus teacher as of 1996-97 and that order was challenged by Respondent No.1 by filing an appeal (Appeal No.200 of 1997). The School Tribunal in that appeal had passed a status quo order on 1 December 1997 directing the Petitioner management not to implement the surplus order. This order was in force when Respondent No.1 was once again declared surplus for 1997-98. After considering all these facts and the law on the point, including the judgments of the Supreme Court, the Tribunal directed reinstatement of Respondent No.1 to his original post in the first Petitioner college with all back wages and other incidental benefits.

4 Learned Counsel for the Petitioner management submits that the discharge of Respondent No.1 took effect and was not stayed by the Deputy Director of Education. Learned Counsel submits that the approval of Deputy Director to the proposal to treat Respondent No.1 as surplus came on 8 November 1998, whereafter the latter was discharged by the management on 13 November 1998. By letter dated 18 November 1998, Respondent No.1 was merely asked by the management not to report to the school. Learned Counsel submits that it was this communication of 18 November 1998, which was stayed or directed not to be implemented by Deputy Director, and not the letter discharging him of 13 November 1998. I am afraid that would not be a correct reading of the Deputy Director's communication of 28 November 1998. The Deputy Director has referred to the action of the management in pursuance of the former's approval of the Respondent's surplus status; it was this action which was not to be acted upon and that on the footing that the surplus status itself was under consideration of the Deputy Director. Besides, as I have noted above, the further communications of the Deputy Director, referred to above, read

with his letter dated 23 November 1998, make it clear that what was referred to by the Deputy Director was the discharge of Respondent No.1 in pursuance of this earlier approval, and not just the management's barring him from entering the institute.

5 No fault can, accordingly, be found with the impugned order of the Tribunal. The Tribunal has correctly proceeded on the footing that since the purported surplus status of Respondent No.1 had not been approved by the Deputy Director of Education, who was the competent authority to do so, Respondent No.1 continued to be in the employment of the first Petitioner college and could not have been discharged or retrenched by the college. The Respondent State has filed an affidavit in the present petition through Assistant Director of Education concurring with the contention of Respondent No.1 that the Deputy Director of Education had stayed the order of the Petitioner management preventing Respondent No.1 from entering the college premises. The State has further reiterated that if Respondent No.1 could not be absorbed, for whatever reason, till his absorption, he be paid salary being a permanent teacher, as per applicable law. The Tribunal has correctly applied the law including the relevant provisions of the MEPS Act and Rules, particularly Rule 26 of the MEPS Rules and judicial pronouncements including the judgment of our court in the case of **Bharat Education Society Junior College vs. Balaram Vembulu**¹. The conclusion of the Tribunal is a possible conclusion based on evidence. It does not take into account any irrelevant or non-germane material or disregard any germane or relevant material. No interference, accordingly, is called for with its order in the writ jurisdiction of this court.

1 2000 Vol.102(3) BLR 688

6 The petition is, accordingly, dismissed. The order of the Tribunal shall be implemented within six weeks from today.

(S.C. GUPTE, J.)