
(2004) 02 BOM CK 0116
In the Bombay High Court
Case No : W.P No. 2683 of 2003

Rajnarayan S. Pathak

APPELLANT

Vs

Deputy Director of Education and Others

RESPONDENT

Date of Decision : 04-02-2004

Acts Referred:

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

Citation : (2004) 2 ALLMR 337 : (2004) 5 BomCR 183 : (2004) 102 FLR 327 : (2004) 3 MhLj 927 : (2004) 2 MhLj 927

Hon'ble Judges : S.C. Dharmadhikari, J; A.P. Shah, J

Bench : Division Bench

Advocate : S.J. Panicker, for the Appellant; Sindra Sridhnan, AGP, for the Respondent

Judgement

1. The petitioner challenges an order dated 16th February 2002 passed by respondent No. 2, The petitioner also seeks a Writ of Mandamus directing the respondents to absorb him either as an Assistant Teacher or as a Head Master in other aided Secondary School in Mumbai under their jurisdiction, as also to pay to him unpaid salary for the period commencing from June 2000 till the derecognition of Swami Dayananda Saraswati High School (hereinafter referred to as "the said School" for short) administered and managed by respondent No. 4 trust.

2. The petitioner is a qualified teacher. Prior to his joining the said School he worked in different schools in Mumbai as an Assistant Teacher in Hindi and English medium. From December 1970 to April 1994 the petitioner worked at the said school initially as a Teacher and subsequently as a Head Master. He was made permanent in the said post w.e.f. 13th June 1987. The said school became hundred percent aided school w.e.f. 25th March 1996. Petitioner's appointment as a Head Master was approved by the Department with retrospective effect i.e. from 13th June 1993. He was also granted approval as a Head Master of Junior College section w.e.f 15th June 1998.

3. Petitioner was suspended by the Education Inspector in view of a criminal case on 17th October 1998. He challenged the said suspension order by moving this Court and instituted Writ Petition No. 2502 of 1998. This Court by its order dated 15th January 1999 quashed the said suspension order. Thereafter, his services were terminated on 2nd July 1999. The petitioner challenged the said termination before the School Tribunal, Mumbai by instituting Appeal No. 17 of 1999. The School Tribunal by its order dated 29th July 1999 quashed the termination order and directed reinstatement of the petitioner in the services.

4. The recognition of the school was withdrawn by the Deputy Director of Education pursuant to a show cause notice w.e.f. June 2000. The order of Deputy Director of Education withdrawing recognition, was confirmed by the Director of Education on 18th July 2000. The petitioner filed Writ Petition No. 1693 of 2000 and this Court directed the Director of Education to hear the matter afresh. The Director of Education reconfirmed his order withdrawing the recognition after such fresh hearing by his order dated 16th March 2001.

5. It is the case of the petitioner that all permanent employees of the said school including those who have been terminated, were absorbed as surplus teachers by the Education Inspector vide orders made from time to time. The petitioner moved the authorities and has been pursuing the matter of his absorption since 11th February 2002 till September 2003.

6. It is alleged by the petitioner that he has been singled out for non absorption and it is his case that the Education Inspector informed him on 6th February 2003 that the Deputy Director of Education has instructed him not to absorb the petitioner in any school. The petitioner made a representation on 8th September 2003, but he has not been informed anything about his absorption. The petitioner submits that at no point of time he was informed about his non absorption at the instance of the Deputy Director of Education. He submits that it is only when he received a letter dated 6th February 2003 from the Education Inspector that he became aware that an order is issued at the instance of the Deputy Director on 16th April 2002 not to absorb the petitioner. In this view of the matter, the petitioner impugns the order dated 16th April 2002, which was communicated to him along with letter Exhibit-O of 6th February 2003. The letter of 6th February 2003 has been addressed by the Education Inspector with which the letter of 16th April 2002 (impugned letter) is annexed. By this petition the petitioner seeks quashing and setting aside of these communications.

7. Mr. Panicker - learned advocate for the petitioner contended before us that the impugned letters are void ab-initio, inasmuch as, the order contained therein has been passed without complying with the principles of natural justice. He submits that prior to the decision of the authorities not to absorb the petitioner, it was incumbent upon them to issue him a show cause notice seeking for his explanation and after giving him hearing, to pass appropriate orders in such matters. He invites our attention to Rule 25A of the Maharashtra Employees of Private Schools Rules, 1981 (hereinafter referred to as "the MEPS Rules" for

short) and contends that a right has been confirmed by the said Rule to approach the authorities and authorities are obliged to act in terms of Sub-rule 2 thereof. Such a right can not be taken away by the authorities without complying with the principles of natural justice.

8. Ms. Shridharan -- the learned AGP appearing for respondent Nos. 1 to 3 invites our attention to the affidavit filed by the Deputy Education Inspector and contends that the petitioner was in-charge of and responsible for administration and running of the said school. He was the Head Master as well as Secretary of the said school. It is her submission that in view of the activities of the petitioner, the recognition of the said school had to be withdrawn by the authorities. In this view of the matter, it was decided not to absorb the petitioner. She submits that the case of the petitioner is not covered by Rule 26 but falls within the purview of Rule 25A(2). She justified action of not absorbing the petitioner as surplus for the reasons which are already set out in the communication addressed in that behalf. In other words, she submits that the petitioner's acts of omission and commission being responsible for derecognition of the School, it is not possible to absorb the petitioner in the services of any other school in terms of the rules.

9. It is not necessary for us to go into the merits of the matter. It is also not necessary for us to decide one way or the other as to whether the petitioner can be said to be responsible for the school being derecognized by the authorities. In our view, the impugned order deserves to be quashed and set aside on the short ground that before such order was passed it was necessary for the authorities to give an opportunity of being heard to the petitioner. Admittedly no such opportunity has been given in this matter. That such a opportunity is required to be given is not seriously disputed before us.

10. In Writ Petition No. 6636 of 2000 a Division Bench of this Court passed an order on 14th June 2001 wherein it observed that the Education Officer is required to make an Enquiry to find out whether the concerned Teacher was not responsible for such de-recognition.

11. 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 25(A)(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 derecognition. All this is lost if the authorities straight way communicate to the employee in question their decision not to recommend the case for absorption. Therefore, in our view, 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 communications as are issued in the instant case without complying with the principles of natural justice.

12. In view of the above discussion, we proceed to quash and set aside the order dated 16th February 2002 and 16th April 2002 and direct the authorities to take decision on the petitioner's request for absorption after giving him an opportunity of being heard. We have made above observations only with a view to impress upon the authorities the fact that valuable rights of the employees of schools which are closed down should not be taken away. The mandate of Article 21 of the Constitution of India takes within it's fold right of livelihood. That apart, all actions of the authorities in such matters have to be in conformity with the mandate of Articles 14 and 21 of the Constitution of India as well. We hope that the authorities would ensure equity, fairness and justice in such matters in future.

13. Rule is made absolute to the extent that the orders dated 6th February 2003 and 16th April 2002 are set aside. Respondent Nos. 1 to 3 are directed to consider the petitioner's request for absorption and pass appropriate orders thereon in accordance with law within a period of eight weeks from today after giving an opportunity to the petitioner of being heard in the matter. Petition is disposed of. No order as to costs.