

**(2008) 09 BOM CK 0054**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 1667 of 2008**

Raju Pacharne

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

**Date of Decision :** 12-09-2008

**Acts Referred:**

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 26(1), 26(2)

**Citation :** (2008) 6 ALLMR 672 : (2009) 1 BomCR 826

**Hon'ble Judges :** K.U. Chandiwal, J; F.I. Rebello, J

**Bench :** Division Bench

**Advocate :** S.D. Kotkar, holding for C.K. Shinde, for the Appellant; K.M. Suryawanshi, A.G.P., Amol Kakade, for Respondent Nos. 3 and 4 and D.R. Markad, for the Respondent

## Judgement

F.I. Rebello, J.—Rule. Heard forthwith.

2. It is the case of the petitioner that he was earlier appointed as Instructor by respondent No. 3 in the Industrial Training Institute named Sant Gadgebaba I.T.I. Pathardi, from 01-09-1990. It is his further case that thereafter he was made permanent in the year 1996. The College closed down from the academic year 2001-2002. As a result of which the services of the petitioner were terminated by an order 19-07-2001.

3. Respondent No. 3 Institution also runs Babuji Avhad Mahavidyalaya, at Ahmednagar. The said institution advertised for two posts, one post for Junior Clerk and another post of Library Attendant sometimes on 28-03-2007. Respondent No. 5 came to be selected to the post of Library Attendant and has been appointed.

4. By the present petition, it is the contention of the petitioner that he ought to have been absorbed by respondent No. 3 in the post of Library Attendant as he was qualified. The qualification for appointment to the post of Library Attendant

is H.S.C. It is next contended that the said post is to be filled in, in terms of M.E.P.S. Rules. The rules would require that the post is to be advertised by publication in the newspaper published in the locality. Respondent Nos. 3 and 4 failed to do so and on that count also, the selection of respondent No. 5 is illegal. It may at the out set be stated that in terms of the advertisement, post was reserved for S.T./O.B.C. The petitioner belongs to S.C.

5. Reply has been filed on behalf of respondent Nos. 3 and 4. It is admitted that the petitioner was appointed as Instructor but that was purely on temporary basis and that every year, fresh appointment was given to the petitioner and at no point of time was the petitioner appointed on permanent basis. The petitioner's age is 43 years and as such, the petitioner was ineligible to apply for the post as advertised. The institution was closed down from the academic year 2001-2002 as there were no sufficient number of students and services of the petitioner were terminated by an order dated 19-07-2001. A reply has also been filed by the State. It is set out that the appointment of the petitioner was purely on temporary basis on fixed pay and that he is over aged at the time of recruitment for the post which was advertised. The College in which the vacancy occurred is affiliated to Pune University and the appointments are required to be made in terms of the Maharashtra Non Agricultural Colleges Standard Code Rule 1984.

6. The first question that arise is whether the petitioner is entitled to have been absorbed by respondent No. 3 in respondent No. 4 Institution. Rules pertaining to absorption are governed by Rule 26(2) of the Maharashtra Employees of Private Schools Rules, 1981, which reads as under:

26(2)(iii) The employees from aided schools, whose services are proposed to be retrenched shall be absorbed 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 Colleges of Education. The order of absorption of such employees shall be issued by registered post acknowledgement due letter and till they are absorbed, the Management shall not be permitted to effect retrenchment on account of any reasons mentioned in Sub-rule (1).

Rule 26(1) sets out that a permanent employee may be retrenched from service by the Management after giving him 3 months' notice, for the grounds set out therein.

In other words, an employee must be permanent for the purpose of the applicability of Rule 26 (2)(iii) of the M.E.P.S. Rules. Apart from averments made by the petitioner that he was made permanent, no order confirming his appointment or of granting permanent approval on permanent basis to his appointment by respondent - State authorities, had been produced. On the contrary, documentary evidence on record would show that the petitioner was being appointed on year to year basis on fixed salary. Even though, therefore, the petitioner has been paid three month's salary, that by itself would not make

the petitioner, a permanent employee.

7. The second aspect of the matter is that absorption is to be done by directions issued 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 Colleges of Education. The other aspect of the matter is that a permanent employee who has to be retrenched, cannot be retrenched till such employee is absorbed and the Management is not permitted to effect the retrenchment on account of the reasons mentioned in Sub rule (1) of Rule 26. In the instant case, the petitioner's services were terminated. That by itself would be a clear indication that Rule 26(2)(iii) would not apply in so far as the petitioner is concerned, as otherwise, the Management could not have terminated his services till such time he was absorbed in another institution. On this count itself, this petition must fail.

8. The petitioner has also raised a contention that the post was not advertised as required under the M.E.P.S. Rules. Though the stand of the respondent- State authorities seems to be that the College Standard Code would apply, the fact remains that a post is in a Higher Secondary School, in what is described as a Junior College. Insofar as these institutions are concerned, they will be governed by M.E.P.S. Rules to the extent that they are so applicable and the College Code is not inconsistent. The post was reserved for S.T./O.B.C. candidate. The petitioner belongs to S.C. and as such, could not have applied for the said post. Apart from that he was age barred. If there has been any irregularity or illegality committed by the Management, it is for the respondent - State authorities while considering the issue of approval to the appointment of respondent No. 5, to look into that issue if raised before them. This court, considering that the petitioner has no right for appointment in the said post, ought not to exercise its extraordinary jurisdiction.

9. For the above reasons, there is no merit in the petition. Rule discharged. There shall be no order as to costs.