

(2006) 01 BOM CK 0061
In the Bombay High Court
Case No : Writ Petition No. 323 of 1998

Premlal Ramchandra Bisen	Vs	APPELLANT
Education Officer and Others		RESPONDENT

Date of Decision : 30-01-2006

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 26(4), 26(5)

Citation : (2006) 5 BomCR 795

Hon'ble Judges : Deshmukh D.K., J

Bench : Single Bench

Advocate : Marathe, for the Appellant; Khubhalkar and B.G. Kulkarni, for the Respondent

Final Decision : Allowed

Judgement

Deshmukh D.K., J.—By this petition, the petitioner challenges the order dated 5-1-1998 made by the Education Officer. The admitted facts are that the petitioner was in the employment of respondent No. 3. He was declared as a surplus teachers. Therefore, the Education Officer made the order for his absorption in the respondent No. 2 School. It appears that, thereafter, the Education Officer was informed that there is vacancy in the respondent No. 3 School and therefore, the Education Officer made the order dt. 5-1-1998 sending the petitioner back from respondent No. 2 School to respondent No. 3 School. It is this order which is under challenge. Challenge to the order is on the ground that this order is made by the Education Officer without any power vested in him by the Statute. The only statutory provision which is relevant and which is pointed out by the learned Counsel for both the sides is Rules 26(4) and 26(5) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 which reads as under:

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.

2. 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.

Rule is made absolute in terms of prayer Clause (i). No orders as to costs.