
(2009) 01 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No. 4598 of 2008

Askok Marotrao Kayarkar

APPELLANT

Vs

Education Officer (Secondary) and Others

RESPONDENT

Date of Decision : 28-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 254
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 4
National Council for Teacher Education Act, 1993 — Section 12, 32

Citation : (2009) 6 BomCR 495

Hon'ble Judges : Dongaonkar S.R., J

Bench : Single Bench

Advocate : F.T. Mirza, for the Appellant; R.A. Wasnik, A.G.P. and R.S. Parsodkar, for the Respondent

Judgement

Dongaonkar S.R., J.—Heard Rule.

Rule made returnable forthwith. Heard finally with the consent of the parties.

2. By this petition under Articles 226 & 227 of the Constitution of India, the petitioner is challenging the order dated 27.2.2008 passed by the Education Officer (Secondary), Zilla Parishad, Nagpur. By the said order, the Education Officer has ordered thus:

As per Government Resolution No. TCM/2002/C.N. 297/Section 4 dated 3rd April, 2003, the qualification for the post of Principal of D.Ed. College is M.A., M.Ed. The claim of Shri Kayarkar for the post of Principal could not be accepted since he is not qualified.

Since M.E.P.S. Act, 1977 and M.S.P.S Rule, 1981, are applicable to secondary schools and D.Ed. Colleges, the seniority list shall be common. Since Smt. Deotale is qualified for the post of Principal of D.Ed. College, the promotion given to her by the Society is proper and thus she will come in .B. category since the

date of her promotion.

(Free English Translation)

3. The Education Officer has held that the claim of the petitioner for the principal ship of D.Ed. College cannot be accepted, since he was not qualified as M.A. M.Ed. He, however, observed that there should be common and one seniority list for the Secondary Schools and D.Ed. Colleges, inasmuch as M.E.P.S. Act, 1977 and M.E.P.S. Rules, 1981, are applicable to the subject matter in the petition.

4. During the course of hearing, learned Counsel for the petitioner has conceded that petitioner's claim for being appointed on the post of Principal of D.Ed. College cannot be pressed, as he is not satisfying the eligibility criteria. Therefore, the challenge to the order of the Education Officer, impugned in this petition, in that respect need not be considered.

5. The question that remains is about the order of the Education Officer regarding the seniority list i.e. whether it should be one and same for both; the Secondary School as well as D.Ed. College. In these circumstances of the case, I need not refer to other contentions.

6. Learned Counsel for the petitioner relying on the observations of the Division Bench of this Court in the decision reported in Shri Laxman Shankar Kaledhonkar Vs. The Honorary Secretary, Walwa Taluka Education Society, The Deputy Director of Education and Shri D.S. Kamble, Principal, Shree Shivaji Teacher-Vidyalaya, , submitted that there can not be one & common seniority list for Secondary Schools and D.Ed. Colleges. The relevant observations of the Division Bench in Shri Laxman Shankar Kaledhonkar Vs. The Honorary Secretary, Walwa Taluka Education Society, The Deputy Director of Education and Shri D.S. Kamble, Principal, Shree Shivaji Teacher-Vidyalaya, in para 7, are thus:

7. Having regard to the Scheme of the NCTE Act, the provisions of the MEPS Act and the Rules framed thereunder which are inconsistent with the provisions of the NCTE Act cannot prevail in view of the Article 254 of the Constitution of India.

Insofar as the appointment of teachers and the Principal is concerned, the NCTE Act u/s 32(d)(1) empowers the Council to lay down the norms and guidelines for the minimum qualification for a person to be employed as a teacher under Clause (d) of Section 12 of the Act, In pursuance of the said power, the Council having laid down the norms which, inter alia, prescribes different qualification, experience, pay-scale and service conditions, than, what is provided for under the provisions of the MEPS Act, 1977 read with MEPS Rules, 1981, the post in D.Ed. College has to be treated as a separate and independent post and cannot be clubbed with the posts in the Girls School and Secondary Schools, which are governed by the said MEPS Act and the Rules made thereunder. The provisions of qualification, experience, pay-scales and service conditions being different for the Principal under both the provisions of law insofar as the D.Ed. College is concerned, by virtue of the power u/s 32(d)(1), the same will override the

provisions of the MEPS Act and the rules made thereunder for other schools. In view thereof, the post of Principal in the D.Ed. College has to be treated as a separate independent post and cannot be clubbed with the post of Principal in other institutions which are governed and ruled by the provisions of the MEPS Act and Rules made thereunder. It is, therefore, impermissible to club the seniority list of the two schools and/or educational institutions governed by the two different sets of rules and regulations. In our view, therefore, the post of the Principal in D.Ed. College has to be treated as an isolated post and therefore, there cannot be reservation on that post.

7. No doubt, the Education Officer has observed that as the provisions of M.E.P.S. Act and Rules are applicable to both the Secondary Schools as well as D.Ed. Colleges, there should be one and only one seniority list, but the same can not be said to be correct in view of the aforesaid observations of the Division Bench.

8. Merely because the provisions of M.E.P.S. Act and Rules are applicable to D.Ed. Colleges, as they are inconsistent with the relevant provisions of N.C.T.E. Act, 1993, the same can not be sufficient to require a common seniority list.

9. There is nothing pointed out by the learned Counsel for the respondents as well as learned A.G.P. who has supported the impugned order, to show that the above quoted observations of the Division Bench, are not applicable to the instant case. Even letter No., TCM/2002/C.R. 294/SC-4, of the Government, dated 23rd July, 2004, mandates; as the qualification and eligibility criteria for the appointment to the post of Principal in D.Ed. College is different than one for the post of Headmaster in Secondary School, there should be separate seniority lists for the Secondary Schools and D.Ed, colleges.

10. In this view of the matter, the impugned order of the Education Officer is liable to be quashed and set aside to that extent i.e. his direction that there should be common seniority list for Secondary Schools and D.Ed. Colleges.

11. The petitioner shall be at liberty to make fresh representation to the Education Officer for reliefs, if any. If such representation is made to him within a period of four weeks from today, the same may be decided in the next four weeks in pursuance to the above observations, on merits in accordance with relevant rules.

Rule made absolute in above terms. No order as to costs.