

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

WRIT PETITION NO.954 OF 2019

Ajit S/o Narendra Sapkal, Sawara, Akot, Dist. Akola

-vs-

Education Officer (Secondary), Zilla Parishad, Akola and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri K. P. Mahalle, Advocate for petitioner.

Shri A. S. Fulzele, Additional Government Pleader for respondent No.1.

Smt Renuka S. Sirpurkar, Advocate for respondent Nos.2 and 3.

CORAM : A. S. CHANDURKAR AND MRS VRUSHALI V. JOSHI, JJ.

DATE : June 19, 2023

P. C.

1. Heard.
2. The challenge raised in the present writ petition is to the order dated 28/11/2018 issued by the respondent No.3-Headmaster declaring services of the petitioner to be surplus. A further challenge has been raised to the order dated 04/12/2018 issued by the Education Officer (Secondary) directing absorption of the petitioner in Yashoda Secondary School, Akot since his services were rendered surplus.
3. The principal challenge of the petitioner is that despite being senior to one Assistant Teacher Shri Madhukar Davedar in the seniority list for the year 2017-2018, he has been declared surplus contrary to the provisions of Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981.
4. After hearing the learned counsel for the parties, on 20/09/2022 the following order was passed :

“One of the challenges raised to the order dated 28.11.2018 declaring the services of the petitioner being rendered surplus on account of reduction in the number of students for the Academic Year 2017-18 is that despite the petitioner not being the junior-most Assistant Teacher as per the seniority list for the year 2017-18, the Management has declared him to be surplus. It is alleged that this declaration is in contravention of Rule 26(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, ‘the Rules of 1981’). The petitioner has made a representation in that regard to the Education Officer (Secondary) on 29.11.2018 which is not yet adjudicated. The Management on the other hand contends that though there is another Assistant Teacher by name Madhukar A. Davedar who is junior to the petitioner and belongs to the reserved category, in view of Government Resolution dated 10.06.2016 he cannot be declared surplus.

We find that as per Rule 26(2) of the Rules of 1981, the principle of seniority has to be observed while retrenching the services of a permanent employee on account of fall in number of pupils studying in the establishment. If that principle is departed from, prior approval of the Education Officer (Secondary) is necessary. This aspect is required to be considered by the Education Officer (Secondary).

Accordingly, the Education Officer (Secondary) shall consider the petitioner’s representation dated 29.11.2018 and whether the requirements of Rule 26 of the Rules of 1981 have been duly satisfied. To facilitate such consideration the petitioner as well as the Headmaster of the respondent no.3-School shall attend the Office of the Education Officer (Secondary) on 01.10.2022. They shall place before the Education Officer (Secondary) all relevant documents and after considering the same the Education Officer (Secondary) shall record his findings in that regard within a period of two weeks thereafter.

Stand over four weeks.”

5. The Education Officer (Secondary) accordingly heard the parties and on 29/12/2022 recorded a finding that in view of Resolution dated 18/05/2016 passed by the Management, the services of the petitioner were required to be absorbed in Class-V in view of the number of students in Class-V at the school for the year 2020. On that basis it was observed that in the light of staff justification for the years 2017-2018, 2018-2019 and 2019-2020 one post of Assistant Teacher on Class-I to Class-V was available. In view of Resolution dated 18/05/2016, it was directed that the services of the petitioner be absorbed on the said post on Class-I to V.
6. In the light of these directions issued in favour of the petitioner, it is clear that the petitioner's grievance as regards the order dated 28/11/2018 by which his services were declared to be surplus now no longer survives.
7. Accordingly the writ petition is disposed of in the light of the order of Education Officer (Secondary) dated 29/12/2022. In case the respondent Nos.2 and 3 are aggrieved by the order dated 29/12/2022, it is open for them to take appropriate steps for challenging the same in accordance with law.
8. The respondent Nos.2 and 3 shall comply with the order dated 29/12/2022 within a period of three weeks from today.
Order accordingly. No costs.

(Mrs Vrushali V. Joshi, J.)

(A. S. Chandurkar, J.)