

(2002) 09 BOM CK 0133
In the Bombay High Court
Case No : Writ Petition No. 4092 of 2001

Laxman Onkar Kajle

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 30-09-2002

Acts Referred:

Citation : (2002) 09 BOM CK 0133

Hon'ble Judges : V.K. Tahilramani, J;B.H. Marlapalle, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Shri Katneshwarkar, learned Advocate holding for Shri Golegaonkar, learned Advocate for the petitioner.

2. The petitioner, on passing his S.S.C., D.Ed, examinations in the year 1974, 1977 respectively came to be appointed as an Assistant Teacher in S. B. High School, Bharadi by order dated 19th July, 1978. He was confirmed in the said post by order dated 20th July, 1980. He served in the said school till the academic year 1987-88 and was relieved from Bharadi on 8th February, 1988. He was appointed as an Assistant Teacher under the respondent No. 5 School on 8th February, 1988. In the meanwhile, he had completed his graduation and, therefore, he was placed in the pay scale applicable to the trained graduate teachers i.e. Rs. 365-760 with effect from 13th June, 1988.

3. The staffing pattern of respondent No. 5 school came to be reassessed in the academic year 1994-95 and in view of the reduction in the students' strength 10 teachers were declared surplus, the petitioner being one of them. This was intimated to the respondent No. 5 school on 23rd of November, 1994. Options were invited for re-absorption in other schools on 29th December, 1994. This communication, inviting options was placed before the petitioner in person and he refused to indicate his option on 11th January, 1995. The Head Master of respondent No. 5 school called upon the petitioner once again to indicate his

option for absorption. The petitioner accepted the same letter but did not exercise his option. All these surplus teachers were declared to have been relieved from service from respondent No. 5 school from 31st March, 1995 and thus the petitioner ceased to be on the rolls of the respondent No. 5 with effect from 1st April, 1995. On 12th of June, 1995 the petitioner approached the Education Officer, Zilla Parishad, Aurangabad and submitted a complaint in writing that the Head Master of the respondent No. 5 High School did not allow him to join the duties.

4. However, it is pertinent to note that on 27th June, 1995 the respondent No. 5 passed an order relieving the petitioner from duty and when the same communication was sought to be served on the petitioner he refused to sign. It was sent by registered post acknowledgment due but was returned with an endorsement "not accepted".

5. On the other hand, the Education Officer passed an order absorbing the petitioner in a vacant post under the New High School at Kingaon. However, the petitioner did not report at the said posting, as was communicated in writing by the Head Master of the said school. Thereafter, the petitioner appears to have made a representation to the Education Officer for absorption in a school at Aurangabad putting forward the ground of his being physically disabled and incapable of undertaking any journey out of Aurangabad City. This was considered and, therefore, a fresh order came to be passed on 30th July, 1996 directing the petitioner's absorption under the Saraswati Bhavan Education Society at Aurangabad. The said society issued an order on 16th August, 1996 and transferred the petitioner to its secondary school at Jalna. The record suggests that this posting was not approved by the Education Officer (Secondary), Zilla Parishad, Jalna and, therefore, the Head Master of the same school could not retain the petitioner. The issue was placed before the Education Officer as well as the Deputy Director of Education once again. A fresh order was passed for the petitioner's absorption in response to his own request under the Dnyaneshwar Vidyalaya, Begumpura, Aurangabad, by order dated 31st March, 1997. However, the Head Master of the said High School, on the same day, wrote a letter to the Education Officer, Zilla Parishad, informing him that the petitioner visited the said school alongwith Shri Sandanshive, Deputy Education Officer and Shri Kalimuddin, Education Extension Officer and he refused to join the school. After waiting for about/six months the Education Officer passed an order on 11th September, 1997 informing the petitioner that he did not honour two different orders of absorption issued under Rule 26 of the Maharashtra Employees of Private Schools Rules, 1981 (M.E.P.S. Rules, for short) such therefore, in pursuance of the provisions of Sub-rule (3) of the said rule the responsibility of the department did not exist any further and consequences would be the retrenchment.

6. The learned Counsel for the petitioner has placed reliance on the subsequent order dated 17th/26th May, 1999 in support of his contentions that the

petitioner cannot, be deemed to have been retrenched by operation of Rule 26(3) of the M.E.P.S. Rules, 1981 specially when he was reabsorbed under the respondent No. 5 school. We are not impressed by these submissions and we have noticed that the petitioner has been successful in dodging his absorption in different, schools during the last about more than seven years. Sub-rule (3) of Rule 26 of the M.E.P.S. Rules, reads thus:

26. Retrenchment on account of abolition of posts. -

(3) In case any employee refuses to accept the alternative employment offered to him under Clause (iii) of Sub-rule (2), he shall lose his claim for absorption and the Management of the school shall be allowed to retrench. such employee from the services after completion of 3 months" notice period.

Clause (iii) of Sub-rule (2) of Rule 26 of the M.E.P.S. Rules reads :

26(2). The retrenchment from service under Sub-rule (1) shall be subject to the following conditions, namely :

(i)...

(ii)...

(iii) The employees from aided schools, whose services are proposed to be retrenched shall be absorbed by the Education Officer in the case of Primary and Secondary Schools or by the Deputy Director in the case of Higher Secondary Schools and Junior Colleges of Education. The order of absorption of such employees shall be issued by registered post acknowledgment due letter and till they are absorbed the Management shall not be permitted to effect retrenchment on account of any reasons mentioned in Sub-rule (1).

7. In the ease at hand, the orders of absorption at new High School. Kingaon as well as Dnyaneshwar Vidyalaya, Begumpura, Aurangabad were served on the petitioner and, in fact, he visited the second school in the company of two officers on 31st March, 1999 and refused to join. There is no doubt that the Education Officer passed the fourth order of absorption of the petitioner under the respondent No. 4 which is a girls High School, However, this order will not prevent the operation of Sub-rule (3) of Rule 26 of the M.E.P.S. Rules and more so on account of the behaviour of the petitioner himself. It is on record that the petitioner resorted to hunger strike for absorption in Aurangabad city on the ground that he was a physically challenged person. We have had the benefit of looking at the petitioner when he was present in the Court on 2-3 occasions and we are satisfied that he is not a physically challenged person. The respondent No. 4 in its detailed affidavit has come out with a case that the petitioner himself is running an educational institution. Nonetheless, the petitioner, by his own actions, has demonstrated that he was determined not to report at any other school and continue under the respondent No. 5. Under such circumstances, the communication dated 11th September, 1997 must be allowed to have its effect in terms of the provisions of Rule 26(3) of the M.E.P.S. Rules which would mean

that the petitioner stood retrenched on service of the said communication and he ceased to have the right for re-absorption in any other school. The respondent authorities shall pass appropriate orders accordingly in this regard within a period of two weeks from today.

8. Petition stands rejected summarily.