
(2019) 07 BOM CK 0125
In the Bombay High Court
Case No : Writ Petition No. 1567 Of 1999

Ambadas Dattatraya Goad

APPELLANT

Vs

Shashikala Arun Chaudhari And Ors

RESPONDENT

Date of Decision : 18-07-2019

Acts Referred:

Maharashtra Employees Of Private Schools (Conditions Of Service) Regulation Act, 1977 — Section 8, 9

Maharashtra Employees Of Private Schools (Conditions Of Service) Rules, 1981 — Rule 12

Constitution Of India, 1950 — Article 226

Citation : (2019) 07 BOM CK 0125

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : M.M. Jadhav, S.P. Shah, M.V. Dhongade, R.R. Patil, N.T. Bhagat

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J

1. This matter was heard extensively on 26.06.2019 and on 04.07.2019.

2. I had passed the following order on 04.07.2019:

â??1 The final hearing in this matter had commenced on 20/06/2019 and the parties were heard at length even today.

2 There is no dispute that the Honourable Apex Court has laid down the law on deciding the seniority amongst the trained assistant teachers in the

matter of Ku. Bhawana Vs. State of Maharashtra and others, (2019) 4 SCC 30.0 It is also undisputed that the petitioner acquired her B.Ed.

Qualification in 1988 and respondent No.1 had acquired her B.Ed. Qualification in April â?" 1987. The seniority as a trained assistant teacher in view

of the judgment of the Honourable Apex Court would place respondent No.1

above the petitioner.

3 The petitioner is presently working as a full-fledged headmaster from 11/06/1988 and is scheduled to retire in April 2022. Respondent No.1 who should be senior to the petitioner, would be retiring in June 2021 and stakes a claim to the post of the headmistress of the School.

4 In the above backdrop, learned Advocate for the petitioner seeks leave to research as to whether the challenge of respondent No.1 to the seniority of the petitioner after seven years is time barred and cannot be entertained.

5 By consent of the parties, stand over to 18/07/2019 for 'passing orders'.

3. The admitted factors in this case are as under:

a) The petitioner was appointed as an untrained teacher on 07.06.1985.

b) Respondent No.1 acquired her B.Ed. qualification in April 1987 and was qualified to be appointed as a trained teacher in view of having acquired the said qualification.

c) Respondent No.1 was appointed as a trained Assistant teacher on 18.09.1987.

d) The petitioner acquired the qualification of B.Ed. in April 1988 and was, therefore, qualified to be appointed as a trained Assistant teacher from April 1988.

e) The petitioner was appointed as an In-charge Head Master on 11.06.1988.

f) The School started receiving 100% Government Grants in the academic year 1990-91.

g) The Education Officer granted approval to the appointment of the petitioner to the post of Head Master on 31.10.1995.

h) Respondent No.1 filed an Appeal No.49 of 1995 on 16.11.1995 before the School Tribunal challenging the appointment and approval of the petitioner.

i) On 07.01.1999, the School Tribunal allowed the appeal filed by Respondent No.1 and it was held that she was entitled for occupying the post of a Head Mistress.

j) The petitioner approached this Court by filing this writ petition and by order dated 07.04.1999, ad interim relief in terms of prayer clause (C) was granted and the impugned judgment was stayed.

4. Considering the above, the following issue arises in this proceeding:

Whether the petitioner needs to be dislodged as a Head Master and Respondent No.1 deserves to be posted in his place as the Head Mistress,

considering their seniority, in the light of the judgment of the Honourable Apex Court in the matter of Ku. Bhawana Vs. State of Maharashtra and

others, (2019) 4 SCC 300.

5. The learned Advocates for the respective sides do not dispute on the fact situation that though the petitioner was appointed earlier as an untrained

teacher, Respondent No.1 was a trained teacher and her appointment as a trained teacher is prior to the petitioner being appointed as a trained

teacher.

6. The petitioner contends that since the Respondent No.1 "original appellant preferred Appeal No.DHL49 of 1995 before the School Tribunal on

16.11.1995, she has belatedly challenged the seniority, which was fixed by the employer on 13.06.1988. It is based on the said seniority that the

petitioner was appointed as the Head Master. The appellant was sleeping over her rights and did not object to the seniority list for 7 years. Any

challenge to the seniority list, after such a long period, would be barred by law in the light of the judgments of the Hon'ble Apex Court in the following

cases:

(a) B.S.Bajwa and another Vs. State of Punjab and others, (1998) 2 SCC 523;

(b) Malcom Lawrence Cecil D'Souza Vs. Union of India and others, AIR 1975 SC 1269;

(c) Shiba Shankar Mohapatra & others Vs. The State of Orissa & others, (2010) 12 SCC 471;

7. There is no dispute that the petitioner would be retiring from employment upon attaining 58 years of age on 30th April, 2022. Respondent No.1

would be retiring on 30.05.2021.

8. The petitioner has questioned the filing of the appeal by the Respondent No.1 on the ground that if the seniority list is to be challenged, she has to

assail the said seniority list approved by the Education Officer under Rule 12 of the Maharashtra Employees of Private Schools (Conditions of

Service) Rules, 1981, by filing a writ petition in this Court.

9. I do not find that the said submission could be sustained. The learned advocate may appear to be right in his submission that the Respondent "

appellant should have questioned the seniority list before this Court. However, the law is now settled that if an employer takes any decision pursuant to

preparing such a seniority list and the said decision causes any legal injury to the appellant, which would be covered by the two contingencies u/s 9 of

the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, an appeal could then be preferred before the School

Tribunal.

10. Section 9 of the MEPS Act, 1977, reads as under:

9 Right of appeal to Tribunal to employees of a private school.

(1) Notwithstanding anything contained in any law or contract for the time being in force, any employee in a private school,

(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management; or

(b) who is superseded by the Management while making an appointment to any post by promotion;

and who is aggrieved, shall have a right to appeal and may appeal against any such order or supersession to the Tribunal constituted under section 8:

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is

pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was

passed by the Management at any time before 1st July, 1976.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal,

otherwise termination of service or reduction in rank, as the case may be:

Provided that where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

(3) Notwithstanding anything contained in sub-Section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty

or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

(4) Every appeal shall be accompanied by a fee of Five hundred) rupees, which shall not be refunded and shall be credited to the Consolidated Fund of

the State.

11. The Respondent-Appellant had approached the School Tribunal with two grievances. Firstly, that she was wrongly placed below the petitioner in the seniority list and secondly, that the employer acted upon the defective seniority list and superseded the appellant by confirming the petitioner as a Head Master of the school. Hence, I am of the view that the appeal was rightly entertained by the School Tribunal.

12. It is undisputed that the law laid down by the Hon'ble Apex Court in the matter of Ku. Bhawana (supra) settles the issue of seniority. The appellant had acquired the qualification required for appointment as a trained teacher prior to the petitioner and she was, therefore, appointed as a trained Assistant teacher prior to the petitioner acquiring qualification of a trained teacher. It is also a settled law that an appointee becomes a trained Assistant teacher from the date the requisite qualification is acquired. The appellant, therefore, was entered in category 'C', under Schedule 'F', prior to the petitioner.

13. The record placed before the School Tribunal indicates that the appellant had raised objections to the seniority list on 04.02.1991. Until then, approval to the seniority list was not granted by the Education Officer. Considering her objections, the Education Officer issued a letter dated 02.01.1992 and informed the Management that the appellant has raised an objection that the management had appointed the petitioner as a Head Master by superseding her. After such correspondence, the Education Officer issued another letter on 31.10.1995 acknowledging that the appellant had staked her claim for becoming Head Mistress of the school on the basis of her seniority.

14. The School Management, however, had passed a resolution on 04.05.1995 informing the Education Officer that the petitioner was appointed as a Head Master. The Management did not deal with the claim of the appellant as regards the defective seniority list. The letter dated 02.01.1992, issued by the Education Officer also indicates that the petitioner was granted a temporary approval as a Head Master only for the purposes of signing the salary bills and similar documents, until the decision on the objections raised by the appellant is taken.

15. In the case of B.S.Bajwa (supra), the seniority list was challenged after about twelve years and the Hon'ble Apex Court, concluded that any

interference in the seniority list, after such a long period, would affect the prospects of the several employees in service.

16. In the case of Malcom Lawrence Cecil D'Souza (supra), the seniority list prepared in the year 1956 was challenged in 1971, after 15 years, and

the Hon'ble Apex Court concluded that though security of service cannot be used as a shield against administrative action for lapses on the part of a

public servant, it is difficult to guarantee such a security in all its varied aspects. It should atleast be possible to ensure the matters like one's position in

the seniority list after having been settled for once should not be liable to be reopened after lapse of many years, without objecting that a party has

slept over its rights. Any interference would cause administrative complications and difficulties and in order to ensure smoothness and efficiency of

service that such matters should be given a quietus after a long period.

17. Same is the view taken by the Hon'ble Apex Court in the matter of Shiba Shankar Mohapatra (supra).

18. The relevant paragraphs, from the aforesaid three judgments, are reproduced herein below:Â?

B.S.Bajwa & another Vs. State of Punjab & others, (1998) 2 SCC 523:Â?

â??7 Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the Single Judge and, therefore, the

judgments of the Single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone sufficient

to dismiss the writ petition on the ground of laches because the grievance was made by B.S. Bajwa and B.D. Gupta only in 1984 which was long after

they had entered the department in 1971Â72. During this entire period of more than a decade they were all along treated s junior to the other

aforesaid persons and the rights inter se had crystallised which ought not to have been reopened after the lapse of such a long period. At every stage

others were promoted before B.S. Bajwa and B.D. Gupta and this position was known to B.S. Bajwa and B.D. Gupta right from the beginning as

found by the Division Bench itself. it is well settled that in service matters the question of seniority should not be reopened in such situations after the

lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present

case for making such a grievance. This alone was sufficient to decline

interference under Article 226 and to reject the writ petition.â??

Malcom Lawrence Cecil D'Souza Vs. Union of India and others, AIR 1975 SC 1269

â??8 The matter can also be looked at from another angle. The seniority of the petitioner qua respondents 4 to 26 was determined as long ago as

1956 in accordance with 1952 Rules. The said seniority was reiterated in the seniority list issued in 1958. The present writ petition was filed in 1971.

The petitioner in our opinion, cannot be allowed to challenge the seniority list after lapse of so many years. The fact that a seniority list was issued in

1971 in pursuance of the decision of this Court in Karnik's case AIR 1970 SC 2092 (supra) would not clothe the petitioner with a fresh right to

challenge the fixation of his seniority qua respondents 4 to 26 as the seniority list of 1971 merely reflected the seniority of the petitioner qua those

respondents as already determined in 1956. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst public

servants because of stale claims made after lapse of 14 to 15 years. It is essential that any one who feels aggrieved with an administrative decision

affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. No satisfactory explanation has been furnished

by the petitioner before us for the inordinate delay in approaching the Court. it is no doubt true that he made representation against the seniority list

issued in 1956 and 1958 but that representation was rejected in 1961. No cogent ground has been shown as to why the petitioner became quiescent

and took no diligent steps to obtain redress.

9 Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential

requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied

aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable

to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Baking up old matters

like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of

smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.â??

Shiba Shankar Mohapatra & others Vs. The State of Orissa & others, (2010) 12 SCC 471:

18 The question of entertaining the petition disputing the long standing seniority filed at a belated stage is no more res integra. A Constitution

Bench of this Court, in Ramchandr Shankar Deodhar v. State of Maharashtra considered the effect of delay in challenging the promotion and seniority

list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons

regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the court just after accrual

of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in Tilokchand Motichand v.

H.B. Munshi, wherein it has been observed that the principle on which the court proceeds in refusing relief to the petitioner on the ground of laches or

delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is

a reasonable explanation for delay. The Court further observed as under :

(Tilokchand case, SCC p. 115, para 7)

7.. The. party. Claiming fundamental. rights. must. move. The Court before other rights come into existence. The action of courts cannot harm

innocent parties if their rights emerge by reason of delay n the part of the person moving the Court.

29. It is settled law that fence sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can

claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and the laches.

The court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum.

(Vide Aflatoon v. Ltd. Governor of Delhi, State of Mysore v. V.K. Kangan; Municipal Council, Ahmednagar v. Shah Hyder Beig; Inder Jit Gupta v.

Union of India; Shiv Dass V. Union of India; A. P. SRTC v. N. Satyanarayana and City and Industrial Development Corpn, v. Dosu Aardeshir

Bhiwandiwalla).

19. Considering the facts recorded above and the law applicable, it would have to be assessed as to whether the appellant had slept over her rights

and had questioned the seniority after a long delay. The seniority list placed on record was prepared for the first time for the academic year 1988-89

when the petitioner was shown at Sr.No.1 and the appellant was shown at Sr.No.2. Similar seniority list was published for the academic years 1989-90,

1990-91 and 1991-92. The qualification mentioned in the seniority list indicates that the petitioner acquired B.Ed. qualification in April 1988 and

the appellant acquired such qualification in April 1987.

20. The learned AGP, appearing on behalf of Respondent No.2, submits that there has always been an ongoing debate as to how should the seniority

of a trained teacher be settled in the face of such peculiar facts. He submits that there are several judgments which indicate that the date of

appointment is to be considered and in some judgments, the date of appointment as a trained Assistant teacher bringing the employee in category

under Schedule is to be considered. This issue has now been permanently settled by the judgment of the Hon'ble Apex Court in the

matter of Ku.Bhawana (supra) and, therefore, the appellant will have to be considered as being senior to the petitioner since she acquired the requisite

qualification for being appointed as a trained teacher prior to the petitioner.

21. In the above backdrop, it would have to be assessed on the basis of the record available before the School Tribunal as to whether the appellant

had slept over the seniority list for such a period that it could be construed to be an inordinate delay. In the judgment cited by the petitioner, the delay

was about 12 years to 15 years in challenging the seniority list.

22. In the instant case, the appellant has challenged the seniority list in the third year. Challenging a seniority list after 3 or 4 years cannot be termed as

being an inordinate delay. It also cannot be construed that such a delay would be fatal to the cause put forth by the appellant. In my view, the

challenge posed by the appellant, after 3 years to the seniority list, cannot be said to be a belated challenge.

23. I have also heard the learned advocates on equities and comparative hardships. I called upon the learned advocate for the appellant to submit as to

whether the appellant would be agreeable to allow the petitioner to continue as Head Master till his retirement so that she can then be accommodated

in his place as a Head Mistress. The learned advocate has pointed out from the record that the appellant would be retiring on 30.05.2021 and the

petitioner would be retiring on 30.04.2022. As such, the appellant would retire prior to the retirement of the petitioner.

24. The learned advocate further submits that every school teacher has an ambition or dream of becoming a Head Master/Head Mistress of the said

school. After devoting an entire lifetime in the teaching profession, such a teacher gains seniority to be eligible for appointment as a Head Mistress.

She would find her dream shattered only on account of an unethical act of the school management of distorting the seniority list. It is not that the

management does not understand the law. The Education Officer consistently instructed the management that the appellant is senior to the petitioner.

The management turned a deaf ear to such instructions from the Education Officer and perpetuated the illegality by seeking approval to the

appointment of the petitioner as a Head Master.

25. He further adds that despite a legal battle before the School Tribunal, in which the appellant established that she was entitled to the position of

Head Mistress in view of the fact that she was senior to the petitioner, even today, the petitioner cannot deny that the appellant is senior. In fact, the

appellant was the first teacher to have entered category 'A' as per Schedule 'A' and the petitioner was included in category 'B' only

after he acquired the requisite qualification of a trained teacher. He further adds that even today, if the appellant is appointed as Head Mistress, her

dream would be fulfilled and she would perform her duties and retire peacefully as a Head Mistress after serving for three years. Thereafter, the

petitioner can again be appointed as a Head Master since he would have one more year after the retirement of the appellant.

26. I find that the school management, conspicuously, has not caused its appearance despite service of Court notice in this matter.

27. Considering the above, I find that the judgment delivered by the School Tribunal dated 07.01.1999 can neither be termed as being perverse or

erroneous nor likely to cause gross injustice to the petitioner. It is a matter of destiny of the Appellant that the impugned judgment was stayed by this

Court in a single sentence order on 07.04.1999 and it has taken 20 years for this matter to be adjudicated upon.

28. Considering the above and keeping in view the law laid down by the Hon'ble Apex Court defining the supervisory jurisdiction of this Court in the

matter of Syed Yakoob Vs. K.S.Radhakrishnan & others, 1964 AIR 477 and Surya Dev Rai Vs. Ram Chander Rai, 2003 (6) SCC 67,5 this petition, being devoid of merit, is therefore, dismissed. Rule is discharged.

29. I deem it appropriate to direct the Education Officer to ensure that the management appoints the appellant as the Head Mistress forthwith so as to enable her to occupy the said position for the remainder period of three years prior to her retirement. The management is at liberty to reconsider the petitioner to be appointed as the Head Master after the retirement of the appellant.