
(2016) 07 BOM CK 0069
In the Bombay High Court
Case No : Writ Petition No. 354 of 2016

Anil Sudam Patil	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 27-07-2016

Acts Referred:

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

Citation : (2016) 5 ALLMR 491

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Shri Deshmukh Sachin S, Advocate, for the Petitioner; Shri U.H. Bhogle, AGP, for the Respondents Nos. 1 to 3; Shri M.D. Gitte, Advocate, for the Respondent No. 4; Shri Prakashsing B. Patil, Advocate, for the Respondent No. 5

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J.(Oral)—Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner is aggrieved by the order passed by Respondent No.3/Education Officer dated 28.12.2015 by which the 5th Respondent has been shown to be senior to the Petitioner and as such, the latter has been placed at Sr.No.2 in the seniority list.

3. I have considered the strenuous submissions of the learned Advocates for the Petitioner and Respondent No.5, as well as the submissions of the learned AGP on behalf of the State Authorities and the Education Department.

4. The undisputed factors are being summarised as under:-

(a) The 5th Respondent was appointed on 16.07.1985 as an Assistant Teacher by considering his qualification of M.Sc.

(b) In June, 1987, the 5th Respondent acquired the qualification of Diploma in

Higher Education (DHE).

(c) DHE was given the equivalence of B.Ed. for the period 1983 to 1988 by the State Government.

(d) The Petitioner was appointed as an Assistant Teacher on 01.09.1987 on the basis of his qualifications of B.Sc. and B.Ed.

(e) As on the date of appointment of the Petitioner, both these candidates were appointed as Assistant Teachers and both of them were placed in Category-C under Schedule-F of the MEPS Rules, 1981.

(f) The 5th Respondent draws a higher pay scale than the Petitioner.

(g) The equivalence of B.Ed. granted to DHE is said to have been withdrawn from 1988 onwards.

(h) Those Assistant Teachers, who had not acquired B.Ed. qualifications, but had acquired DHE after 1988, resorted to an agitation and prayed for equivalence with B.Ed.

(i) The issue was considered by the State Government and the Government Resolution dated 19.03.2013 was then introduced once again giving DHE equivalence with B.Ed. with effect from the date of the Government Resolution.

(j) The above issue of granting effect to the Government Resolution dated 19.03.2013 was considered by this Court in between these very parties in Writ Petition No.4808/2014, which was decided by the judgment of this Court dated 01.09.2015.

(k) This Court finally concluded that the Government Resolution dated 19.03.2013, which reflects the object of the Government in introducing the policy of granting DHE equivalence with B.Ed., has to be made applicable prospectively and cannot be made applicable retrospectively.

(l) In short, the Government Resolution dated 19.03.2013 would not be effective in between 1989 till 18.03.2013 insofar as the seniority of those persons who acquired the qualifications of B.Ed. is concerned.

(m) On 14.06.2010, the Petitioner, who was always below the 5th Respondent in the seniority list, was promoted as a Supervisor and placed in Category-B.

(n) It is with this promotion as Supervisor that the Petitioner overtook the 5th Respondent insofar as the categorisation is concerned.

(o) On 08.05.2012, the Petitioner was promoted as an Assistant Headmaster.

(p) Due to dispute of seniority between Mr. G.S. Patil, who has now retired, vis-a-vis the Petitioner, the matter came before the Education Officer sometime in 2013-2014.

(q) The first round of litigation in between the parties was in Writ Petition

No.4808/2014, which was decided by this Court on 01.09.2015.

5. Shri Deshmukh, learned Advocate for the Petitioner, has strenuously submitted that though all along the Petitioner was below the 5th Respondent in the seniority list, the promotion granted to the Petitioner placed him into Category-B and as such, the Petitioner fell in a completely different and higher category as that of the 5th Respondent.

6. The relevant portion of Schedule F of the MEPS Rules, 1981 reads as under:-

"Schedule "F" :-

1. Guidelines for fixation of seniority of teachers in the primary schools:- The seniority of primary school teachers in Primary Schools shall be based on the date of joining service and continuous officiation.

2. Guidelines for fixation of seniority of teachers in the secondary schools, junior colleges of education and junior college classes attached to secondary schools and senior colleges:- For the purpose of fixation of seniority of teachers in the secondary schools, junior colleges of education and junior college classes attached to secondary schools the teachers should be categorised as follows:-

Category A : Heads of Secondary Schools having an enrolment of students above 500 and Principals of Junior Colleges of Education having more than four Divisions on the basis of the dates of their appointments to the respective posts.

Category B : Heads of Secondary Schools having an enrolment of students of 500 and below, Principals of Junior Colleges of Education having four or less Divisions and Assistant Heads of Secondary Schools having more than 20 classes on the basis of the dates of their appointments to the respective posts.

Category C : Holders of -

M.A./M.Sc./M.Com., B.T./B.Ed., or its equivalent; or

B.A./B.Sc./B.Com., B.T./B.Ed., or its equivalent; or

B.A./B.Sc./B.Com. Dip.T. (Old two years course); or

B.A./B.Sc./B.Com., S.T.C./Dip.Ed./Dip.T. (one year course) with 10 years post S.T.C. etc. service.

[B.A. or its equivalent plus Senior Hindi Shikshak Sanad with five years service; or Junior Hindi Shikshak with ten years service [after obtaining both academic and training qualifications.]]

Category D : Holders of -

B.A., B.Sc./B.Com./S.T.C./Dip.Ed. (One year course) [Senior or Junior Hindi Shikshak Sanad] or its equivalent.

Explanation - On and after the date of publication of this notification in the

Official Gazette and without affecting the promotion made until that date, the inter se seniority of teachers with qualification Senior Hindi Shikshak Sanad or Junior Hindi Shikshak Sanad in service should be fixed in Category C with reference to the date of their acquiring both the qualifications i.e. B.A. or its equivalent and the Senior (5 years) or Junior Hindi Shikshak Sanad (10 years) as the case may be by the teachers concerned.

Category E : Holders of -

S.S.C., S.T.C./Dip. Ed./Dip.T. (one year course) [Senior or Junior Hindi Shikshak Sanad] or its equivalent. Category F : Untrained Graduates or holders of equivalent qualification. Category G : Untrained Matriculates or holders of equivalent qualification. Category H : All teachers other than those mentioned in categories A to G. Note 1 : For the purpose of categories C, D and E teachers with S.T.C., T.D., Jr.P.T.C., Dip.T., Dip.Ed. (post SSC one year course) qualifications appointed on or after 1st October, 1970 shall be considered as untrained and their seniority shall be fixed in the F or G category of untrained teachers as the case may be.

Note 2 : The following training qualifications which can be secured two years after SSC examination shall be considered as training qualification for the purpose of seniority even after 1st October 1970 -

(1) D.Ed. (2 years).

(2) T.D. (Bombay University)

(3) Dip.Ed. (Nagpur University).

Note 3 : In the case of teachers whose date of continuous appointment in one and the same category is common, the teacher who is senior by age will be treated as senior.

Note 4 : The categories mentioned above represent the ladder of seniority and have been mentioned in descending order."

7. It is, therefore, apparent from Schedule F that though the Petitioner and the 5th Respondent were in Category-C all along from the dates of their appointments, despite the 5th Respondent being senior, the Petitioner has been placed in Category-B in circumstances which have not been divulged. Neither of the parties are in position to comment as to why did the Management take the decision of placing the Petitioner in Category-B by superseding the 5th Respondent.

8. Shri Deshmukh has seriously canvassed that in the seniority list of 2013-2014 though the Petitioner is shown at Sr.No.4 below the 5th Respondent and the retired employee Mr.G.S.Patil, he was at the said time an Assistant Headmaster and therefore, was in Category-B. It is undisputed that the seniority list is maintained by the Educational Institution not on the basis of the categories, but on the basis of the seniority which is fixed on the basis of the educational

qualifications and entry in service of teachers. This is how even the Vice Principal Shri S.R.Pahurkar is at Sr.No.8 below the Petitioner as well as the 5th Respondent.

9. Be that as it may, after Mr.G.S.Patil retired, the litigation in between the Petitioner and the 5th Respondent gained momentum. After the retirement of Mr.G.S. Patil, when the Petitioner realised that he was shown at Sr.No.4 and the 5th Respondent was at Sr.No.3 in the seniority list, he raised a dispute under Rule 12 of the MEPS Rules, 1981 before the Education Officer questioning the seniority. The thrust of the Petitioner's submissions is that his appointment as an Assistant Headmaster on 08.05.2012 was never objected to by Respondent No.5 and as such, he is precluded from raising such objections.

10. I am unable to accept the submissions of Shri Deshmukh for the reason that the signature of Respondent No.5 appearing on the seniority list of 2013-2014 was a recent event and cannot be said that he has accepted the seniority list showing the Petitioner ahead of him in Category-B for a long time and that by passage of long time, he could be said to be precluded from raising this dispute.

11. Shri Deshmukh has relied upon the judgment of the learned Division Bench of this Court in the matter of Ashok Narayan Sathe v. Education Officer (Secondary), Zilla Parishad, Solapur, 2007 (4) Mh.L.J. 358. Paragraphs 7 and 8 of the said judgment read as under:-

"7. Admittedly, in 1974, when the petitioner was appointed in service, he could not have been appointed in category C as he was not a graduate. It was only after he became a graduate and obtained the B.Ed degree that he qualified for category C i.e., in 1988. Although he became a graduate in 1977 and was a holder of a Diploma in Education, he could not be considered to be a trained graduate. It was necessary for him to possess both the B.A. degree as well as the B.Ed qualification to be considered as a trained graduate teacher. It was only after 1988 that he could be considered as a trained graduate teacher. The other alternative was that the Petitioner ought to have been a graduate, holding a D.Ed (1 year course) with 10 years service. Considering these qualifications the petitioner could have been placed in category 'C' from 1984. However, Respondent No.5 was already a trained graduate teacher from the date he joined service, having completed his M.A. in 1972 and B.Ed. in 1976. Respondent No.5 was, therefore, rightly placed above the petitioner in the category C. It is only on acquiring the requisite qualifications that the Petitioner would be entitled to be considered a trained graduate teacher and his seniority in category C would be reckoned from that date.

8. This question is no longer res integra. The Division Bench of this Court in the case of Madhav G. Budhe v. Education Officer, Zilla Parishad, Nagpur, 1994 Mh.L.J. 42 has considered this issue. Rules 61,63, Annexure 45 and Clause 5 of the M.P. Education Act which are pari materia with Schedule F of the MEPS Act r/w Rule 12 of the MEPS Rules framed under the MEPS Act. It was held that the

initial date of appointment is of no consequence insofar as category wise seniority is concerned. The seniority has to be reckoned from the date the teacher either achieves the qualifications required or improves his/her qualifications for being a trained teacher."

12. I do not find that the said judgment would be of any assistance to the Petitioner considering that the facts involved in Ashok Sathe case (supra) are different. Ashok Sathe in 1974 was not appointed in Category-C as he was not a graduate. He became graduate and acquired B.Ed. qualification so as to enter Category-C in 1988. It was necessary for him to possess B.A. as well as B.Ed. so as to be considered as a trained graduate teacher. Respondent No.5 therein, who was qualified and placed in Category-C when he joined employment in 1983, having acquired B.Ed. in 1976 prior to Ashok Sathe was, therefore, placed in Category-C. This Court, therefore, concluded that in the given case, Rule 12 has to be read not on the basis of the seniority per-se, but as per the category-wise seniority.

13. In the case in hand, there is no dispute as recorded above that Respondent No.5 in Category-C was senior to the Petitioner, who was also in Category-C. This situation from 1987 was disturbed for the first time by the Management on 14.06.2010 after a passage of 23 years by sidelining the 5th Respondent and placing the Petitioner in Category-B. In the light of the said fact situation, the entry of the Petitioner in Category-B itself is rendered illegal, as in the same Category-C, when the Petitioner and Respondent No.5 were together for 23 years, the Management could not have disturbed the categorisation considering that the appointment of Supervisor was based on the seniority and it was not by nomination.

14. Shri Deshmukh has seriously canvassed that the impugned order of the Education Department does not deal with these aspects which have been dealt with by this Court in this judgment.

15. I am not inclined to accept the said submissions since the illegality committed in 2010 which is now considered by this Court, cannot be perpetuated only because the impugned order does not contain many reasons. The fact, however, remains that the conclusion drawn by the Education Officer in the impugned order is sustainable in law and on facts.

16. This Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

17. At this stage, Shri Deshmukh prays for stay to this order in the light of the ad-interim protection granted on 01.01.2016. Shri Patil opposes the request.

18. Considering the litigation between the parties which has reached this Court on two occasions and considering the fact that this Court has come to the conclusion that the entry of the Petitioner in Category-B is unsustainable, I do not find that the request of Shri Deshmukh can be entertained. The request is,

therefore, rejected.

19. No costs.