

(2009) 04 BOM CK 0087

In the Bombay High Court

Case No : Writ Petition No. 8866 of 2007

Ashok Yashwant Nikam

APPELLANT

Vs

Chatrapati Shivaji Vidya Prasarak Mandal and Others

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

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

Citation : (2009) 3 BomCR 19

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : Anilkumar Patil, for the Appellant; M.S. Karnik and S.K. Chinchalikar, AGP, for Respondent Nos. 3, 4 and 7, for the Respondent

Judgement

S.A. Bobde, J.—Rule, returnable forthwith. Heard by consent.

2. The petitioner has challenged the Order of the Education Officer, Zilla Parishad, Nasik, dated 1.3.2007, by which that Officer has entertained the review petition and set aside his own earlier Order dated 23.6.2006.

3. By the earlier Order the Education Officer had held the petitioner to be senior to the respondents i.e. Shri Khute and Shri Pawar. By his subsequent Order purportedly in exercise of the powers of review he has held that the petitioner cannot be treated as senior.

4. Mr. Anilkumar Patil the learned Counsel for the petitioner submitted that an Education Officer determines the seniority of teachers in exercise of power under Rule 12 of M.E.P.S. Rules. According to the learned Counsel there is no power of review and adjudication of seniority once made. The petitioner has relied on the decision of a learned Single Judge of this Court Lodha, J. (as he then was) in Smt. Kausalyabai Paraskar and Others Vs. Ramchandra Patekar, , where this Court observed as follows:

...It is well settled that the review is the creature of the Statute and quasi judicial authority or any such authority or tribunal does not remain in seisin of the matter once it has been decided unless power of review is conferred on such authority. Even on the justifiable ground unless power of review is conferred on the authority under the law the order once passed cannot be reviewed. Power of review is not inherent. Rent Control Order, 1949 does not provide any power on the Rent Controller to review its order on any ground whatsoever.

Neither M.E.P.S. Act nor the Rules confer any power on an Education Officer to review the order once made.

5. Mr. Karnik, the learned Counsel for the respondent No. 5 following the best tradition of the bar fairly accepted and pointed out a decision on the said point in the case of *Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.)* 1987 DGLS(Soft.) 722, where the Supreme Court observed in paragraph 11 as follows:

It is now well established that a quasi judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice-Chancellor in considering the question of approval of an order of dismissal of the Principal, acts as a quasi judicial authority. It is not disputed that the provisions of the U.P. State Universities Act, 1973 or of the Statutes of the University do not confer any power of review on the Vice-Chancellor...

6. Mr. Karnik the learned Counsel for the respondent No. 5 further submitted that the question whether an Education Officer who determines the seniority of the teachers is a quasi judicial authority or not is also no more res integra in view of the decision of the Division Bench in the case of *Saramma Varghese v. Secretary/ President, S.I.C.E.S. Society* 1989 Mh.L.J. 951, where the Division Bench while referring to the power of the Education Officer to resolve disputes as to seniority, observed as follows:

...Education Officer appointed for this purpose is by the rules called upon to adjudicate whether a particular person is senior or not. His duty is to adjudicate upon the dispute as to seniority created by the Act and the Rules. Therefore his adjudicatory function is a creature of the State who made the statute and the rules. The authorities having been by law called upon to perform adjudicatory functions which is essentially judicial, the Education Officer is an authority vested with the power to adjudicate upon the dispute in regard to seniority of teachers. His office is a creature of statute. In the discharge of his functions under rule 12 of the 1981 Rules the Education Officer is a tribunal within the meaning of Article 227 of the Constitution of India.

7. In this view of the matter, there is no doubt that the impugned order passed in purported exercise of powers of review is without any jurisdiction and must be set aside.

8. Mr. Karnik, the learned Counsel for the respondent No. 5 however submitted that it would not be appropriate for this Court to exercise its jurisdiction under Article 226 and 227 of the Constitution of India for setting aside the impugned order since it would result in restoration of an earlier order which is patently illegal.

9. It is not possible to see any patent illegality in the order since what is alleged by the respondent No. 5 as being illegal in the said order can only be considered after ascertainment of several facts and by a process of reasoning thereon. Indeed, if the respondent No. 5 is aggrieved by the order he would be at liberty to challenge it in accordance with law as may be advised. In this view of the matter, Rule is made absolute. There shall be no order as to costs.