

(2001) 06 BOM CK 0004

In the Bombay High Court

Case No : Writ Petition No. 6636 of 2000

Chanda Nazma Abdul Razak

APPELLANT

Vs

Education Officer (Primary), Zilla Parishad, Solapur and
others

RESPONDENT

Date of Decision : 14-06-2001

Acts Referred:

Citation : (2001) 06 BOM CK 0004

Hon'ble Judges : B.P. Singh, C.J;A.M. Khanwilkar, J

Bench : Division Bench

**Advocate : S.G. Kudle, for the Appellant; Nitin Jamdar for Respondent No. 1,
Mrs. R.M. Dere, Assistant Government Pleader for Respondent No. 2 and I.M.
Khairdi, for the Respondent**

Judgement

A.M. Khanwilkar, J.—Heard Counsel for the Petitioner, the Education Officer (Primary), Zilla Parishad, Solapur, Respondent No. 1, the State, Respondent No. 2, and the Secretary, Jamiatul Quresh (Khatik Samaj), Respondent No. 3.

2. The Petitioner has prayed for two reliefs, viz., that this Court be pleased to declare the Petitioner as a surplus teacher as per the provisions of Rule 25A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 for the purpose of absorbing her in any other aided Urdu Primary School and the Respondents be directed to protect the Petitioner's services by way of including her name on the waiting list of surplus teachers and she be paid the salary and allowances payable to her during the period she was under suspension by Respondent No. 3 in view of the fact that the order of suspension has been set aside by this Court on the ground that it had been passed in breach of statutory provision requiring the appointing authority to take prior approval of the Education Officer before passing the order of suspension. The Petitioner remained under suspension from 1st July, 1999 till 31st May, 2000.

3. Counsel appearing on behalf of Respondent No. 3 has submitted that since the order of suspension was set aside on a technical ground, the management is not

liable to pay to the Petitioner her salary and allowances payable during the period of suspension. He has further submitted that in any event, the State of Maharashtra must pay to Respondent No. 3-Management the amount which it is now required to pay to the Petitioner as a result of the order of suspension being set aside.

Both the objections are untenable. Since the order of suspension has been set aside on the ground of non-compliance of statutory requirement, the Petitioner is entitled to payment of salary and allowances to which she would have otherwise been entitled, had she not been placed under suspension. The submission that the State Government must make the funds available to the management for payment to the Petitioner is equally untenable, as the Management acted in contravention of the statutory mandate, which required it to take the approval of the Education Officer before placing the Petitioner under suspension. The Respondent-Management cannot now insist that the State must make available to the Management the amount required for payment to the Petitioner, because despite statutory requirement, the approval of the State Government was not taken before placing the Petitioner under suspension the obligation to pay the salary and allowances to the Petitioner is primarily that of Respondent No. 3, though in the case of aided institutions, the Government may give grant-in-aid for certain purposes. However, in the facts and circumstances of this case, Respondent No. 3 must be held liable to pay salary and allowances which are not paid to the Petitioner. We hold accordingly, and direct Respondent No. 3 to pay to the Petitioner her salary and allowances payable in respect of the period of suspension, within a period of three months from today.

4. The next question is whether the Petitioner must get the benefit under Rule 25A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. Rule 25A deals with "Termination of Services on account of abolition of posts". It provides that the services of permanent employee may be terminated by the Management on account of abolition of posts due to closure of the school after giving him advance intimation of three months. The Explanation provides that for the purpose of this sub-rule, the expression "closure of the school" shall include closure of the school due to de-recognition by the Department. It is not disputed before us that the school was de-recognised with effect from 31 st May, 2000.

5. Counsel for the Education Officer (Primary), Respondent No. 1, has submitted that Sub-rule (2) of Rule 25A applies only to a case where the concerned employee is not found responsible for de-recognition of the school, and, therefore, whenever this question arises, the action, inaction or conduct of a teacher of the school which has been de-recognised has to be examined. The Education Officer is required to make an enquiry to find out whether the concerned teacher was not responsible for such de-recognition. If it is found that the concerned teacher was responsible for such de-recognition, he will not be entitled to the benefit under Sub-rule (2) of Rule 25A, but he will be entitled to

such benefit if it is found that the de-recognition of the school was for other reasons, unconnected with the action, inaction or conduct of the teacher concerned.

6. Counsel for the Petitioner has submitted that the Petitioner has already made a representation to the Education Officer, and, therefore, the Education Officer must now proceed to consider and decide the issue. He has, of course, submitted that the grounds given for de-recognition of the school do not relate to his action, inaction or conduct. That, however, is a matter which the Education Office is required to consider on the basis of material available, including any material which the Petitioner may like to place before him for a fair adjudication of the matter.

7. In the circumstances, we direct the Education Officer (Primary), Respondent No. 1, to proceed to make an enquiry as required under Sub-rule (2) of Rule 25A of the Rules and to pass an order within a period of three months from today. Nothing said in this Order should be construed as expression of opinion on the merit of the claim of the Petitioner, and the Education Officer (Primary), must apply his mind to the relevant facts and circumstances, and pass an order in accordance with law.

8. This Writ Petition is disposed of in the above terms.

9. Parties be given copies of this Order duly authenticated by the Sheristedar.