

(2014) 01 BOM CK 0128

In the Bombay High Court

Case No : Writ Petition No. 5482 of 2013

Prerna Shikshan Mandal, Sindewahi and Head Master/
Principal, Samrat Ashok Vocational Junior College

APPELLANT

Vs

State of Maharashtra, The Education Officer (Secondary) and
Deputy Director of Education

RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:

Citation : (2014) 5 ALLMR 212 : (2014) 6 BomCR 139 : (2014) 2 MhLj 843

Hon'ble Judges : Z.A. Haq, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : A.D. Mohgaonkar, for the Appellant; S.M. Ghodeswar, AGP for
Respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—Heard Shri Mohgaonkar, learned counsel for the petitioners and Shri Ghodeswar, learned Assistant Government Pleader for respondents 1 to 3. Perused the judgment of Division Bench of this Court reported at Vidya Vikas Khandekar and Others Vs. Bal Mandir Sanstha and Others, . Looking to the nature of controversy, we have heard the matter finally with the consent of parties by issuing Rule and making it returnable forthwith.

2. Petitioner no. 1-Management runs four schools in Chandrapur district. All these schools are duly recognized and Samrat Ashok High School at Chinchpalli i.e. one out of these schools is only receiving grant-in-aid. One Shri Siddhartha Raut was working as Headmaster in unaided Samrat Ashok High School at Lohara. Headmaster Shri N.U. Ramteke working in aided school superannuated on 31/10/2012. Petitioners, therefore, transferred said Raut to aided school and sought approval thereto. The approval has not been granted on the ground that one Shri Meshram found surplus in aided school and absorbed in school of the other management, needed to be brought back in said aided school of the Petitioner. Hence present petition is filed.

3. Shri Mohgaonkar, learned counsel for the petitioners, submits that as vacancy has arisen in the cadre of Headmaster and is being filled in horizontally by transfer, there is no vacancy of Assistant Teacher in aided school to absorb the teacher earlier declared surplus. He contends that proceedings under Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 do not bar such transfer. He also seeks support from the Division Bench judgment mentioned supra.

4. Learned Assistant Government Pleader relied upon the reply affidavit and documents on record. He states that the proposal submitted to grant approval to the transfer as Headmaster was returned back and thereafter petitioners submitted a proposal to grant approval to transfer of said Raut as an Assistant Teacher to the school receiving grant-in-aid. This proposal dated 12/12/2012 also has not been accepted. He states that as per the provisions of Rule 26(4) of M.E.P.S. Rules, 1981 a teacher absorbed in other school has a right to come back to his parent school and therefore such an approval cannot be granted.

5. Shri Mohgaonkar, in ripely, submits that Management never submitted any proposal seeking approval to transfer of said Raut as an Assistant Teacher in aided school.

6. With the assistance of respective counsel, we have perused the record. Education Officer has in his communication dated 31/12/2012 stated that the action of transferring an Assistant Teacher working in unaided school to aided school is not legal. He points out that one V.K. Meshram was declared surplus in aided school & was absorbed in Navbharat School at Antaragaon which is an aided school of other management. In communication dated 5/2/2013, the education officer has mentioned about proposal dated 5/11/2012 sent by the petitioners. It reveals an afterthought story of petitioners that on 21/6/2012 resignation was tendered by said Raut from the post of Headmaster of unaided school and thereafter Shri Raut has been transferred as Assistant Teacher to aided school and accordingly a proposal came to be submitted for grant of approval on 5/11/2012. This story is repeated again in a communication dated 5/7/2013 sent by petitioner to the Deputy Director of Education at Nagpur.

7. This communication states that Shri Raut was transferred as headmaster from unaided school on 1/11/2012 & proposal seeking approval to it was submitted on 12/10/2012. The return of said proposal by education officer due to lacunae therein on 26/11/2012 is also stated. It also states that thereafter Shri Raut was transferred as assistant teacher to the aided school & proposal was filed on 5/12/2012 to approve it.

8. Respondent no. 2-Education Officer has filed reply affidavit and in paragraph 7 it is mentioned that on 26/11/2012 proposal to grant approval to transfer of Shri Raut as Headmaster was rejected. Thereafter Shri Raut has been transferred as an Assistant Teacher from no grant school to grant-in-aid school w.e.f. 11/11/2012 and then petitioner no. 1 vide letter dated 12/12/2012 submitted

the proposal seeking approval to that transfer. This approval is also rejected on 5/2/2013.

9. The facts clearly show that there was a surplus teacher with the petitioners who has been absorbed in other school. That teacher, therefore, needs to be offered a chance to come back to his parent school in obedience to mandate of Rule 26(4) of MEPS Rules, 1981. Considering these facts, the Education Officer has not granted approval to the transfer of said Raut as an Assistant Teacher. Permanent teacher like Shri Meshram validly declared surplus continues to receive salary without work till he is absorbed. Hence, such vacancies in a recognized school getting grant-in-aid must be first offered to the teachers declared surplus first as per their position in waiting list as per the scheme of M.E.P.S. Rules, 1981. If managements are permitted to fill in such posts through teachers like Shri Raut, the burden on public revenue will further mount. The judgment on which the learned counsel has placed reliance speaks about a situation where a management has more than one schools and none of them is receiving grant-in-aid. When for the first time grant is extended to only one of such schools, what should be the procedure to be followed to find out the teachers eligible to its benefit is the facet gone into by the said Division Bench. Here, Management already has a school which is receiving grant-in-aid. Petitioners do not urge that Shri Raut served in that aided school at any time and, at relevant time, he was working as Headmaster in a school not receiving grant-in-aid. After Headmaster Shri Ramteke in a school receiving grant-in-aid retired, an effort was made to transfer Shri Raut in his place. It appears that after failure, Shri Raut was asked to resign retrospectively from the post of Headmaster and thereafter, approval was sought by petitioner to his transfer as an assistant teacher again from non-grant school to grant-in-aid school. These efforts cast serious doubts on the bonafides of the petitioners & their attempt to invoke Art. 226 must be discouraged. We fail to understand how could they approach this Court with such mutually destructive pleas. The facts also show that in school receiving grant-in-aid, there is already a teacher more senior to Shri Raut and petitioner Management claims that said teacher has relinquished his claim for promotion as a Headmaster in favour of Shri Raut. We find that this claim also needs a thorough investigation to find out voluntoriness of such senior teacher. If said senior teacher in Samrat Ashok High School receiving grant-in-aid is promoted as Headmaster, a vacancy in the post of Assistant Teacher will become available in that school and against that vacancy Shri V.K. Meshram, an ex-teacher in employment of petitioners only sent out after he became surplus, can come back. The refusal to accord approval to shifting of Shri Raut & direction to take back Shri Meshram issued by the education officer to the petitioners is valid. We, therefore, find the action taken by the respondents in public interest and in accordance with law. No case is made out warranting interference. Petition is, therefore, dismissed. Rule is discharged. No costs.