
(2004) 08 BOM CK 0026
In the Bombay High Court
Case No : Writ Petition No. 4238 of 2003

Ramdas Dahat

APPELLANT

Vs

Education Officer (Secondary) Zilla Parishad and Others

RESPONDENT

Date of Decision : 19-08-2004

Acts Referred:

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

Citation : (2005) 4 BomCR 879 : (2005) 2 MhLj 248

Hon'ble Judges : K.J. Rohee, J;A.P. Deshpande, J

Bench : Division Bench

Advocate : A.R. Patil, for the Appellant; S. J. Jichkar, A.G.P. For respondents Nos. 1, 2 and 6 B.G. Kulkarni, for the Respondent

Judgement

A.P. Deshpande, J.—Heard.

2. Rule. Rule made returnable forthwith. By consent of parties, taken up for hearing.

3. The limited grievance is made by the petitioner which deserves consideration and the same pertains to non-inclusion of the name of the petitioner in a list to be prepared and maintained under Rule 25A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, by the Education Officer (Secondary), Nagpur. The petitioner was appointed as an Assistant Teacher in the year 1971 in the employment of respondents No. 4 and 5 in Laxmi Vidya Mandal School. In the year 1997-98 the services of the petitioner came to be terminated because of reduction in the strength of the teaching staff. Aggrieved by the order of termination, the petitioner carried an appeal before the School Tribunal vide Appeal No. 106/1997 and the tribunal stayed the termination order. As a result of grant of stay to the order of termination, the Management chose to withdraw the termination order and issued a fresh order of termination. The second termination order was also challenged by the petitioner before the School Tribunal. This time again the School Tribunal granted stay to the termination

order and consequently the petitioner was continued in service.

4. It appears that by passage of time, the Management of the School was finding it difficult to run the school and hence sought permission from the State authorities to close down the school. The State authorities granted permission to close down the school on 30-3-1999. The above referred facts are undisputed. As a result of closure of school on 30-3-1999, the petitioner claims that he is entitled to the protection made available under Rule 25-A of the MEPS Rules. Rule 25A provides for the consequences as a result of voluntary closure of the school by the Management so far as permanent employees are concerned. In the event of voluntary closure as laid by Sub-rule (2), the names of permanent employees in aided schools who are to directly responsible for such derecognition, are to be taken on the waiting list to be maintained by the Education Officer in case of primary and secondary schools. Such names are thereafter to be recommended by the Education Officer to the Management of newly opened aided schools or of the existing aided schools which are allowed to open additional divisions or classes. No doubt the petitioner's case is squarely covered by Sub-rule (2) of Rule 25-A of the MEPS Rules as the petitioner is admittedly a permanent employee of the aided school. The learned counsel appearing for the State and Education Officer Shri Jichkar submits that as a result of pendency of petitions filed by the employees claiming absorptions instead of claiming the inclusion of their names in the list to be prepared by the Education Officer under Rule 25A, inclusion of names of such employees in the waiting list is not made. He does not dispute the entitlement of the petitioner to have his name included in the waiting list to be prepared and maintained under Rule 25A. Having regard to the totality of the facts and circumstances, we are convinced that the petitioner is entitled to have his name included in the waiting list and he is further entitled to be granted the deemed date of having been rendered excess as 30-3-1999 it being the date on which the school was voluntarily closed down.

5. The petitioner also has raised challenge to the vires of Rule 25A of the MEPS Rules. The said Rule has been held to be not ultra vires by a judgment of Division Bench of this Court reported in Dattaraj Janraoji Nimkar and Others Vs. Swargiya Sakharamji Shikshan Sanstha and Others, . Hence that question is not required to be adjudicated and the said challenge is not pressed. Hence we pass the following order :

6. We declare that the petitioner is entitled to have his name included in the waiting list to be prepared and maintained by the Education Officer under Rule 25A of the MEPS Rules and we accordingly direct the inclusion of the petitioner's name in the waiting list by granting the petitioner deemed date of having been rendered excess on 30-3-1999 it being the date on which the school was voluntarily closed down.

7. Rule is made absolute in the above terms. There shall be no order as to costs.