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

907 WRIT PETITION NO.6374 OF 2005
WITH CA/2235/2020 IN WP/6374/2005 WITH CA/11550/2005
IN WP/6374/2005

1. The Secretary,
Paramhansa S. P. M.
A/P Yenegur, Tal. Umarga,
Dist. Osmanabad

2. The Head Master,
Cap. Joshi Smarak Vidyalaya,
Yenegur, Tal. Umarga,
Dist. Osmanabad

...PETITIONERS

VERSUS

1. Shri. Nagappa Ramchandra Teerth,
R/o. Arati Nivas, Yashwantnagar,
Murum, Tal. Umarga,
Dist. Osmanabad

2. Jevali Education Soc.,
A/p. Jewali, Tal. Lohara,
Dist. Osmanabad,
Through : it's Secretary

3. The Head Master,
Shri. Basaveshwar Madhyamik
Va Uccha Madhyamik Prashala,
Jewali, Tal. Lohara

4. The Education Officer (Sec.),
Zilla Parishad, Osmanabad

...RESPONDENTS

...
Mr K. J. Ghute Patil, Advocate h/f Mr N. S. Kadam, Advocate for
petitioners;

Mr V. D. Gunale, Advocate for respondent No.1

Smt. S. G. Chincholkar, Advocate for respondent Nos.2 & 3

Smt. V. S. Choudhary, A.G.P. for respondent/State

(2)

WITH
WRIT PETITION NO.7776 OF 2005
WITH CA/2239/2020 IN WP/7776/2005

Mahesh Bhimrao Khandalkar,
Age: 24 years, Occu: Service
as Shikshan Sevak,
Captain Joshi Smarak Vidyalaya,
Yenegur, Tal. Omerga, Dist. Osmanabad ...PETITIONER

VERSUS

1. The Secretary,
Paramhansa S. P. M.
A/P Yenegur, Tal. Umarga,
Dist. Osmanabad
2. The Head Master,
Cap. Joshi Smarak Vidyalaya,
Yenegur, Tal. Umarga,
Dist. Osmanabad
3. Shri. Nagappa Ramchandra Teerth,
R/o. Arati Nivas, Yashwantnagar,
Murum, Tal. Umarga,
Dist. Osmanabad
4. Jevali Education Soc.,
A/p. Jewali, Tal. Lohara,
Dist. Osmanabad,
Through : it's Secretary
5. The Head Master,
Shri. Basaveshwar Madhyamik
Va Uccha Madhyamik Prashala,
Jewali, Tal. Lohara
6. The Education Officer (Sec.),
Zilla Parishad, Osmanabad
(Respondent Nos.3 to 6 are dismissed
as per Registrar's order
dtd.23/04/2007 ...RESPONDENTS

...

(3)

Mr M. P. Tripathi, Advocate for petitioners;
Mr K. J. Ghute Patil, Advocate h/f Mr N. S. Kadam, Advocate for
respondent Nos.1 & 2
Mr V. D. Gunale, Advocate for respondent No.3
Smt. S. G. Chincholkar, Advocate for respondent Nos.4 & 5
Smt. V. S. Choudhary, A.G.P. for respondent/State

CORAM : RAVINDRA V. GHUGE, J

DATE : 16th March, 2022

ORAL JUDGMENT:

1. These two cases bring forth weird and peculiar facts. As goes the saying, “confusion most confounded”. This case is of such nature.

WRIT PETITION NO. 6374 OF 2005

2. The unfortunate teacher, namely, Shri. Nagappa Ramchandra Teerth (hereinafter referred to as ‘Nagappa’), joined as an ‘Assistant Teacher’ with the Captain Joshi Memorial School at Yenegur, which was operated by the petitioner Paramhans Shikshan Prasarak Mandal (hereinafter referred to as ‘the old school’). After his appointment, he continued for five consecutive years and on 15/03/1995, due to the fall in the strength of the students, he was declared surplus by the Education Officer. Since there was a vacancy available with Shri. Basaveshwar Secondary and Higher Secondary School, Jevali, Tq. Lohara, Dist.

(4)

Osmanabad (hereinafter referred to as 'the new school'), he was absorbed under the order of the Education Officer, on 30/04/1998. Considering the law applicable, the break in service from 15/03/1995 till his absorption on 30/04/1998, is non-existent.

3. Rule 26 of the Maharashtra Employees of Private Schools (Conditions of service), Rules 1981, reads thus :-

“[26. Retrenchment on account of abolition of posts. -

(1) a permanent employee may be retrenched from service by the Management after giving him 3 months notice, on any of the following grounds, namely :

(i) reduction of establishment owing to reduction in the number of classes or divisions;

(ii) fall in the number of pupils resulting in reduction of establishments;

(iii) change in the curriculum affecting the number of certain category of employees;

(iv) closure of a course of studies;

(v) any other bonafide reason of similar nature.

(2) The retrenchment from services under sub-rule (1) shall be subject to the following conditions, namely :-

(i) The principle of seniority shall ordinarily be observed;

(ii) Prior approval of the Education Officer in the case of Primary and Secondary Schools or, of the Deputy Director in the case of Higher Secondary Schools and Junior Colleges of Education shall be obtained by the Management in each case of retrenchment including such cases in which the principle of seniority as

(5)

proposed to be departed from and a senior member of the staff is proposed to be retrenched when a junior member should have been retrenched, stating the special reasons therefor;

(iii) The employees from aided schools, whose services are proposed to be retrenched shall be absorbed by the Education Officer in the case of Primary and Secondary Schools or by the Deputy Director in the case of Higher Secondary Schools and Junior Colleges of Education. The order of absorption of such employees shall be issued by registered post acknowledgment due letter, and till they are absorbed, the Management shall not be permitted to effect retrenchment on account of any reasons mentioned in sub-rule (1).

(3) In case any employee refuses to accept the alternative employment offered to him under clause (iii) of sub-rule (2), he shall lose his claim for absorption, and the Management of the school shall be allowed to retrench, such employee from the services after completion of 3 months' notice period.

(4) If the posts retrenched are revived or additional posts for the same subject are created, the Management shall, by a registered post acknowledgment due letter addressed to the employee who is retrenched and absorbed in other school, give him the first opportunity of rejoining service in the school. For this purpose, the employees shall communicate to the Management, his address and availability for the job every year before April by a letter sent by registered post acknowledgment due.

(5) The retrenched person who may have been absorbed in other school shall have an option either to get repatriated to his original school or to continue in school in which he has been absorbed.

(6)

(6) If the employee opts to continue in the school in which he has been absorbed, or if no written reply is received from the employee within a fortnight from the date of receipt of the letter addressed to him by the Management regarding the offer for re-appointment or repatriation to the school or on refusal by him to receive the letter containing such offer, the Management shall be free to fill the post or posts by appointing some other qualified person or persons.

(7) In the event of the employee opting to get repatriated to the original school, he shall be restored to his original position in pay, seniority etc.

(8) In the event of the employee opting to continue in the school in which he has been absorbed, and even during the intervening period when he has not been given an opportunity to rejoin his previous school, his services shall not be terminated by the Management under sub-rule (1) of rule 28 by treating him as temporary. If the services of such an absorbed employee are required to be terminated under rule 25A or he is to be retrenched under this rule, the procedure prescribed under rule 25A or, as the case may be in this rule shall apply. However, his seniority for the purpose of promotion in the school in which he is absorbed shall be fixed in the respective category from the date of his absorption.

(9) In case, the fall in the number of pupils, classes or divisions affects the scale of the employee or his status, the facility of absorption admissible as per provisions of clause (iii) of sub-rule (2) shall not be admissible to him and he shall have to work on the lower scale or lower post or part-time post, as the case may be. In the event of such an employee showing unwillingness to work on such a post, the authorities mentioned in clause (iii) of sub-rule (2) shall permit the Management to retrench him after giving him three months' notice or, as the case may be, after

completion of the notice period if already given.]”

4. On 30/04/1998, as there was an increase in one post with the old school, the Management complied with Rule 26 (5 and 6), thereby calling upon Nagappa to report for duties on 01/06/1998. He was given one full month of May vacation, after which he was to join on 01/06/1998. He specifically replied on 08/05/1998 that, he does not intend to return to the old school and he was happy with the new school, where he desired to continue. He, therefore, exercised his option under Sub-clause 5. By opting to continue in the new school where he was absorbed, the old school was at liberty to fill in the post in terms of Sub-clause 6. This was done by the old school by following the prescribed procedure.

5. The controversy in this matter arose when an employee Shri. B. R. Suryawanshi retired from the old school on 31/05/2004 due to superannuation and the Education Officer, without reading the law or the Rules, issued an order dated 08/06/2004, directing the old school to absorb Nagappa. In the same order, he directed the new school to relieve Nagappa. The most shocking aspect of this highhanded act of the Education Officer is that, he directed Nagappa to join the old school when he had already exercised his option in 1998, refusing to join the said school and preferring to

(8)

continue with the new school. The Education Officer directed the new school to relieve Nagappa. This created a weird situation. The new school, under the order of the Education Officer, relieved Nagappa and the old school declined to absorb him, since he had already declared his intention six years ago that, he did not desire to return to the old school. Therefore, a new employee, namely, Mahesh Bhimrao Khandalkar was appointed by the old school in place of the superannuated employee Shri. B. R. Suryawanshi. The Education Officer further aggravated the situation with his weird and unusual act of granting an approval to the appointment of Shri. S.S. Karbhari, who was already in the new school from 2003.

6. As such, on the one hand, the Education Officer, de hors the Rules, uprooted Nagappa from the new school and tried to forcibly plant him in the old school and on the other hand, he approved the appointment of Shri. Khandalkar made by the old school and he also approved the the appointment of Shri. Karbhari in the new school, thereby filling up the two vacancies and leaving Nagappa in suspended animation. I find these factors to be quite shocking, demonstrating utter insensitivity and casual attitude.

7. In view of the above, Nagappa had no option, but to approach the School Tribunal. Since he was relieved from the new school and the old school declined to absorb him, he treated the same as being oral termination w.e.f. 15/07/2004 and prayed that the same may be quashed and set aside. In the alternative, he prayed that, he should be continued in the new school by setting aside the orders of the Education Officer.

8. Unfortunately, the School Tribunal has completely lost sight of the above aspects and failed in dealing sternly and firmly with the Education Officer, while allowing the appeal filed by Nagappa. Surprisingly, the Tribunal held that the old school had terminated his services and concluded that the oral termination order dated 15/07/2004 issued by the old school, was illegal. The school Tribunal lost sight of the fact that Shri. Khandalkar was appointed by the old school after publishing an advertisement in daily newspaper 'Sanchar', Solapur. The School Tribunal granted reinstatement in service with continuity and full backwages to appellant Nagappa, when it should have taken the Education Officer to task and should have found a way out by directing Nagappa to be reinstated in the new school and absorb Shri. Karbhari in the same new school or elsewhere.

9. The peculiar situation before this Court, therefore is, that on the one hand, the impugned Judgment cannot be sustained as against the old school and on the other hand, Nagappa cannot be granted reinstatement in service with continuity and full backwages, in the new school. At the same time, the appellant Nagappa, who is not at fault and cannot be blamed in any manner whatsoever, and who has been a victim of the whims of the Education Officer, cannot be rendered jobless or remediless.

10. The Rules clearly indicate that, if an employee opts to continue with the new school where he has absorbed, he would continue in that school. Rule 26(5) can be so interpreted that, once he exercises his option/makes a choice of continuing with the new school, not to return to the old school, he is not to be compelled to come back to old school, inasmuch as, the old school, thereafter need not again invite his choice, if any vacancy occurs in future, as the employee has already chosen his option and has elected not to come back to the old school. Such exercise is not to be repeated once an option is exercised under Rule 26(5).

11. It is nowhere prescribed under the Rules that the surplus teacher has to be confronted repeatedly for seeking his view on

whether he desires to join the old school, as and when vacancies continue to be available. Logically, this would not be of any advantage as it would actually create a situation, wherein, the old school Management continues to approach it's teacher who has been rendered surplus and absorbed elsewhere. This also creates an atmosphere of uncertainty because the new school would continue to speculate as to whether the absorbed teacher might leave the school and go back to the old school.

12. In view of the above, Writ Petition bearing No.6374/2005 filed by the old school Management is allowed. I am, therefore, issuing the following directions :-

- (a) The order of relieving the appellant by the new school, is quashed and set aside.
- (b) The order of the Education Officer dated 29/06/2004, uprooting the appellant from the new school and directing the old school to appoint him, is also quashed and set aside.
- (c) Nagappa will have to be treated as being continued in the new school, notionally, without creating any monetary burden on the new school. His entire wages for the said period, viz. he being uprooted from the new school, till his

(12)

attaining the age of superannuation on 30/06/2020, shall be paid by the State Government on account of the glaring misdeed committed by the then Education Officer in 2004.

(d) The new school would process the pension papers of Nagappa, on or before 30/04/2022 and forward the same to the Education Officer (Secondary), Zilla Parishad, Osmanabad, who shall forward the said papers with supporting documents to the Competent Authority, on or before 15/06/2022.

(e) The Competent Authority dealing with the pension of the appellant Nagappa, shall ensure that papers are cleared, as expeditiously as possible and not later than 30/07/2022.

(f) The arrears of backwages shall be paid to Nagappa within 60 days thereafter.

(g) Considering the conduct of the then Education Officer, costs of Rs.1,00,000/- are imposed on the said Education Officer.

(13)

(h) The Deputy Director, Latur, under whose jurisdiction the Education Officer (Secondary), Zilla Parishad, Osmanabad was working in 2004, will initiate steps for recovering an amount of Rs.1,00,000/- towards costs from the salary of the said Education Officer, in 10 equal installments, if he is in employment today, or from his pensionary benefits in 20 equal monthly installments, and remit the amount in the State Exchequer.

(i) The Deputy Director, Latur Region is directed to pay the entire backwages of the appellant Shri. Nagappa R. Teerth from 11/06/2004 till 30/06/2020 from the State Exchequer. The present Education Officer (Secondary), Zilla Parishad, Osmanabad, shall fix the last drawn Pay-Scale of the appellant Shri. N.R. Teerth for the purpose of his pension.

(j) The impugned Judgment of the School Tribunal stands modified accordingly.

WRIT PETITION NO. 7776 OF 2005

13. In view of the above, the writ petition filed by the employee Shri. M. B. Khandalkar, who is appointed in the old school,

(14)

bearing No.7776/2005, would not survive and stands disposed off.

14. Pending Civil Applications in these two writ petitions stand disposed off .

15. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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