

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

WRIT PETITION NO. 4061 OF 2017

Hanmant Babruwan Dure .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 3674 OF 2017**

Khalil Maheboob Shaikh .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 3679 OF 2017**

Dagdu Ratan Tamboli .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 3680 OF 2017**

Deepak Shriram Kadam .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 3681 OF 2017**

Mahadeo Prabhu Ghadge

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri A. N. Irpatgire, Advocate for the Petitioner in all matters.
Mrs. M. A. Deshpande, Addl.G.P. for the Respondent Nos. 1, 3
and 5.

Shri Ashwin V. Hon, Advocate for Respondent Nos. 6 to 8 in all
matters.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

**CLOSED FOR ORDERS ON : 04.08.2022.
ORDER PRONOUNCED ON : 11.08.2022**

FINAL ORDER (*Per Sandeep V. Marne, J.*) :-

. In these five petitions, the petitioners have approached this Court with a grievance that while closing down the college by transfer/absorption of the students into another college, the management has left the lecturers working in the college high and dry. The petitioners have therefore prayed that the order absorbing the students of the respondent No. 7 college into the respondent No. 8 college be quashed and set aside. The petitioners also pray for their absorption in service in any educational institution including the educational institutions run by the respondent No. 6 management.

2. Brief facts of the case, as captured from the pleadings, are that the respondent No. 6 trust has been running eighteen

educational institutions, which include Women's D. Ed. College (respondent No. 7) and a D. Ed. college (respondent No. 8). The respondent No. 3 had granted permission to the respondent No. 6 to run respondent No. 7 college with intake capacity of 80 students in Marathi medium on 26.03.1991. The petitioners claim to have been appointed on the post of lecturers through selection process on various dates more particularly, as pointed out in para No. 3 of the respective petitions. They further claim that personal approvals were granted to their appointments by the office of the Deputy Director of Education, Latur vide order dated 05.06.2006 from the academic year 2005-2006.

3. It is a common ground that the respondent No. 7/college has not been receiving grant in aid and, therefore, the entire responsibility of payment of salary to the petitioners rested only on the management.

4. The respondent No. 6 adopted a resolution on 17.08.2016 to close the respondent No. 7 college from the academic year 2016-2017 on account of inadequate admissions. Accordingly, the respondent No. 6 informed the office of the Deputy Director of Education, Latur not to recommend any admissions from the academic year 2016-2017.

5. Apprehending that the career prospectus of the teaching and non teaching staff would be adversely affected by the decision of the respondent No. 6, it appears that on 22.08.2016 some of the teaching staff complained to the office of the Director

of Education, Pune requesting him not to act upon the letter dated 19.08.2016. The Deputy Director of Education, Latur by its letter dated 24.08.2016 called upon the Principal of the District Education and Training Centre, Murud to pay visit to the college and enquire into the issue of absorption of 24 students and complaint of the teaching staff.

6. On 21.10.2016, the Deputy Director of Education, Latur approved the proposal of the respondent No. 6 for absorption of 48 students of the respondent No. 7 college into the respondent No. 8 college. The said letter dated 21.10.2016, however is completely silent about the future of the teaching and non teaching staff of the respondent No. 7 college. The petitioners have challenged the said letter dated 21.10.2016 in the present petition.

7. Appearing for the petitioners, Shri A. N. Irpatgire, learned advocate has submitted that, since the respondent No. 6 management is running eighteen educational institutions, the petitioners were required to be absorbed in service in other colleges of the respondent No. 6. He relied upon the provisions of the Rule 25A of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (for the sake of brevity hereinafter referred as to the "Rules of 1981") to contend that the names of the petitioners ought to have been kept on waiting list by the Deputy Director's office for being absorbed in any other college. He has also relied upon the provisions of Clause (d) of the Rule 27 of the Rules of 1981 to contend that

since the management is running more than one college, it was incumbent upon the management to prepare common seniority list of all the employees working in all the colleges for the purpose of absorption.

8. Per contra, Shri Ashwin V. Hon, learned advocate appearing for respondent Nos. 6, 7 and 8 has submitted that the petitioners request for absorption in other educational institutions of the respondent No. 6 cannot be granted in view of the fact that the petitioners are qualified for teaching D. Ed. course, whereas other educational institutions offer B. Ed. course. He therefore submits that on account of non possessing qualification for teaching B. Ed. course, the absorption of the petitioners in other colleges of the respondent No. 6 is not possible.

9. Before we deal with the contentions raised by the parties, it would be necessary to make reference to the Rules of 1981. Rule 25A of the Rules of 1981 deals with termination of service on account of abolition of posts and provides that services of permanent employee may be terminated by the management on account of abolition of posts due to closure of school after giving advance intimation of three months. Sub Rule (2) of Rule 25A of the Rules of 1981 provides that names of employees in the aided schools, whose services stand terminated in accordance with sub-rule (1) on account of de-recognition and who are not directly responsible for de-recognition shall be taken on a waiting list by the Deputy Director and the same shall be recommended by him

to the management of newly opened aided schools or of the existing aided schools. Rule 26 of the Rules of 1981 deals with retrenchment on account of abolition of posts and provides that a permanent employee may be retrenched from service by the management after giving him 3 months notice on the five grounds which includes reduction of establishment owing to reduction in the number of classes or divisions or fall in the number of pupils. The rule further provides prior approval of the Deputy Director in each case of retrenchment including the cases in which principle of seniority is proposed to be departed. It is further provided that the employees of aided schools, whose services are proposed to be retrenched shall be absorbed by the Deputy Director. Rule 27 of the Rules of 1981 deals with principles of termination of service in the event of retrenchment. For our purpose Clause (d) of Rule 27 of the Rules of 1981 is relevant, which provides that if the management runs more than one school and in case the retrenchment is to be effected under Rule 26 in any one of the schools, the principle of common seniority of employees working in all the schools conducted by it shall be followed.

10. Coming to the facts of the present case, we find that no intimation is given by the respondent management to the petitioners in respect of their services. The respondent management only opted for absorption of the students into another college and failed to deal with the issue of services of the petitioners. It appears that prior notice of three months as required under Rule 25A and Rule 26 of the Rules of 1981 has

not been given by the respondent management to the petitioners. Even though there is no specific order/communication of retrenchment, it is common ground that the petitioners are neither allowed to serve on account of closure of the college itself, nor are paid salaries. Therefore, it could be a case of deemed retrenchment. On account of non following of statutory requirement before retrenchment, the same may be rendered bad in law. However, so far as the relief relating to retrenchment is concerned, the petitioners have alternate efficacious remedy of approaching the School Tribunal challenging their retrenchment.

11. When we put across the suggestion to Shri Irpatgire, the learned advocate appearing for the petitioners that the petitioners may avail the alternate remedy for setting up challenge to their retrenchment, Shri Irpatgire, urged before us that the petitioners are required to be absorbed in service in other colleges of the respondent No. 6. This is how we are called upon to consider the prayer for absorption of the petitioners in other colleges of the respondent No. 6.

12. The reliance of Shri Irpatgire, on Sub Rule (2) of Rule 25A of the Rules of 1981 appears to be misconceived. The said provision is applicable only in respect of employees of aided schools. In respect of the employees of the unaided schools, there is no obligation on the Deputy Director to ensure absorption of retrenched employees in other schools. Even Clause (d) of Rule 27 of the Rules of 1981 is of little assistance to the petitioners on account of peculiar facts of the present case. Clause (d) of the

Rule 27 of the Rules of 1981 makes it mandatory for the management running more than one school to maintain common seniority of all employees in the schools which has to be followed while effecting retrenchment. Even though no such common seniority list has been brought to our notice by the respondent No. 6 management, the issue of maintenance of the same has become academic. This is because, the respondent No. 6 management has made a specific statement in their affidavit in reply as under, *“I say that respondents cannot accommodate the petitioner in any other college as most of the D. Ed. colleges of the respondent No. 6 trust have been closed down and he cannot be recruited in any other college because the State Government has imposed ban on the recruitment process.”* Thus the respondent management has come out with a specific case that there are no posts/vacancies available in any other college of the respondent No. 6 for absorption of the petitioners.

13. The petitioners on their part have also failed to discharge the burden of demonstrating before us that vacancies exists in other colleges of respondent No. 6 for absorption of the petitioners. Absolutely, no material is placed before us in that regard by the petitioners.

14. We thus face a situation where there is failure on the part of the petitioners to prove existence of vacant posts in other colleges of the respondent No. 6 for their absorption and there is specific stand of the respondent management that no posts are available in other colleges for absorption of the petitioners. It

must be born in mind that that the respondent Nos. 6 to 8 are not instrumentalities of the State and are not amenable to writ jurisdiction of this Court. We are aware of the legal position that some of the provisions of the Rules of 1981 and more particularly those dealing with payment of salary are held to be enforceable under writ jurisdiction of this Court. However, in a case like this, where no material is placed by the petitioners before us demonstrating existence of vacant posts in other colleges for their absorption, we cannot direct enforcement of the provisions of Clause (d) of Rule 27 of the Rules of 1981, particularly considering the position that there is no statutory duty on the respondent No. 6 management to provide alternate employment to the retrenched employees. We, therefore, are unable to grant relief of absorption in service in other colleges of the respondent No. 6 as sought for by the petitioners. In the circumstances, we proceed to pass the following order.

ORDER

- (A) The prayer of the petitioners for absorption in service of other colleges of the respondent No. 6 management is rejected.
- (B) The petitioners are at liberty to avail alternate remedy before the competent forum with regard to their retrenchment/deemed retrenchment from service.
- (C) While considering challenge to the retrenchment/deemed retrenchment of the petitioners, the time spent in

prosecuting the present petition be excluded for the purpose of computation of period of limitation. This order shall not be construed to mean that we have dealt with the merits of the issue relating to the retrenchment. All contentions in this regard are expressly kept open.

15. With these observations, the writ petitions are disposed of without any order as to costs.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/Aug. 22