
(2006) 02 BOM CK 0104
In the Bombay High Court
Case No : Writ Petition No. 1372 of 1996

N.T. Deshmukh and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 02-02-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 25A, 25A(2), 26, 27

Citation : (2006) 3 ALLMR 512 : (2006) 5 BomCR 367 : (2006) 3 MhLj 220

Hon'ble Judges : J.N. Patel, J;A.H. Joshi, J

Bench : Division Bench

Advocate : M.P. Lala, for the Appellant; A.D. Sonak, Assistant Govt. Pleader for respondent Nos. 1 to 3 and 5, for the Respondent

Judgement

J.N. Patel, J.—Heard the learned Counsel for the parties.

2. The petitioners till derecognition of the school at Belora run by respondent No. 4 society were in employment as its staff. The petitioner Nos. 2 to 5 were employed as teachers in the high school whereas petitioner Nos. 6 to 8 were employed as teachers in middle school and petitioner Nos. 10 to 13 are the non-teaching employees who have approached this Court for seeking appropriate writ, order or direction of this Court to the respondent Education department to consider their case for absorption in some other aided school with all the consequential reliefs.

3. Initially the petitioners have pressed their prayer Clause (i) to the petition which was to strike down Rule 25(A) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereafter referred to as "the MEPS Rules") being ultra vires but in the course of hearing of the petition, this has been given up in view of the decision of this Court rendered in the case of Dattaraj Janraoji Nimkar and Others Vs. Swargiya Sakharamji Shikshan Sanstha and Others, wherein this Court has held that Rule 25(A) of the said Rules of 1981

is not ultra vires to Article 14 of the Constitution of India and, therefore, now the petitioners restrict their prayer only to the extent of seeking absorption in any other aided school mainly on two grounds, firstly that if the school in which they were employed had been derecognised, the employees can be removed from service only as per the criteria laid down in Rule 27 of the MEPS Rules, 1981. In absence of the petitioners being given an opportunity of hearing, they could not have been held responsible for derecognition of the school and deprived of absorption as provided under Rule 26 of the said Rules of 1981 and, therefore, they are entitled to be absorbed in any other aided school.

4. The fact that the petitioners were in the employment of respondent No. 4 institution which was running a school at Belora and were permanent and confirmed employees is not in dispute. It so happened that on 18-5-1996 the respondent No. 1 passed an order by which the school at Belora came to be derecognised. The respondent Education department before taking such a decision though gave sufficient opportunity to the respondent No. 4 management, yet the respondent No. 4 management did not submit any reply to the show-cause notice which resulted in passing of the impugned order.

5. It is the contention of the petitioners that the Deputy Director has observed that the employees of the said school, viz. the petitioners are responsible for certain shortcomings and closure of the school. It is, therefore, contended that at no point of time any copy of show-cause notice was served on any of the petitioners and the decision by the impugned order has been taken without affording any opportunity to the petitioners of being heard in the matter, which is without following the principles of natural justice and contrary to law and, therefore, they cannot be deprived of their right to be absorbed in any other school.

6. The learned Counsel for the petitioner submitted that insofar as the petitioners are concerned, they are not keen to challenge the order of derecognition passed by respondent No. 1 as it was for the management of respondent No. 4 to have taken up the issue as the decision has adversely affected their rights without they being given an opportunity of hearing, the impugned order passed by the respondent No. 1 to that extent stands vitiated and is bad in law.

7. The respondent No. 2 has filed his reply and it is contended that the Education Officer had inspected the institution run by respondent No. 4 at Belora where the petitioners were employed as teaching as well as non-teaching staff and based on the inspection report of the Education Officer, the respondent had issued a show-cause notice to the President and Secretary of the society on 21-3-1996. Not only the respondent No. 4 society did not reply to the show-cause notice but they did not even respond to the notice given by the respondent No. 2 to contest the matter. Hence, the respondent passed an order of derecognition of the school on 18-5-1996 from the session 1995-96 and, therefore, it is contended that the impugned order has been passed by following the principles of natural justice.

8. It is further contended on behalf of the respondent No. 2 that there is no provision to issue separate notices to each and every staff working in the school though it is categorically stated in the return that the contention of the petitioners that they are not at all responsible for the state of affairs found by the Deputy Director of Education in respect of the school is not correct. On the contrary, the grounds for derecognition mentioned in the order itself make it clear that the staff working in the school is responsible directly for derecognition and, therefore, it is the case of the respondents that as the petitioners are directly responsible for derecognition, they are not entitled to be taken on a waiting list by the respondents for recommending their names to the management of newly aided school or to the existing aided school for consideration. It is the case of the respondent Education department that the employees in the private schools are basically the employees of the management of the concerned school and as such they cannot claim anything as a matter of right from the State Government. The respondents have also placed reliance on the Government Resolution dated 20-11-1987 and the order of Director of Education dated 27-4-1992 in support of their contention.

9. The respondent Education Department in order to show that a fair opportunity was given to the respondent management as well as the petitioners to enable the Education Department to continue the functioning of the school under an Administrator but this was also not found workable due to the deficiencies noted in the institution and, therefore, the petition deserves to be dismissed.

10. Mr. M. P. Lala, learned Counsel for the petitioners, submitted that he is not canvassing the case on behalf of the respondent management so as to challenge derecognition of the school and the reasons for the same given by the Education Department insofar as it relates to the deficiencies found in the institution except that the petitioners have been held responsible for the same. Mr. Lala submitted that if opportunity was given to the petitioners, they could have demonstrated that the petitioners are not responsible for the state of affairs in the school which was due to the sole negligence or inability on the part of the respondent-management which is also managing another institution at Ridapur. It is submitted that the petitioners have put in long years of service and depriving them of their right to be absorbed in another institution in accordance with Rule 26 of the MEPS Rules without giving them opportunity of hearing was not justified. Mr. Lala has drawn our attention to the decision of this Court in the case of Chanda Nazma Abdul Razak v. Education Officer (Primary), Zilla Parishad, Solapur and Ors. reported in 2001 (3) Mh.L.J. 766 wherein it has been observed in para 5 as under:

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.

Therefore, Mr. Lala submits that before holding the petitioners responsible for such de-recognition, the Education Officer was required to make an enquiry as to whether the petitioners were responsible for such de-recognition and for that an opportunity ought to have been given to the petitioners by the Education Officer.

11. Mr. Lala submits that there is a direct authority on the issue as to whether an employee has a right to be heard in the matter, particularly when the respondents have come up with a case that it is not necessary for them to hear the employees of the school while taking a decision to de-recognised the institution. Mr. Lala has cited the case of *Rajnarayan S. Pathak v. Deputy Director of Education, Greater Mumbai* and Ors. reported in 2004 (2) Mh.L.J. 927, wherein this Court had an opportunity to examine the issue which is involved in the " present petition. The decision squarely covers the controversy as it was held in the case of *Rajnarayan S. Pathak v. Deputy Director of Education, Greater Mumbai* and others that:

The right of the employee to approach the Department for enlisting himself/herself as a candidate who should be employed by management of other schools on account of closure of the school where he/she was working, cannot be taken away without affording opportunity of putting forward their case. He/she must know as to why their name is not being included in the waiting list to be maintained under Rule 25A(2) or otherwise. As to why the Department feels he/she is not a fit person to be recommended for absorption by other schools in their services, should be known to them. The authorities are also expected to inform the employee the reason for his/her non-inclusion. He/she should have an opportunity to point out to the authorities that it is not his/her act which is directly responsible for de-recognition. All this is lost if the authorities straightway communicate to the employee in question their decision not to recommend the case for absorption. Therefore, in such matters, compliance with principles of natural justice is necessary. The authorities should inform the employee in question, if it is of the view that his/her acts are responsible for the derecognition of the school. Ultimately, the employee is going to be affected adversely. Therefore, such tentative and prima facie views ought to be communicated to the concerned employee and an opportunity should be given to him/her to put forward his/her case. After his explanation is received and a hearing is given to him/her, the authorities can pass appropriate orders. It is not permissible for the authorities to issue the communication as are issued in the instant case without complying with the principles of natural justice.

This according to Mr. Lala leaves no doubt in one's mind that the petitioners have been deprived of their right of absorption without giving them opportunity of hearing.

12. Mr. Sonak, learned A.G.P. submitted that the stand taken by the Education Department is just and proper for the reason that as required u/s 25A, the Education Officer has conducted an enquiry into the affairs of the school and found the following deficiencies:

- i. Attendance in classes from Vth to Xth is low,
 - ii. relations between the management and the teachers are strained,
 - iii. the school building is not owned by the management and the existing building is very old, insufficient to accommodate the students and lacks enough light and ventilation,
 - iv. furniture is insufficient for the students,
 - v. separate laboratory is not available,
 - vi. Material is not available,
 - vii. separate arrangement for girl students, is not satisfactory,
 - viii. the meeting of the school committee has not been convened and held,
 - ix. the accounts are not audited for the last 3 years and cash book and pass book is not updated,
 - x. from 1986-87, grants are not assessed;
- and

(i) results of the last 5 years are unsatisfactory. Results of 1993-94 and 94-95 are less than 10%.

The learned A.G.P. drew our attention to Clause (x) of the findings of the Education Officer which is one of the grounds for de-recognition of the school and which reads that results of the last 5 years are unsatisfactory. The results of 1993-94 and 1994-95 are less than 10%. The learned A.G.P. therefore, submitted that this itself reflects on the performance of the petitioner being the teachers which was one of the main consideration for derecognising school and as the finding speaks for itself even accepting that the petitioners have a right of hearing, this is sufficient to show that they have also contributed to the de-recognition of the school considering the performance of students where they were teachers.

13. The learned A.G.P. further submitted that though the management was given sufficient opportunities to represent their case, they having failed to contest the show-cause notice and challenge the findings of the Education Officer against the institution, this indicates that the management has accepted the deficiencies and

respondent No. 2 in ordering de-recognition of school and, therefore, the petitioners have no say in the matter and the petition deserves to be dismissed.

14. Mr. Lala submitted that during the pendency of the petition, certain changes have taken place like the original petitioner Gajanan Narayanrao Shelke who was a teacher in middle school and Raosaheb Nagorao Wanare, who was a non-teaching employee of the school have expired and, therefore, this Court passed appropriate orders protecting their rights so as to entitle their legal heirs to claim benefits which otherwise they would have been entitled to.

15. It has been also pointed out to us that some of the petitioners having completed 58 years of age, i.e. original petitioner Nos. 2, 3, 4, 6 and 7, they would stand retired on attaining the age of superannuation and, therefore, their case may be also considered as a class for giving them benefits of pension, etc. if they are found entitled for being continued in service by way of absorption.

16. Mr. Lala further submitted that the respondent No. 4 institution having not followed the procedure contemplated under Rule 27 of the MEPS Rules, 1981, the respondent No. 4 should also be directed to comply with the same if this Court arrives at a finding that the petitioners were entitled for absorption under Rule 26 of the MEPS Rules.

17. As none appears for the respondent No. 4, this Court has not got any assistance from the management regarding the state of affairs vis-a-vis the petitioners' status as employees of their school at Belora which came to be derecognised nor the management has chosen to file any return on affidavit to contest the case of the petitioners.

18. Therefore, we find that the petitioners who were members of the teaching and non-teaching staff have been deprived of the right to be heard by the Education Officer as well as the respondent No. 2 before taking a decision that they are responsible for the de-recognition of the school as provided under Rule 25-A of the MEPS Rules, 1981. This Court in the case of Rajnarayan Pathak (cited supra) has clearly laid down that the right of the employees to approach the department for enlisting himself/herself as a candidate who should be employed by management of other schools on account of closure of the school where he or she was working cannot be taken away without affording opportunity of putting forward their case. It is further made clear that he/she should have an opportunity to point out to the authorities that it is not his/her act which is directly responsible for de-recognition. Admittedly, in the present case, such an opportunity has not been given to the petitioners and, therefore, refusal on the part of respondent No. 2 to consider the case of the petitioners for absorption on the ground that they are directly responsible for de-recognition of the school cannot be upheld. The respondent No. 2, i.e. the Education Department in its return on affidavit has specifically admitted that the petitioners were not given any show-cause notice or heard in the matter whereas they have specifically pleaded that there is no provision to issue separate notice to each and every

staff working in the school.

19. Plain reading of the provision if literally interpreted may be construed that there is no requirement to issue individual notice to the members of the teaching, non-teaching staff if the school is being de-recognised but the consequences of such a decision which will have bearing on the rights of the teaching and non-teaching staff resulting in termination of their services and retrenchment makes it implicit on the part of the Education authorities to give them an opportunity of hearing. The Education Department having not followed these basic principles of rules of natural justice has deprived them of an opportunity to explain as to how they are not responsible for the de-recognition of the school particularly the dismal result which has been considered as one of the factors to hold them responsible for de-recognition of the school and, therefore, we direct the Education Officer (Secondary), Zilla Parishad, Amravati, who is the authority u/s 25A(2) in order to prepare the waiting list of such teaching and non-teaching staff for absorption, to hear the petitioners in the matter of derecognition of E.S. High School, Belora which was managed and run by respondent No. 4 institution and of which the petitioners were employees on the issue of derecognition of the school, vis-a-vis the responsibility of the petitioners is concerned by giving them a fair opportunity of hearing. The Education Officer would give an opportunity of hearing to the legal representative or their authorised representative of deceased employees to put forth their case before the Education Officer.

20. The petitioners and/or authorised representative shall appear before the Education Officer (Secondary), Zilla Parishad, Amravati on 20-2-2006 for fixing a date of hearing in the matter and shall be entitled to seek inspection of the record and the material on the basis of which the Education Officer has held them responsible for derecognition to enable them to file reply, if any, and put up their respective case.

21. The Education Officer shall take a decision in the matter preferably within a period of three months from the date of first appearance of the petitioners before him and in case the Education Officer is satisfied that the petitioners are not directly responsible for derecognition of the school where they were working, pass appropriate orders in accordance with the MEPS Rules, 1981. In case of petitioners who have retired, the Education Officer would direct the respondent No. 4 to process their case for grant of pension as per their entitlement in accordance with their service regulations and in case of petitioner employees who have expired during pendency of the petition, process their case through the respondent No. 4 institution for family pension and all other benefits to which they are entitled.

22. Rule is made absolute in the aforesaid terms with no order as to costs.