



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

932 WRIT PETITION NO.15374 OF 2019

Tajmunnisa Begum Shaikh Masood,
Age 49 yrs., Occ. Nil,
R/o Vitthalnagar, Mudkhedkar Home,
Naigaon (B), Tq. Naigaon,
Dist. Nanded.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra,
Through its Secretary
School Education and Sports Department,
Mantralaya, Mumbai.
- 2 The Director of Education,
Maharashtra State, Pune.
- 3 The Deputy Director of Education,
Latur Region, Latur.
- 4 The Education Officer (Primary),
Zilla Parishad, Nanded,
Dist. Nanded.
- 5 Dr. Zakir Hussain Shikshan Prasarak Manda,
CIDCO, New Nanded,
Tq. & Dist. Nanded.
Through its President / Secretary

... Respondents

...

Mr. C.K. Shinde, Advocate h/f Mr. V.H. Dighe, Advocate for petitioner
Mr. N.S. Tekale, AGP for respondent Nos.1 to 3

Mr. S.B. Pulkundwar, Advocate for respondent No.4

Respondent No.5 - served

...

**CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.**

DATE : 07th FEBRUARY, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 The petitioner by invoking the constitutional powers of this Court prays for quashing the communication/order dated 26.09.2018 and letter dated 27.05.2019 issued by respondent No.4 and declare the petitioner entitled for absorption as per the provisions of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules, 1981 and consequential prayer to grant benefits as per the provisions of Rule 25-A of M.E.PS. Rules, 1981.

3 It is not in dispute that the petitioner was appointed by respondent No.5 as Assistant Teacher by order dated 05.06.1990. The Management had submitted a proposal for grant of approval for her

appointment and accordingly Education Officer (Primary) had granted approval by order dated 29.04.1994. Respondent No.4 issued notice in the year 2005 to the respondent-Management for withdrawal of recognition on the ground that there are certain deficiencies. Headmaster had then submitted the reply and clarification, but the Education Officer (Primary) was not satisfied and, therefore, again issued a show cause notice on 18.11.2005 giving reference to Rule 109(2) of Bombay Primary Education Rules, 1949. The reply was given, however, Education Officer (Primary) had taken the decision on 04.05.2006 for withdrawing the recognition of the primary school viz. Noorjahan Urdu Primary School, Naigaon (B). Being aggrieved by the order of de-recognition the Management preferred appeal before the Deputy Director of Education, Latur. The representatives of the Management or the school did not remain present. Under the said circumstance, the Deputy Director had dismissed the appeal on 13.09.2006.

4 The petitioner contends that the petitioner and other Teachers were not responsible for de-recognition and, therefore, they were entitled for absorption. Necessary applications/representations were given, however, no positive response has been given. The petitioner and others had approached this Court in Writ Petition No.2784 of 2008 for directions to include their names in the wait list and to decide their representations. The said writ

petition came to be partly allowed on 07.09.2018 by giving directions. It was observed by this Court that once the school is de-recognized, then the provisions of Rule 25-A of M.E.P.S. Rules would operate and then respondent No.4 was directed to conduct an inquiry in respect of claim of the petitioner for absorption within stipulated period. The hearing has taken place and impugned order has been passed by holding the petitioner and other Teachers responsible for the de-recognition of the school and, therefore, not entitled for absorption. The representation/application of the petitioner was not considered properly in the light of the rules. The said order being illegal deserves to be set aside.

5 Heard learned Advocate Mr. C.K. Shinde holding for learned Advocate Mr. V.H. Dighe for petitioner, learned AGP Mr. N.S. Tekale for respondent Nos.1 to 3 and learned Advocate Mr. S.B. Pulkundwar for respondent No.4. In order to cut short, it can be said that they have argued in support of their respective contentions.

6 The first and the foremost fact that is required to be considered here is that the school, which had appointed the petitioner, stood de-recognized from 04.05.2006. Even at this stage, in the affidavit-in-reply it is not the case of respondent No.4 that the petitioner's appointment was

without following due procedure. The same authority had, in fact, granted the approval to the appointment of the petitioner before 1994. Even in the earlier round of litigation this Court was of the clear opinion that after the de-recognition of the school the rules those would govern the petitioner would be Rule 25-A of the M.E.P.S. Rules. Definitely, before the name of the petitioner is taken in the wait list/Pratiksha Yadi of surplus Teachers, the Education Officer (Primary) would be justified in holding an inquiry especially on the background, if the employees of the school were responsible for the closure/de-recognition of the school. Neither in the impugned order nor in the affidavit-in-reply the act attributable to the petitioner which led to the de-recognition of the school has not been pointed out. Very vague statement is made. The act of the Headmaster or other Teacher in particular, if any, cannot be the reason for holding the petitioner ineligible. It appears that Education Officer had visited the school on 23.09.2004 and he found that the Teachers had not signed the attendance register. But, at the same time, paragraph No.4 of the affidavit-in-reply makes it clear that petitioner was one of the Teachers who claimed that she was present along with some other Teachers, but they were not allowed to sign the attendance sheet. It appears that it is the act of a day, which cannot be considered as the act of the Teachers leading to the de-recognition of the school. There should have been series of certain acts, that too deliberate for closing down the school.

Therefore, it was totally erroneous on the part of respondent No.4 to hold that the petitioner was responsible for the de-recognition of the school and, therefore, not entitled to be placed in the wait list of the surplus Teachers.

7 For the above said reasons, the petition deserves to be partly allowed. Hence, the following order.

ORDER

1 The impugned communication/order dated 26.09.2018 is hereby set aside.

2 Respondent No.4 to declare the petitioner as entitled for absorption as per the provisions of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules, 1981 and include her name in the list of surplus Teachers.

3 The benefits as per the provisions of Rule 25-A of M.E.P.S. Rules, 1981 be given after due inquiry regarding the date of entitlement.

4 Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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