

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

WRIT PETITION NO. 4077 OF 2019

Sanjay Sudhakar Nikure,
Aged about 33 years, Occ. Service,
R/o. Post Shirpur, Tahsil. Chimur,
District – Chandrapur

... Petitioner

.. Versus ..

1) State of Maharashtra

through its Secretary,
Education and Sports Department,
Mantralaya, Mumbai – 400 032

2) Deputy Director of Education,
Nagpur Division, Nagpur

3) Education Officer (Secondary),
Zilla Parishad, Chandrapur.

4) Pay Unit, through its Superintendent,
Chandrapur, District. Chandrapur.

5) Gaurav Bahu Uddeshiya Shikshan Sanstha,
through its Secretary, Warora,
District Chandrapur.

6) Adarsh Vidyalaya, Wadala (Paiku),
through its Headmaster, Chimur,
District. Chandrapur.

7) Ku. Harsha Tulsiram Bothley,
Aged about 37 years, Occ. Service,
R/o. C/o. Adarsh Vidyalaya, Wadala (Paiku),
Chimur, District – Chandrapur

...Respondents

Shri Ajay Mohgaokar, Advocate for petitioner.
Shri Nitin Rao, A.G.P. for respondent nos. 1 to 4.
Shri Nitin Khamborkar, Advocate for respondent nos. 5 to 7.

**CORAM : SUNIL B. SHUKRE AND
SMT. M.S. JAWALKAR, JJ.**

DATED : 19/04/2022

ORAL JUDGMENT (Per : Smt. M.S.Jawalkar, J.)

Rule. Rule made returnable forthwith. Heard the matter finally at the stage of admission with the consent of the learned counsel for the parties.

2. The petitioner is aggrieved by an order passed by the respondent no. 3 - Education Officer (Secondary) declaring the petitioner as surplus and the respondent no. 7 who is junior has been protected. The petitioner was appointed as an Assistant Teacher on 26/06/2010 for the subjects of Mathematics, Physics and Chemistry as the petitioner holds the qualifications B.Sc. Mathematics with Physics and Chemistry (B.Ed.). The respondent no. 6 – School runs the sections from standard 8th to 10th. The appointment of the petitioner was duly approved by the

Education Officer in 2016. The school was admitted to 20% grant. His appointment was on sanctioned post. In the year 2016-2017, one post of Assistant Teacher was reduced. It is contended that the respondent no. 7 Ku. H. T. Bothley was appointed on 12/07/2014 as a language teacher, as she is holding qualification B.A., B.Ed. Thus, the respondent no. 7 is the junior most Assistant Teacher working in the school. This can be seen from the seniority list produced along with the petition as Annexure-10. The respondent management proposed to declare as surplus to one Ku. K.D. Nadurkar who is senior to Ku. Bothley as well as the petitioner. On her objection to Education Department, Education Department called upon all concerned including the petitioner for the hearing. The petitioner rendered his written submissions. According to the petitioner, as per rules, Ku. H.T. Bothley (respondent no. 7 - a language teacher who is junior most Assistant Teacher) ought to have been declared as surplus, there was no reason to call said Ku. H.T. Bothley for hearing. The Education Officer without giving any reason and in total contravention to the provisions of Rule 26, issued an order dated 19/03/2019. The order passed is without application of mind and any justification, in favour of Ku. H.T. Bothley. The petitioner

was declared as surplus. It is pointed out that the petitioner is senior to Ku. Bothley. Moreover, Ku. Bothley and Ku. Nadurkar both are Art Teachers and the petitioner is only Maths Teacher in the School. Ku. Nandurkar is senior to the petitioner also as well as to Ku. Bothley. Therefore, the petitioner is not having any grievance for retaining Ku. Nadurkar as Art Teacher. However, Ku. H.T. Bothley who is also Art Teacher and junior to the petitioner for no reason retained and protected. The petitioner's representation is also turned down and earlier order was confirmed. Thus, the learned counsel for the petitioner prays for quashing and setting aside the impugned order. By an order dated 23/09/2019, the Management was directed to pay salary to the petitioner from the date from which the petitioner was not permitted to sign the muster-roll. By an order dated 07/10/2019, this Court was directed to the respondent – Management to prepare the salary bills of the petitioner from the date on which the petitioner is declared as surplus and to forward the same to the Deputy Director of Education within a period of two weeks from today. However, the salary is not paid inspite of the direction.

3. As against this, Shri Nitin Rao, the learned Asst. Government Pleader submits that after granting an opportunity of hearing, the order came to be passed. It is duly justified and there is no reason or ground for interference.

4. We have heard both the parties at length. Perused the documents placed on record. There is no dispute about the seniority list produced at Annexure 10. As per seniority list, the respondent no. 7 Ku. H.T. Bothley is the junior most Assistant Teacher. Moreover, as per staffing pattern, 4 posts of Assistant Teacher and one post of Headmaster were sanctioned. Except the petitioner, there is no teacher for Maths. As the petitioner holding qualification B.Sc. with Physics, Chemistry and Maths subjects, the petitioner is able to teach Maths as well as Physics and Chemistry. One Ku. Nandurkar who is senior to the petitioner is teaching an Art subject. The respondent no. 7 Ku. H.T. Bothley who is junior to the petitioner is also an Art Teacher. Thus, Ku. Bothley not only junior to the petitioner but also Art Teacher in addition to one Ku. Nandurkar. Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (In short, MEPS Rules) which is in respect of the

retrenchment on account of abolition of posts. Sub-Rule (1) of Rule 26 mentions the ground on which a permanent employee may be retrenched from service by the Management after giving him 3 months notice, on any of the grounds mentioned therein, and Sub-Clause (2) of Rule 26 speaks about retrenchment under sub-rule 1 shall be subject to the conditions mentioned therein. Sub-Clause (2) of Rule 26 reads as under:-

“(2) The retrenchment from service 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 is 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) ”

5. Thus, ordinarily, the principle of seniority requires to be observed. If impugned order at Annexure 12-A dated 19/03/2019 is perused, the Education Officer has not given a single reason for retaining the junior most Assistant Teacher. He has not considered that if the petitioner is declared as surplus, there will be no Maths Teacher. Shri R.K. Khobragade is holding B.Sc. (Biology). Thus, on this count also, the Education Officer has not applied his mind whether the order passed declaring the petitioner as surplus is proper or not. There is no justifiable reason mentioned in the impugned order. Thus the impugned order is passed without considering the seniority as well as requirement of the school. On both these count, the impugned order is liable to be quashed and set aside. The Education Officer will have to take decision afresh. Accordingly, we proceed to pass the following order:

ORDER

1. The petition is partly allowed.
2. The impugned order dated 19/03/2019 is hereby quashed and set aside.

3. The Education Officer (Secondary) i.e. Respondent No. 3 is directed to take decision afresh as to who should be declared to be surplus from amongst the teachers working on the establishment of Respondent Nos. 5 and 6, keeping in view the rule of seniority as prescribed under rule 26(2) (1) of the MEPS Rules, in accordance with law, as early as possible, preferably within a period of two weeks from the date of appearance of the petitioner and Respondent Nos. 5 to 7 before him.
4. The parties to appear before Respondent No. 3 on 25th April, 2022.
5. Unpaid salary together with admissible arrears of salary shall be paid to the petitioner by Respondent Nos. 5 and 6 within a period of four weeks from the date of the decision of Respondent No. 3, if the decision declares the Petitioner to be entitled for his retention in Respondent No. 6 School, with liberty to Respondent Nos. 5 and 6 to claim reimbursement for the same from the State Government.
6. Rule is made absolute in the above terms. No costs.

7. Authenticated copy of this order be supplied to both the parties.
8. Parties to act upon the authenticated copy of the order.

[SMT. M.S. JAWALKAR, J.]

[SUNIL B. SHUKRE, J.]

B.T.Khapekar, PA