

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.2029 of 2019
Shri Vijay s/o Gajananrao Wandile
Versus

The Director of Education, Secondary and Higher Secondary, State of Maharashtra, Pune,
and others.

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri A.Z. Jibhkate, Advocate for Petitioner.
Shri N.S. Rao, Assistant Government Pleader for Respondent
Nos.1 and 2.

Coram : R.K. Deshpande & S.M. Modak, JJ.
Dated : 11th March, 2019

1. Heard Shri Jibhkate, the learned counsel appearing for the petitioner.

2. The petitioner was working as an Assistant Teacher in one of the Schools run by the respondent No.4- Society. The said School was de-recognized; as a result, the petitioner was declared as surplus and absorbed in another School as per the provision of Rule 25A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981("the MEPS Rules). Subsequently, as a result of occurrence of a vacancy in one of the grant-in-aid Schools, viz. Madhuvan Vidyalaya, Jambhulghat, Tq. Chimur, Dist. Chandrapur, the respondent No.3 was absorbed as an Assistant Teacher. The petitioner was working as

a Head Master in the said School.

3. The challenge in this petition is to the order dated 30-4-2001 passed by the Education Officer directing absorption of the respondent No.3 in the School and also to the order dated 7-10-2003 granting continuity in employment to the respondent No.3 and counting his seniority over the petitioner. By an order dated 20-2-2019, the Education Officer has conferred administrative powers upon the respondent No.3 and hence this is also under challenge.

4. Shri Jibhkate for the petitioner has relied upon the decision of the Division Bench of this Court in the case of *Prabhakar Panjabrao Mahajan v. The Deputy Director of Education, Nagpur and others*, reported in 2007(2) ALL MR 220. Paragraph 27 of the said decision being relevant, is reproduced below :

“27. A teacher who is terminated on account of contingency covered by rule 25-A can only be considered for recommendations to the management of other school for being appointed on their establishment as a fresh candidate and such management is required to consider the case of employee for absorption and any such appointment of employee terminated under rule 25-A is required to be

treated as newly appointed employee who has (the petitioner in this case) suffered termination under rule 25-A of the MEPS Rules. All new appointees are required to be treated as Shikshan Sevak covered under the Scheme of Shikshan Sevak framed by the Government vide Government Resolution dated 27th April, 2000 read with modified Government Resolution dated 13th October, 2000.”

5. It is urged that the respondent No.3 was terminated on account of contingency covered by Rule 25A of the MEPS Rules and, therefore, his `appointment on absorption in the present School has to be treated as a fresh appointment. The respondent No.3, therefore, cannot be treated as senior to the petitioner.

6. It is not in dispute that the petitioner is neither superseded in the matter of promotion to the post of a Head Master nor he is reverted to the post of an Assistant Teacher. We, therefore, express that it shall be open for the petitioner to approach the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 as and when such event takes place.

7. It is merely conferment of administrative powers upon the respondent No.3 by an order dated 20-2-2019 that the present petition has been filed. Shri Jibhkate, the learned counsel,

submits that the grievance is against absorption of the respondent No.3 in violation of the law laid down by this Court, cited supra, and granting of continuity in service that the petitioner is aggrieved and hence these points are required to be considered by this Court.

8. The order of absorption dated 30-4-2001 and the order granting continuity to the respondent No.3 in service were passed long back and the present petition is filed in the year 2019. We do not find any propriety or justification to entertain such challenge in the present petition.

9. It shall be open for the petitioner to approach the School Tribunal as and when such occasion arises. We keep all questions open to be agitated in such appeal. We make it clear that the Tribunal may not set aside the order of absorption or grant of continuity in employment to the respondent No.3, but it can certainly take into consideration the effect of it in counting the seniority for the purposes of promotion to the post of a Head Master.

10. With these observations, the petition is dismissed.

(S.M. Modak, J.)

(R.K. Deshpande, J.)