

(2010) 12 BOM CK 0050

In the Bombay High Court

Case No : Writ Petition No. 8106 of 2010

Navnath Raghunath Somwanshi

APPELLANT

Vs

Padmashree Dr. Vithalrao Vikhe Patil Foundation, The
Principal Padmashree Dr. Vithalrao Vikhe Patil Foundation's
Polytechnic and Joint Director of Technical Education,
Regional Directorate

RESPONDENT

Date of Decision : 20-12-2010

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 8, 9
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule
25(A), 26(1)

Citation : (2011) 6 BomCR 239 : (2011) 3 MhLj 262

Hon'ble Judges : A.A. Sayed, J

Bench : Single Bench

**Advocate : Satyajit S. Bora, for the Appellant; V.D. Hon, Respondent Nos. 1 and
2 and D.V. Tele, AGP, for the Respondent**

Judgement

A.A. Sayed, J.—Rule. Rule made returnable forthwith and heard finally by consent of parties.

2. The above petitions impugn the orders of Presiding Officer, School Tribunal, Solapur. By the said orders, the applications filed by Respondent-Institution to dismiss the appeals of the Petitioners pending before it, came to be allowed and the appeals were dismissed as infructuous in view of the order passed by Government of Maharashtra dated 15/5/2007 of final closure of the Respondent-institution under Rule 25(A) of Maharashtra Employees of Private Schools(Conditions of Service) Regulation Act, 1977 (herein after referred to as MEPS Act for brevity).

3. The appeals before the School Tribunal had been filed by the Petitioners, who were employees of the Respondent-institution questioning the retrenchment

notice dated 21/7/2005 issued to them as per Rule 26(1) of MEPS Act by the Respondent-institution. During the pendency of the appeals, closure order dated 15/5/2007 of the Respondent-institution was passed by the Government of Maharashtra. The Respondent-institution thereupon moved applications in the said appeals stating that in view of the closure order, the appeals had become infructuous. As indicated above, the said applications came to be allowed by the impugned order and the Appeals of the Petitioners were dismissed. Hence, the above Writ Petitions.

4. At the outset, it is noticed that the closure order dated 15/5/07 was issued during the pendency of the appeal which was filed in 2005. It is further noticed that the impugned orders are passed, based on the closure order of the Government of Maharashtra dated 15/5/07 on an interlocutory application, holding that since the appeals have become infructuous in view of the closure order, the appeals stand dismissed.

5. In order to appreciate the controversy, it would be apposite to extract Rule 25A of the MEPS Rules 1981 which deals with termination of service on account of abolition of post due to closure of school. The same reads as under:

25A Termination of Service on account of abolition of posts

[1] 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 to the effect that in the event of closure of the school, his services shall automatically stand terminated. In the case of closure of school due to de-recognition, such advance intimation of three months shall be given by the Management to the permanent employees after receipt of a show cause notice from the Deputy Director.

Explanation: For the purpose of this sub-rule, the expression closure of the school shall include -

[i] voluntary closure by the Management of the entire school if it is imparting instruction through one medium or a part of the school comprising one or more media of instruction if it is imparting instruction through more than one medium; and

[ii] closure of the school due to de-recognition by the Department.

[2] The names of the employees in aided schools, whose services stand terminated in accordance with sub-rule (1) on account of de-recognition and who are not directly responsible for such de-recognition, shall be taken on awaiting list 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 College of Education, and same shall be recommended by him to the Managements of newly opened aided schools or of the existing aided schools which are allowed to open additional divisions or classes for consideration.

6. The Division Bench of this Court [Swatanter Kumar CJ (as he then was) and A.M. Khanwilkar, J.] in the decision of Laxmi Education Society and Ors. v. State of Maharashtra and Ors. 2010 (2) Mh.L.J. 837 had the occasion to elaborately consider the scheme of closure of schools as contemplated under Rule 25-A of MEPS Act. Speaking on behalf of the Division Bench, Justice A.M. Khanwilkar observed in paragraphs 33,34 and 35 of the judgment as follows:

[33] The next question is what are the consequences of closure of the school qua permanent employees. That question in our opinion, will have to be addressed by the School Tribunal in the first instance, keeping in mind the provisions of Rule 25-A of the Rules. We have already observed that the closure of the school would be governed only by the regime of Rule 25-A of the Rules. We do not propose to elaborate on this issue any further . Lest it may affect the merits of the pleas available to the Management as well as the concerned permanent employees. All questions in this behalf will have to be addressed by the Tribunal. Even the question as to whether the Tribunal can direct absorption of the affected permanent employees in the school on the assumption that they have been rendered surplus due to voluntarily closure of the School/Junior College by the Management, will have to be considered by the Tribunal in accordance with law. We do not wish to detain ourselves on those aspects.

[34] The next question is: Whether the School Tribunal can examine the question of bona fides of closure. In this context, we will also consider the correctness of the opinion recorded by the learned Single Judge in the impugned decision that the Tribunal has misdirected itself in considering the said question inspite of the observations of the Division Bench in the case of Bhagwant Kaur Sandhu and Others Vs. Laxmi Education Society and Others, . In the first place, jurisdiction of the School Tribunal flows from Section 9 of the Act, which read thus:

[9] Right of appeal to Tribunal to employees of private schools -

[1] Notwithstanding anything contained in any law or contract for the time being in force, (any employee in a private school -

[a] who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management or

[b] who is superseded by the Management while making an appointment to any post by promotion, and who is aggrieved, shall have right of appeal and may appeal against any such order or suppression to the Tribunal constituted u/s 8 ;

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July, 1976.

[2] Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal,

otherwise termination of service or reduction in rank as the case may be:

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

[3] Notwithstanding anything contained in Sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days, as the case may be, if it is satisfied that the Appellant has sufficient cause for not preferring the appeal within that period.

[4] Every appeal shall be accompanied by a fee of (five hundred) rupees, which shall not be refunded and shall be credited to the Consolidated Fund of the State.

It is a remedy provided to the employee of a private school, who is dismissed or removed or whose services are terminated or who is reduced by rank by order passed by the Management. All questions arising in respect of the said grievance will have to be considered by the tribunal. However, at the same time, that does not mean that the tribunal can undertake parallel enquiry on matters which the Education Department is expected to examine upon receipt of intimation from the management about its proposal to close the school. Indeed, the Tribunal can incidentally go into the question of whether there is closure effected, but it does not empower the tribunal to render conclusive finding with regard to the bonafides of closure. As we have observed in earlier part of this judgment, even the Appropriate Authority of the Education Department cannot sit over the decision of the Management to close down the School as an Appellate Authority. The scope of enquiry even before the Appropriate Authority of the Education Department is only to consider as to what suitable directions are warranted in the fact situation of the case, so as to minimise the loss and hardship to because to the stakeholders, in particular, the students community and the permanent employees of the school. In our view, therefore, the School Tribunal cannot render conclusive finding with regard to the bona fides of the decision of the Management to close the school. Moreover, an enquiry with regard to the bonafides of voluntary closure will be an exercise in futility as the right of the Management to close the school can only be regulated by imposing reasonable restrictions in the interests of general public. For, it would not be open even to the Appropriate Authority to outright reject the proposal of voluntary closure of the school, as that would impinge upon the rights guaranteed under Article 19(1) (g) of the Constitution.

[35] The next question is: Is it open to the school tribunal to consider the issue of closure resulting in causing prejudice to the existing students of the school or prospective students and that of the society as a whole. We are afraid it is not open to the school tribunal to reopen the issue of closure of the school, which would attain finality with the directions to be issue by the Appropriate Authority of the Education Department. The School Tribunal in any case would be competent only to address the matters in the context of privileges or benefits available and accrued to the permanent employees if any, on account of the

closure of the School. The School Tribunal has no concern with any other issue, since it has been constituted only to examine the limited grievance brought before it u/s 9 of the Act.

7. On perusal of the aforesaid paragraphs of the judgment, it can be seen that what has been expounded by the Division Bench is that notwithstanding that the closure of the institute, the School Tribunal would address the matters in the context of privileges or benefits available and accrued to the permanent employees if any, on account of the closure of the institution. It is further expounded that in so far as the closure is concerned, the school tribunal would have no concern and it would not address itself on this issue and it would only have to examine the limited grievance brought before it u/s 9 of the said Act.

8. Considering the aforesaid judgment, it cannot be said that merely because the closure order has been issued during the pendency of the appeals, nothing would survive for consideration for the school tribunal in the appeal pending before it. It is also noticed that the tribunal would also, in accordance with law, have to address itself on the issue of retrenchment for the period prior to the closure order being passed since the appeals also challenge the retrenchment notices which are subject matter of the appeal, which were filed prior to the closure order dated 15/5/2007 and were pending at the time.

9. In the circumstances, I find that the School Tribunal was not right in dismissing the appeals pending before it that too on an interlocutory application filed on behalf of the Respondent-institution. The impugned orders are therefore, unsustainable and required to be set aside and accordingly set aside. Rule is accordingly made absolute in terms of prayer clause B of the petitions.

10. It would be open to the Petitioners to file appropriate applications for amendment to their appeals to bring on record subsequent events and further make any consequential prayers, if so advised. If such applications are filed the same shall be decided on its own merits and in accordance with law after hearing the Respondent-institution.