

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

NOTICE OF MOTION NO. 548 OF 2018

IN

WRIT PETITION NO. 525 OF 2016

GirijJashankar Jagardeo Yadav	}	Petitioner
versus		
The Education Inspector, Greater	}	
Mumbai (West Zone) and Ors.	}	Respondents

WITH

NOTICE OF MOTION NO. 550 OF 2018

IN

WRIT PETITION NO. 531 OF 2016

Shri Rajeshprasad S. Chaturvedi	}	Petitioner
versus		
The Education Inspector, Greater	}	
Mumbai (West Zone) and Ors.	}	Respondents

Mr.S.G.Kudle for the applicants/
Petitioners.

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

Mr.S.K.Chincharikar for respondent no.4.

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

DATE :- MARCH 7, 2019

P.C. :-

1. The prayers in Notice of Motion No. 548 of 2018 are as
under:-

“a) This Hon’ble Court be pleased to direct the Respondents
herein and more particularly Respondent Nos. 1 and 2 herein
to produce the list of newly appointed teachers w.e.f. June,
2012 onwards and in the event of having found that the new

teachers have been appointed thereby granting them approval ignoring the applicant's rightful claim for absorption on account of having rendered surplus teachers then in that case this Hon'ble Court be pleased to declare that the Applicant is entitled for arrears of payment of salary w.e.f. June, 2012 onwards till he is permanently accommodated any other aided secondary school and moreover the juniors of the Respondent No.5 School have been retained ignoring the combined seniority list of "C" Category Teachers;

b) For any reasons whatsoever if this Hon'ble Court is not inclined to grant the reliefs sought for in terms of prayer clause (a) then in that case, this Hon'ble Court be pleased to the peremptory date of early hearing and final disposal of Writ Petition No. 531 OF 2016 forthwith."

2. The petitioners say that there is a combined seniority list of Marathi and Hindi medium teachers. The petitioners claim 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 petitioners.

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) 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 petitioners herein have been terminated under the provisions of Rule 25A of the Maharashtra Employees of Private Schools

(Conditions of Service) Rules, 1981 (MEPS Rules) and therefore, are 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 petitioners are not responsible for de-recognition of the school, still, the petitioners cannot rely upon any other rule. They 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 petitioners' names can be included in the said list and their case can be recommended accordingly.

4. After this matter was argued at great length, we pointed out a *prima facie* fallacy in the argument of the respondents. We invited the attention of the respondents to an affidavit in reply filed by respondent nos. 1 to 3 in the other matter concerning the same school (NMW/438/2018 in WP/375/2016 and connected matters). In that 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 petitioners. The petitioners are the teacher who are at the receiving end. The petitioners are not responsible for the de-recognition order. The petitioners have 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 petitions are finally decided and the legal issue, which is sought to be raised, though technical, is settled, the teachers-petitioners before us cannot be denied the protection. We cannot allow the State to play with words, particularly when the above referred affidavit contains positive statements in terms of paras 7 and 8. In terms of this affidavit, therefore, we direct that the petitioners' case shall be treated as an exception and purely on humanitarian ground as that of surplus teachers. This will be without prejudice to the rights and contentions of both sides. The petitioners' 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, both the notices of motion are disposed of.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)