



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

WRIT PETITION NO.96 of 2025

Dnyaneshwar Gangaramji Dadhe,
Aged about 46 years,
Occupation – Assistant Teacher,
R/o Flat No.202, Dhiraj Residency-
46-47, Vaishnavmata Society,
Nagpur – 440027

Petitioner

Versus

1. The Deputy Director of Education,
Nagpur Division, Nagpur.
2. The Education Officer (Secondary)
Zilla Parishad,
Wardha.
- 3.The Secretary,
Nagar Shikshan Mandal,
Sindi (Railway), Tah. Selu,
Dist. Wardha.
- 4.The Head Master,
Kesarimal Nagar Vidyalaya,
Sindi Railway, Tah. Selu,
Dist.Wardha.
- 5.Head Master,
Shri Sant Sai Baba Vidyalaya,
Burkoni, Post Chincholi,
Tah.Hinganghat, Dist. Wardha.

Respondents

Mr. N.S.Warulkar, Advocate for petitioner.

Mr. S.S.Hulke, AGP for respondent nos.1 and 2.

Mr. Anand Parchure, Advocate for respondent nos.3 and 4.

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CORAM : ALOK ARADHE, C.J. & NITIN W. SAMBRE, J.
DATE : FEBRUARY 25, 2025.

ORAL JUDGMENT (PER NITIN W. SAMBRE, J.)

1. Heard finally with the consent of the learned counsels appearing for the respective parties.

2. The petitioner has questioned the impugned communication dated 24th December, 2024 issued by the respondent no.2-Education Officer whereby the Education Officer has directed the petitioner to join the respondent no.5-School from where he was declared surplus and was posted to the respondent no.4-School.

3. The facts necessary for deciding the petition are as under:-

Pursuant to the selection and appointment of the petitioner in the respondent no.5-School, an approval was granted vide order dated 16th February, 2005 on the post of Shikshan Sewak with effect from 30th August, 2002 pursuant to the appointment order dated 30th August, 2002.

4. The services of the petitioner thereafter were confirmed with effect from 30th August, 2005, the same is apparent from the order dated 7th September, 2007 passed by the respondent no.2-Education Officer granting further approval.

5. It appears that on 21st October, 2016 the petitioner was declared surplus in the respondent no.5-School and his services were absorbed in Krushak Kanya Vidyalaya at Arvi, District, Wardha. However, pursuant to the request made, his services were absorbed by order of the respondent no.2 dated 21st October, 2016 in the respondent no.4-School. Accordingly, the petitioner started discharging his duties as a High School Teacher in the respondent no.4-School.

6. It appears that a vacancy of High School Teacher occurred in the respondent no.5-School and accordingly the respondent no.2-Education Officer directed the petitioner vide impugned order dated 24th December, 2024 to join his original school viz respondent no.5. Feeling aggrieved by the impugned order, the petitioner has preferred this petition.

7. The counsel appearing for the petitioner would invite our attention to the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and particularly Rule 26 of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("Rules of 1981" for short) framed thereunder. According to him, Rule 26(4) and 26(5) of Rules of 1981 are relevant for deciding the issue in question. It is urged by the counsel for the petitioner that once the petitioner was declared surplus vide order dated 21st October, 2016, he was posted in the respondent no.4-School, then his services cannot be repatriated to the respondent no.5-School viz place of original appointment unless the petitioner opts for the same. So

as to substantiate the said contention, the counsel would urge that the provisions of Rule 26 (4) and 26(5) of the Rules of 1981 gives an option to the employee like the petitioner to exercise the choice of joining or repatriating in the respondent no.5-School or continue with the respondent no.4-School. That being so, it is claimed that the order impugned dated 24th December, 2024 goes contrary to the scheme of Rule 26 of the Rules of 1981.

8. As against above, the counsel appearing for the respondent no.4 so also the Assistant Government Pleader would support the order impugned based on the language of Rule 26(4) and 26(5) of the Rules of 1981. It is specifically claimed by the learned counsel for the respondent no.4 that the petitioner has given an undertaking to go back to the school way back in 2016, which is produced on record at Annexure R3 and R4-I (page 40). It is claimed that pursuant to the undertaking executed on 16th November, 2016 the petitioner has undertaken to go back to the respondent no.5-School and that being so, rightly so the respondent no.4-School and its management has passed a resolution pursuant to which the order impugned is issued by the respondent no.2-Education Officer.

9. We have considered the rival claims.

10. The provisions of Rules 26 (4) and 26 (5) of Rules of 1981 read thus:-

"Rule 26(4) : If the posts retrenched are revived or additional posts for the same subject are created, the

Management shall, by a registered post acknowledgment due letter addressed to the employee who is retrenched and absorbed in other school, give him the first opportunity of rejoining services in the school. For this purpose, the employees shall communicate to the Management, his address and availability for the job every year before April by a letter sent by registered post acknowledgment due.

Rule 26(5) : The retrenched person who may have been absorbed in other school, shall have an option either to get repatriated to his original school or to continue in school in which he has been absorbed."

11. Plain reading of the said Rules would reveal that the Rules are incorporated for the benefit of the employee and not for the benefit of the management or employer. Rule 26 (4) of the Rules of 1981 further provides that it is the duty of the management to provide intimation to the employee like the petitioner about the creation of post and an opportunity of joining in the school of origin should be provided to the employee and it is for the employee to exercise his option by encashing such an opportunity offered by the employer.

12. However, the management where the petitioner was absorbed cannot force the petitioner to join his original employer school. The language of Rule 26(5) of the Rules of 1981 is aptly clear on the aforesaid issue.

13. In the aforesaid background, if we peruse the entire pleadings, the annexures to the petition and the reply, the so-called

undertaking executed by the petitioner on 16th November, 2016 in no way gives an undertaking that he shall revert back to his school of origin viz the respondent no.5-School and the same is contrary to the above Rules of 1981. Rather, the respondent no.4-School in anticipation has got an undertaking executed from the petitioner, whereby it is mentioned that the petitioner shall revert back to his school. It is not open for the respondent no.4-School or the respondent no.5-School or even for that purposes the respondent no.2 to get an undertaking in anticipation executed from an employee like the petitioner in the wake of provisions of the Rules 26 (4) and (5) of the Rules of 1981. Though, the perusal of the said undertaking creates a doubt as regards the execution of the same, however, we refrain ourselves from commenting anything on the same particularly, when we are of the view that such undertaking ought not to have been obtained by the respondent no.4 – School as such act goes contrary to the scheme of Rule 26 of the Rules of 1981.

14. In this background, it was expected of the respondent no.2-Education Officer to conduct himself in accordance with the provisions of Rules 26 (4) and 26 (5) of the Rules of 1981 viz to consider the option which the petitioner intends to exercise in the backdrop of the aforesaid provision. The impugned order perhaps appears to be influenced by the alleged undertaking of 16th November, 2016 which was executed by the respondent no.4 from the petitioner which is contrary to the very scheme of Rule 26 of the Rules of 1981.

15. That being so, the order impugned passed by the respondent no.2 on 24th December, 2024 cannot be said to be sustainable.

16. A similar view is also taken by the Single Bench in judgment of this Court in the matter of **Premal Ramchandra Bisen Vs. Education Officer and others** reported **2006(5) Bom.C.R.795**. Para 2 of the aforesaid judgment reads thus:

"Perusal of the provisions of Rules 26(4) and 26(5) shows that the teacher who has been declared surplus in a school and who has been absorbed in another school has an option of going back to his original school, if he so desires and it is only at the option of that teacher that he can be sent back. Admittedly, the petitioner never exercised his option of going back to the respondent No. 3 School and therefore, the order for his repatriation to respondent No. 3 School could not have been made. The power of Education Officer under Sub-rules (4) and (5) of Rule 26 regarding repatriation gets activated only on the concerned teacher exercising the option. If the concerned teacher does not exercise the option, there is no power in the Education Officer to send that teacher back. As I find that the order impugned has been made by the Education Officer without having power to do so, the orders obviously is liable to be set aside. In the result, the petition succeeds and it is allowed".

17. In the aforesaid background, the order impugned dated 24th December, 2024 is hereby quashed and set aside.

18. We direct the respondents to forthwith permit the petitioner to resume his duties in the respondent no.4-School, who shall, in turn forward immediately the proposal for continuation of his services and release of his salary till date. Let the salary including arrears payable to the petitioner be released within a period of eight weeks from the date of this order.

19. We further direct the respondent nos.2 and 4 to continue to release the salary of the petitioner, if he is otherwise not disqualified.

20. The petition stands allowed in the aforesaid terms. There shall be no order as to costs.

(NITIN W.SAMBRE, J.)

(CHIEF JUSTICE)