

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

WRIT PETITION NO. 2034/2019

Govind Phulsing Rathod,
Aged 60 years, Occupation-retired,
R/o Post Gaondgaon, tahsil-Patur,
District-Akola, Maharashtra.

PETITIONER

-VERSUS-

1. Education Officer (Secondary),
Akola Zilla Parishad, Having his Office at
Zilla Parishad, Akola, Maharashtra.
2. Deputy Director of Education,
Amravati Division, Having his Office at
Amravati, Maharashtra.
3. Director of Education,
Secondary and Higher Secondary,
Directorate of Education Having his Office at
Pune, State of Maharashtra.

RESPONDENTS

Shri Nihalsingh B. Rathod, counsel for the petitioner.
Ms Nivedita P. Mehta Assistant Government Pleader for the respondents.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE ON WHICH ARGUMENTS WERE HEARD : 25TH JULY, 2022.
DATE ON WHICH JUDGMENT IS PRONOUNCED : 6TH SEPTEMBER, 2022.
JUDGMENT (PER : A.S. CHANDURKAR, J.)

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard by issuing **RULE** and making the same returnable forthwith.

2. The petitioner was appointed on the post of Peon at the school run by Dnyankiran Shikshan Prasarak Mandal, Gawandgaon. The said

appointment initially was on probation. The services of the petitioner were thereafter confirmed. By an order dated 22.03.1994 the petitioner's services came to be approved from 01.07.1992. In proceedings seeking to de-recognize the school where the petitioner was serving the Deputy Director of Education, Amravati issued an order on 21.06.1997 thereby de-recognizing the said school under Clause 7.4 of the Secondary School Code. This order of de-recognition was challenged by the Management in Writ Petition No.2233 of 1997. An interim order came to be passed therein by virtue of which the staff continued in service till 22.06.1998 when the interim order came to be vacated. Subsequently on 10.03.2014 the said writ petition came to be dismissed for want of prosecution.

3. The petitioner alongwith other staff members took steps to seek absorption of their services in some other educational institution. On 05.04.2010 the Education Officer (Secondary) submitted a report to the Director of Education, Pune acknowledging the fact that the services of the petitioner had been approved with effect from 01.07.1992. It was recommended that the services of the said staff members could be considered for absorption. Thereafter the Deputy Director of Education sought further clarification from the Education Officer (Secondary) after which the Block Education Officer submitted a report on 05.02.2011 to the Education Officer (Secondary) stating therein that when the educational institution was de-recognized there were five members of the

non-teaching staff whose appointment had been approved but their services had not been absorbed. There was a communication between the Authorities and ultimately on 02.07.2011 the Directorate of Education directed the Deputy Director of Education to act in accordance with the Circular dated 01.12.1997. As per that Circular, the modalities in which Rule 25A and Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, 'the Rules of 1981') were to operate were stated.

4. Since nothing much was done in the matter, three members of the non-teaching staff from amongst the five approached this Court in Writ Petition No.5020 of 2012 seeking the relief of absorption. In those proceedings, affidavit was filed on behalf of the Authorities stating therein that the said members of the non-teaching staff were not responsible for de-recognition of the school and hence they were entitled to the benefit of Rule 25A(2) of the Rules of 1981. It was also stated in the subsequent affidavit dated 15.04.2013 in that writ petition that the orders for absorption of the said petitioners would be shortly passed. The petitioner alongwith another member of the non-teaching staff filed Writ Petition No.3562 of 2013 seeking similar relief. In that writ petition this Court on 18.12.2013 extended the benefit of the directions issued on 19.03.2013 to the petitioners who were similarly placed in Writ Petition No.5020 of 2012. As a result the name of the present petitioner was also

included in the waiting list of employees whose services ought to be absorbed. The name of the present petitioner was shown at Serial Number 14 in the said waiting list and subsequently his services have been absorbed. He accordingly started discharging duties from 13.01.2017. In the aforesaid backdrop, the petitioner has approached this Court praying that the period from 01.07.1998 to 02.01.2017 be taken into consideration for the purposes of continuity in service alongwith all consequential benefits as well as back wages for that period. The petitioner has since superannuated on 30.06.2017.

5. In the reply filed on behalf of the Education Officer (Secondary) it has been stated that the name of the petitioner was included in the waiting list as on 01.01.2014 and subsequently he was joined in a school from 03.01.2017. By an order dated 07.04.2017 he was granted pay-scale of Rs.4440-7440 from the date of resuming his duties. The qualifying services of the petitioner was stated to be 01.07.1992 to 22.08.1998 at Dnyan Kiran Vidyalaya, Gawandgaon and from 03.01.2017 to 31.07.2017 at Ramsing Munsing Naik Vidyalaya, Malsur. This period was of 6 Years 6 Months 19 Days. It has then been stated that from 01.07.1998 to 02.01.2017 cannot be considered as period spent on duty on account of de-recognition of the earlier school in terms of the Government Resolution dated 01.04.2016. It has then been stated that the petitioner is not entitled for any relief whatsoever.

6. Shri Nihalsingh Rathod, learned counsel for the petitioner referred to the aforesaid factual aspects and submitted that it was undisputed that the present petitioner was not responsible for the de-recognition of the school in question. As a result the provisions of Rule 25A of the Rules of 1981 were applicable. The services of the petitioner had been duly approved prior to the order of de-recognition and hence after much effort the petitioner's name was included in the waiting list of similar employees seeking absorption. The name of the petitioner ought to have been taken in the waiting list immediately after the interim order in Writ Petition No.2233 of 1997 was vacated. On account of the delay on the part of the Authorities his name was included in the waiting list only in the year 2014. The petitioner could not be deprived of the benefit of continuity of service to enable him to obtain necessary benefits. The learned counsel placed reliance on the decision in *Dattaraj Janraoji Nimkar & Others Versus Swargiya Sakharamji Shikshan Sanstha & Others* [2004(1) **Mh.L.J. 516**] to urge that an employee who is permanently retrenched in view of Rule 25A of the Rules of 1981 was entitled to the protection of his services. There was no reason to deny the petitioner the benefit of the period during which he was on the waiting list. He referred to the various orders passed in the proceedings initiated by the petitioner including the orders passed in Writ Petition Nos. 3562 of 2013 and 930 of 2016 as well as Contempt Petition No.263 of 2016 to urge that the petitioner was always pursuing his remedies in law. It was thus submitted

that in the light of the provisions of Rule 25A of the Rules of 1981 the petitioner ought to be granted necessary relief as prayed for.

7. Ms Nivedita Mehta, learned Assistant Government Pleader for respondents opposed the aforesaid submissions. It was submitted that since the petitioner had actually discharged duties from 01.07.1992 to 22.08.1998 and thereafter from 03.01.2017 to 31.07.2017 he would be entitled to seek benefit of service rendered during this period. Since the petitioner had not discharged any duties in the interregnum he was not entitled for any monetary relief as well as on account of continuity in service. It was submitted that the only relief that the petitioner was entitled to was of absorption of his services and that relief had been granted to him. She referred to the decision in *Gramin Vikas Shikshan Va Krida Prasarak Mandal, Khadki and another vs. Yamu Narayanrao Bire and others* [2012(3) **Mh.L.J.** 820] and submitted that the writ petition was liable to be dismissed.

8. We have heard the learned counsel for the parties and we have perused the documents on record. The factual aspects involved indicate that the services of the petitioner of the post of Peon had been approved from 01.07.1992. On account of de-recognition of the school where he was serving his services were required to be retrenched. The respondents have admitted that the provisions of Rule 25A of the Rules of 1981 were

applicable and that the petitioner was not responsible for passing of the order of de-recognition. By initiating various proceedings the petitioner took steps to have his services absorbed in another school under provisions of Rule 25A of Rules of 1981. In litigation initiated by other members of the non-teaching staff from the same institution this Court has found that the petitioners therein who were entitled to be absorbed in another institution and there was a delay on the part of the Authorities in taking necessary steps. The petitioner was also held entitled to similar relief as was granted to other members of the non-teaching staff. Ultimately the name of the petitioner was included in the waiting list and thereafter his services were absorbed from 02.01.2017. The only aspect to be considered is whether as a consequence of his absorption in another aided school is the entitlement to the benefits flowing therefrom.

9. At the outset it may be stated that the learned counsel for the petitioner submitted that the prayer for grant of back wages was not being pressed by the petitioner. It is also to be noted that in Writ Petition No.930 of 2016 that was preferred by the petitioner seeking absorption of his services this Court in the order dated 06.04.2016 has observed that the petitioner would not be entitled to claim salary for the period after passing of the order of de-recognition. Reference has been made in that order to the Government Resolutions dated 14.10.2014 and 21.10.2015. In that view of the matter, it is clear that the relief of grant of back wages

cannot be granted to the petitioner. The Division Bench in *Gramin Vikas Shikshan Va Krida Prasarak Mandal* (supra) has also held accordingly.

10. Coming to the aspect of grant of benefit of continuity of service for the period from passing of the order of de-recognition till the actual order of absorption in service is concerned it is seen that as per Clause 3 of the Government Resolution dated 01.04.2016 it has been provided that after an order of absorption is passed such employee would be entitled to the benefit of notional increment for the period when the retrenchment of services was effected till the order of absorption. As per Clause 6 thereof the break in service can be condoned for the period when the retrenchment was effected till absorption of services. Such decision was required to be taken by the Director of Education, Pune.

11. While issuing notice in the writ petition this Court had directed the respondents to consider the claim of the petitioner in terms of Clause 3 of the Government Resolution dated 01.04.2016. In affidavit filed on behalf of the respondent no.1 it has been stated that since the petitioner had not spent the period from 01.07.1998 to 02.01.2017 on duty on account of the order of de-recognition his claim could not be considered.

12. We find from the record that though the order of de-recognition was passed on 21.06.1997, the respondents did not take immediate steps

as required under Rule 25A of the Rules of 1981. Despite recommendation for grant of absorption of services as per report of the Education Officer (Secondary) on 05.04.2010 no steps in that direction were taken. The petitioner was required to approach this Court by initiating various proceedings being Writ Petition Nos. 3562 of 2013 and 916 of 2016 as well as Contempt Petition No.263 of 2016. It is only thereafter that the name of the petitioner was taken in the waiting list in the year 2014 and his services were absorbed from 02.01.2017. At no point of time could the petitioner be blamed for the said state of affairs. The respondents themselves did not take steps as required under Rule 25A of the Rules of 1981 by including the petitioner's name in the waiting list. Had the petitioner's name been included in the waiting list in terms of Rule 25A of the Rules of 1981 shortly after the order of de-recognition he would not have been required to wait till 2014 for his name to be included in the waiting list and till 2017 for actual absorption of his services. Once having found that the case of the petitioner was governed by the provisions of Rule 25A of the Rules of 1981 it was for the respondents to have acted in accordance thereto. On account of delay on the part of the respondents the petitioner cannot be prejudiced. The names of other similarly situated non-teaching employees from the same institution which was de-recognised were already absorbed. If the name of the petitioner would have been taken in the waiting list shortly after the order of de-recognition, he would have rendered necessary qualifying

service to be entitled for pensionary benefits. The break in service for the period from passing of the order of de-recognition till absorption of his services can be condoned as the same is provided in the Government Resolution dated 01.04.2016. This Court in *Dattaraj Janraoji Nimkar & Others* (supra) has observed that under Rule 25A of the Rules of 1981 the protection and privilege to which a permanent employee is entitled to has been recognized and protected. In that view of the matter, we are inclined to grant the benefit of continuity of service to the petitioner. Though the respondents were granted an opportunity to consider the claim of the petitioner for such relief the same has been refused for no justifiable reason. We thus find that the petitioner cannot be deprived of such benefit on account of the inaction on the part of the respondents in applying the provisions of Rule 25A of the Rules of 1981 to the petitioner.

13. Hence for aforesaid reasons, the following order is passed:-

- I) It is held that in terms of the Government Resolution dated 01.04.2016 and especially Clause 3 thereof the break in service for the period from 01.07.1998 to 02.01.2017 stands condoned. This benefit would enable the petitioner to the relief of continuity of service for the purposes of receiving pensionary benefits but except for the grant of back wages.
- II) The respondents to take necessary steps in that regard and make available pensionary benefits to the petitioner in accordance with the said Government Resolution within a period of eight weeks from the receipt of copy of this judgment.

14. The writ petition is partly allowed in aforesaid terms with no order as to costs. Rule accordingly.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

APTE