

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

4 WRIT PETITION NO.749 OF 2019

**GANGADHAR KASHINATH SURYAKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Rodge Pratap G.

AGP for Respondents: S.G.Karlekar

Adv. Gunale V.d. For R No. 6

Adv.Bondar U.B. For R No. 4

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**CORAM : S.V.GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATE : 09.01.2020

PC. :-

The petitioner is challenging the order dated 12/12/2018. The said order in fact is an order of retrenchment though the wordings of the said order may not effectively convey the same. The order is passed on the ground that the strength of the students is reduced and the post is not available. The petitioner is relieved from service.

2] The following facts are not disputed. The petitioner was an employee of respondent nos.5 and 6. The petitioner was terminated from service. The petitioner filed an appeal before the School Tribunal, Latur bearing Appeal No.32/2009. The Appeal filed by the petitioner came to be allowed. The operative part of the order reads thus :

“1] Appeal is allowed.

2] The termination order dated 2.2.2007 issued by the respondent No.2 is hereby quashed and set aside.

3] Respondents are directed to reinstate the appellant in service as Assistant Teacher forthwith with continuity of his service and pay him full backwages and other consequential benefits from the date of his termination to the date of reinstatement.

4] The respondent shall pay full backwages and other consequential benefits to the appellant within 40 days from this order. If the respondent Nos.1 & 2 failed to comply the above order then the respondent No.3 shall withhold non salary grants of the respondent school and pay from it directly to the appellant arrears of his backwages and other consequential benefits.

5] Each respondent shall pay costs of Rs.2,000/- of this appeal to the appellant within one month from this order.”

3] The petitioner was earlier also terminated from service. He filed Appeal No.251/2004 before the School Tribunal, Pune Region, Solapur. The Appeal came to be allowed under the judgment dated 15/12/2004. The operative part of the said order reads thus :

“1] The Appeal is allowed as under :-

2] The impugned order of termination dt. 5-1-2001 is hereby quashed and set aside.

3] The Appellant be reinstated forthwith in the service with continuity of service and is entitled to receive full back wages with consequential benefits from R/M alone.

4] The Appellant's service shall be deemed to be approved and confirmed as Primary Teacher on completion of two years probation period.

5] The Respondents are directed to pay full back wages to the Appellant until reinstatement and thereafter as per Rules and Regulations of M.E.P.S. Act.

6] The Respondents shall comply with the aforesaid order within 35 days and on their failure Resp. No.3 E.O. shall deduct the dues of the Appellant from non-salary grant of the R/M and be paid directly to the Appellant.

7] Inform parties accordingly.”

4] The order passed by the School Tribunal, Latur in Appeal No.39/2009 is challenged by the management before this Court by filing Writ Petition. This Court did not grant stay to the reinstatement, however, stay is granted to the extent of back wages.

5] Subsequently on 12/12/2018, the Head Master of respondent no.6 informed the petitioner that the strength of the students has been reduced and as per Rule 26 (2 and 5) of M.E.P.S. Rules directions are given to terminate the services of the surplus teachers. The notice was issued under Rule 26 and as per Rule 26 the petitioner stands relieved from 11/12/2018. The said order is assailed in the present Writ Petition.

6] The Assistant teacher who is a permanent employee can be retrenched from service by the management after giving 3 months notice on the ground of reduction in number of class or divisions or fall in number of pupil resulting in reduction of strength. The petitioner is relieved on account of the reduction in the strength of students but same would tantamount to retrenchment.

7] If retrenchment is under Rule 26-1 Rule 26(2) (ii) directs employees from aided schools whose services are proposed to be retrenched to be

absorbed by the Education Officer.

8] The contention of Mr.Bondar, the learned counsel for the Education Officer is that the petitioner is not an approved employee he does not possess the necessary qualification. Thrice his proposal has been returned back. In view of that the petitioner is not entitled to be absorbed. The petitioner is terminated from service.

9] Mr.Sabnis, learned counsel for the institution states that the institution had submitted proposal to the Education Officer. Moreover, further contends that the petitioner stands relieved from the service.

10] The contention on behalf of the Education Officer that the petitioner is not an approved Teacher cannot be accepted in the light of the judgment of the School Tribunal in an Appeal filed by the petitioner against the termination order bearing Appeal No.251/2004 decided on 15/12/2004. The School Tribunal has categorically observed that the petitioners services shall be deemed to be approved and confirmed as primary teacher on completion of 2 years probation period. The judicial order passed by the School Tribunal is in force. There is no stay granted to the said order. The Education Officer cannot sit over the judgment of the School Tribunal. It was for the Education Officer to challenge the said judgment, however, the Education Officer chose not to assail the said judgment. In view of the judicial pronouncement that the petitioner shall be deemed to be an approved and confirmed as primary teacher the Education Officer has no other option but to take steps for absorption under Rule 26 of the M.E.P.S. Rules. It would not be open now for the Education Officer to contend that at the time of appointment Section 5 of

M.E.PS. Rule has no authority. The Tribunal has also given finding in that regard.

11] In light of the above, we direct the Education Officer to take steps for absorption of the petitioner in accordance with Rule 26 considering the petitioner to be a deemed approved teacher. The same shall be done preferably within 3 months. The Education Officer shall place the petitioner in the list of surplus teachers to be absorbed and shall take steps to absorb the petitioner as per his turn immediately. This order is passed considering judgment of the School Tribunal in force today.

12] Writ Petition is accordingly disposed of. No costs.

[MANGESH S. PATIL, J.]

[S.V.GANGAPURWALA,J.]

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