

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

WRIT PETITION NO.13498 OF 2018

Sanjay Nathu Solunkhe ..Petitioner

Versus

The State of Maharashtra & Ors. ..Respondents

WITH

WRIT PETITION NO.13503 OF 2018

Vijaysingh Sonu Pawara ..Petitioner

Versus

The State of Maharashtra & Ors. ..Respondents

WITH

WRIT PETITION NO.13513 OF 2018

Gyanu Uttam Masule ..Petitioner

Versus

The State of Maharashtra & Ors. ..Respondents

WITH

WRIT PETITION NO.13526 OF 2018

Prashant Kamlakar Shinde ..Petitioner

Versus

The State of Maharashtra & Ors. ..Respondents

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Mr. Shailesh P. Brahme, Advocate for the
Petitioners.

Mr. A. B. Chate, AGP for Respondents-State.

Mr. Shrikant S. Patil, Advocate for Respondent
Nos.3 and 4.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATED : 14th MARCH, 2019.

PER COURT:-

1. The petitioners assail the order passed by the Education Officer declaring petitioners surplus and rejecting their objection. It is contended that after hearing, the order has been passed.

2. It appears that in the Institution run by the respondent-Society there are 98 Assistant Teachers. Some are declared surplus.

3. The contention of Mr. Brahme, learned counsel for petitioners is that petitioners are not the junior most teachers. As per the chart detailed above, there are many more Assistant Teachers junior to petitioners. In that case as per Rule 27 (a) the junior most teachers are required to be retrenched and declared surplus. The said procedure has not been followed. Even from S.T. category there is one person at serial no.97 who is junior to the Scheduled Tribe petitioners, so also there are candidates belonging to NT-C category who are junior to petitioners. Rule 27 has not at all been considered.

4. According to learned A.G.P. the policy as framed by the Government has been considered while

declaring petitioners surplus. The policy has been detailed in the communication dated 10.06.2016. No error has been committed. A person possessing ATD qualification cannot be declared surplus as one Arts teacher is required in every school.

5. We have considered the submissions canvassed by the learned counsel for the respective parties.

6. Rule 27 of the MEPS Rule reads thus:

"27. Principles of Termination of Service in the event of Retrenchment.

While terminating the services of employees under the preceding rule, the following principles shall also be observed, namely:-

- (a) In the case of reduction in the number of classes at the High School stage, i.e.. Standards VIII to X, the services of the junior-most teacher in the category of trained graduates shall be terminated.
- (b) In the case of reduction in the number of classes at the Middle School stage, i.e., Standards V to VII the services of the junior-most teacher in the category of trained undergraduates shall be terminated.
- (c) If there are some teachers who entered the services as (i) untrained Matric/S.S.C. or (ii) Matric/S.S.C., S.T.C. or its equivalent and changed their category on improving qualifications as (i) untrained graduate or (ii)

trained graduate, respectively and if the situation demands that their services are required to be terminated under rule 26, they shall be given option either to go back to the original category if (i) untrained Matric/S.S.C. or (ii) trained Matric/S.S.C. etc. On their doing so, the services of the junior-most teacher in that category shall be terminated.

- (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.
- (e) When any retrenchment is to be effected. members of Backward Classes already in service shall not be retrenched though liable to retrenchment according to their seniority, if their strength in the school does not exceed the percentage of reservation prescribed in sub-rule (7) of rule 9. In their place, an equal number of other non-backward Class members of the staff shall be retrenched subject, however, to the condition that, as between the permanent and temporary employee, the temporary employee shall be retrenched irrespective of the fact that he belongs to the Backward Class."

7. The primary consideration while declaring persons surplus is that the junior most teacher in the category shall be declared surplus and if the member from the reserved category is to be declared surplus then as per sub-rule (e) of Rule 27, they are not required to be retrenched unless there strength in the school does not exceed the percentage of reservation prescribed in the sub-rule (7) or Rule 9.

8. Perusing the order of Education Officer it does not transpire that the Education Officer has undertaken said exercise. The order has been passed bereft of the considerations as enshrined under Rule 27 of the MEPS Rules.

9. In light of the above, the impugned order rejecting the objection of the petitioners is quashed and set aside. The Education Officer shall consider Rule 27 in it proper perspective and take a decision accordingly. The petitioners may appear before the Education Officer on 25.03.2019 and put forth their stand. The Education Officer shall after considering the aforesaid aspects and Rule 27 in its proper perspective pass order afresh on its own merits within a period of two (02) months from the date of appearance of the petitioners.

10. Till the Education Officer decides on the objection of the petitioners afresh, the order directing absorption of petitioners in other schools under order dated 27.11.2018 shall not take effect.

11. Writ Petitions are disposed of. No costs.

(A. M. DHAVALÉ)
JUDGE

(S. V. GANGAPURWALA)
JUDGE