

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1081 OF 2021

Shridhar P. Prabhu ... **Petitioner**
Versus
Shri Vile Parle Kelwani Mandal & Ors. ... **Respondents**

Mr. Ashok Shetty & Ms. Ritu Joshi & Mr. Kalpesh Nansi i/b.
Kalpesh Nansi, Advocate for the Petitioner.

Mr. Kiran Bapat a/w. Ms. Manorama Mohanty and Mr. A. P.
Singh i/b. S. K. Srivastav & Co., Advocate for the
Respondent Nos.1 to 3.

Mr. Abhay L. Patki, AGP for Respondent/State.

**CORAM: S.V. GANGAPURWALA &
MADHAV J. JAMDAR, JJ.**

DATED : AUGUST 17, 2022

P.C.

1. The petitioner was employed as full time Instructor with respondent No.2 on or about 8th November 2006. The appointment of the petitioner was approved by the Joint Director Vocational and Technical Education under order dated 10th August 2009, however, with effect from 8th November 2006.

2. Due to the reduction in the strength of students, the Management decided to close three HSC Vocational courses (MCVC) from the academic year 2019-2020 onwards. The permission was granted to the request of Management to close down the courses. Subsequently, it appears that, the petitioner was absorbed/transferred in the Commerce stream of respondent No.2.

3. The proposal was submitted by the Management seeking approval to the transfer of the petitioner to the Commerce Division. The same is rejected under the impugned order.
4. We have heard learned Counsel for the petitioner and learned AGP.
5. According to learned Counsel for the petitioner, as the courses were closed down, Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as, "**MEPS Rules**") would apply and not Rule 25A of the MEPS Rules as relied by the Deputy Director of Education. According to the learned Counsel for the petitioner, the petitioner is absorbed in 100% grant-in-aid post as an Assistant Teacher. The same ought to have been considered by the respondents.
6. According to learned AGP as it is the case of closure of entire school, Rule 25A of the MEPS Rules would apply. The proposal was submitted seeking approval to the transfer of the petitioner from the vocational course that is closed down to the Commerce Division. The proposal is not permissible under Rule 25A of the MEPS Rules. The petitioner has been terminated from the service as such could not have been transferred.
7. We have considered the submissions.
8. Whether the Management had submitted proposal seeking approval to the transfer of the petitioner or as to the absorption would be too technical issue.
9. It is undisputed that the course for which the

petitioner was appointed as Instructor closed down. Even assuming that Rule 25A of the MEPS Rules would apply, still if the employee is not responsible for the closure of the course, he is entitled to be absorbed as he is working on 100% grant-in-aid post.

10. In light of the above, it would be unnecessary to enter into rigmarole as to whether the petitioner was transferred or absorbed in the Commerce Division. The same would be entering into verbal jugglery.

11. In light of the above, the impugned order is quashed and set aside. The Deputy Director of Education shall reconsider the proposal. It may consider the case as that of absorption, which is certainly permissible under Rule 25A so also Rule 26 of the MEPS Rules.

12. The Deputy Director of Education will only be required to consider whether the petitioner possesses the necessary qualification to the post and whether the petitioner is absorbed and the post is available. The proposal shall be decided on its own merits expeditiously preferably within three months. If the proposal is approved, the petitioner would be entitled to continuation of service.

13. The writ petition is disposed of. No costs.

(MADHAV J. JAMDAR, J.)

(S.V. GANGAPURWALA, J.)

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