

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 438 OF 2018
WITH
NOTICE OF MOTION (L) NO. 445 OF 2017
AND
NOTICE OF MOTION NO. 165 OF 2018
IN
WRIT PETITION NO. 375 OF 2016**

Udaybhan Cheddee Mishra	}	Petitioner-Applicant
versus		
The Education Inspector,	}	
Greater Mumbai and Ors.	}	Respondents

Mr.S.G.Kudle for the applicant.

Ms. Jyoti Chavan-AGP for respondent nos.
1 to 3 and 6.

Mr.Sureshkumar J. Panicker with Ms.
Sucheta Panicker I/b. Mr.S.K.Chinchalikar
for respondent no. 4.

Mr.Anil Sable-Education Inspector, West
Zone, Mumbai present.

**CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.**

DATE :- JANUARY 24, 2019

P.C. :-

1. The prayers in Notice of Motion No. 438 of 2018 moved in
this court on 24th September, 2018 are as under:-

“a) That this Hon'ble Court be pleased to fix the peremptory date of early hearing and final disposal of Writ Petition No.375 of 2016 in view of the fact that the earlier two Notices of Motion have been tagged with the main Petition without deciding the issue in the said two Notices of Motion and in the such circumstances keeping the issues pending for considerable length of time amounts to the abuse of process of

law in view of the fact that the Junior Teachers have been retained in the School in question thereby rendering the senior teachers jobless and by way of not making any provisions for the purpose of their survival.

b) That this Hon'ble Court further be pleased to declare that the Education Inspector, Greater Mumbai (West Zone) was not justified in granting approval in respect of newly appointed teachers ignoring the claim of the surplus teachers and in all eventualities there is a frustration of rule of law and those who defeat the provisions of law should be dealt with sternly so as to inspire the confidence in the administration of Education Department of Government of Maharashtra."

2. The petitioner has stated in the affidavit in support that there are already two notices of motion moved and which have been tagged along with this notice of motion. The petitioner says that there is a combined seniority list of Marathi and Hindi medium teachers. The petitioner claims to be senior to other teachers who have been retained in the school in question, but the Management and the Department together have not placed on record the list of newly appointed teachers in whose case an approval has been granted from June, 2012. Therefore, the reliefs in terms of the above prayers be granted is the request of the petitioner.

3. The learned AGP who appears on behalf of the State as also the Deputy Director of Education and the Director of Education (respondent nos. 1 to 3) relies upon an affidavit in reply filed in Notice of Motion (L) No. 445 of 2017 and says that the de-recognition of respondent no. 4 resulted in some litigation, but

eventually, the order of de-recognition has been upheld. It is claimed that the petitioner herein has been terminated under the provisions of Rule 25A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (MEPS Rules) and therefore, is not entitled to be declared as surplus, but a wait-list of eligible teachers and of staff came to be prepared and circulated amongst the schools with a request to appoint them in their school in case of vacancy. Though the petitioner is not responsible for de-recognition of the school, still, the petitioner cannot rely upon any other rule. He cannot rely upon Rules 25A and 26 for they are not *pari materia*. It is claimed that a list was prepared styled as wait-list and at best the petitioner's name can be included in the said list and his case can be recommended accordingly.

4. After this matter was argued at great length and we pointed out a *prima facie* fallacy in the argument of respondent nos. 1 to 3, a further affidavit in reply has been filed. In this affidavit, in para 6, while maintaining that there is a distinction between Rule 25A and Rule 26 of the MEPS Rules and hence, the petitioner cannot be declared as a surplus teacher, in paras 7 and 8, the deponent states as under:-

“7. I say that the Petitioner was teaching in Hindi medium and is B.Sc. B.Ed. I say that as per the list maintained by our

office there are total 121 Surplus Teachers of Hindi Medium as on date. I say that initially there were 132 Surplus Teachers of Hindi Medium in Mumbai Region. I say that as on date as mentioned herein above there are 121 Surplus Teachers and out of 121 Surplus Teachers there are 16 B.Ed. Teachers. Hereto annexed and marked as **Exhibit "1"** is the list of Surplus Teachers of Hindi Medium.

8. I say that, however in view of the peculiar facts and circumstances involved herein, and on humanitarian grounds, as an exception, we will consider the Petitioner for absorption, on priority basis. However, this can be done only and only after all the Surplus Teachers, as mentioned hereinabove, as per their subjects are absorbed."

5. These two paragraphs, therefore, for the time being, protect the entitlement of the petitioner. The petitioner is a sole teacher who is at the receiving end. The petitioner is not responsible for the de-recognition order. The petitioner has also not been found to be acting in collusion in seeking to protect the entitlement and in terms of the MEPS Rules.

6. We are of the firm opinion that until the writ petition is finally decided and the legal issue, which is sought to be raised, though technical, is settled, the teacher-petitioner before us cannot be denied the protection. We cannot allow the State to play with words, particularly when the affidavit filed today contains positive statements in terms of paras 7 and 8. In terms of this affidavit, therefore, we direct that the petitioner's case shall be treated as an exception and purely on humanitarian ground as that of a surplus teacher. This will be without prejudice

to the rights and contentions of both sides. The petitioner's name be included in terms of the above statements on oath in the list of surplus teachers. All consequences in law will then follow.

7. With the aforesaid directions, all the notices of motion are disposed of.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)