

(2001) 03 BOM CK 0110

In the Bombay High Court

Case No : Writ Petition No. 2936 of 1999

Baliram Maharaj Shikshan Sanstha and Another	APPELLANT
Vs	
Education Officer (Secondary), Zilla Parishad and Another	RESPONDENT

Date of Decision : 13-03-2001

Acts Referred:

Citation : (2001) 3 ALLMR 51 : (2002) 104 BOMLR 220(1) : (2001) 4 MhLj 394

Hon'ble Judges : S.D. Gundewar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.D. Gundewar, J.—This writ petition is directed against the order dated 4.8.1999 passed by the Education Officer (Secondary), Zilla Parishad, Amravati, whereby respondent No. 2 has been held as senior to petitioner No. 2.

2. A few facts insofar as they are relevant, may be stated as below:

The petitioner No. 2 Gangadhar Sheshrao Dandale was born on 20.8.1945. He was appointed as assistant teacher in Shri Bahrain Maharaj Vidyalaya, Mardi, Tahsil Tiwsa, District Amravati, on 1.7.1972. At the time of his appointment as assistant teacher, the petitioner No. 2 was under graduate and while in service he improved his qualification and passed his B.S.C Examination on 13.7.1974 and B.Ed. on 26.5.1976.

Respondent No. 2 - Shankar Manikrao Wankhede was born on 5.5.1946. He was also appointed as assistant teacher in the aforesaid school on 1.7.1972. At the time of his appointment as assistant teacher, the respondent No. 2 was untrained graduate. He also passed his B.Ed. Examination on 26.5.1976.

3. One Shri S.Z. Qureshi, the Head Master of the aforesaid School, was due to retire on 4.5.1998 on attaining the age of superannuation and hence petitioner No. 2 made a representation to the Education Officer (Secondary), Zilla Parishad, Amravati, respondent No. 1 herein, on 20.4.1998 for appointing him as Head

Master in place of Shri Qureshi. The respondent No. 1 after examining the matter found that petitioner No. 2 was senior-most teacher in the school and hence he intimated the petitioner No. 1 the President, Shri Baliram Maharaj Shikshan Sanstha, Mardi, Tahsil Tiwsa, district Amravati, to promote the petitioner No. 2 as Head Master of the aforesaid school after the retirement of Shri Qureshi. Thereafter, there was some controversy as to whether the post of Head Master in the aforesaid school was an isolated post or subject to reservation. A dispute about the same was raised by Shri N.U. Baswanthe, another teacher of the said school. However, the said dispute was settled and the petitioner No. 2 came to be appointed as the Head Master of the aforesaid school by petitioner No. 1 vide order dated 16.10.1998. The respondent No. 1 approved the said appointment and conveyed his decision to petitioner No. 1 vide his letter dated 14.12.1998. Thereafter, respondent No. 2 made a representation on 19.12.1998 to respondent No. 1 contending that he was senior to the petitioner No. 2 and, therefore, he ought to have been appointed as Head Master of the aforesaid school after the retirement of Shri Qureshi. Upon receipt of the said representation, the respondent No. 1 intimated the petitioner No. 1 about the same and also informed the petitioner No. 1 that hearing of the said representation was fixed by him on 22.12.1998. The respondent No. 1 heard the said matter finally on 28.12.1998 and reserved the same for passing an order.

4. Thereafter, Shri N.U. Baswanthe filed Writ Petition No. 21 of 1999 before this Court on 4.1.1999 challenging the approval granted by respondent No. 1 to petitioner No. 2 as Head Master. In the said writ petition, the present respondent No. 1 was also arrayed as respondent, who filed his affidavit in the said W.P. No. 21/1999 justifying his order dated 14.12.1998 granting approval to the appointment of petitioner No. 2 as Head Master of the said school. The respondent No. 2 herein was an intervenor in W.P. No. 21/1999. In that writ petition also the present respondent No. 2 contended that he was senior to the present petitioner No. 2. Not only that, but had filed another Writ Petition No. 703/1999 seeking direction from this Court to the Education Officer (Secondary), Zilla Parishad, Amravati, to decide the dispute relating to inter se seniority between him and the present petitioner No. 2 expeditiously. Both the aforesaid writ petitions were heard and disposed of by this Court on 8.4.1999 but by separate orders. Writ Petition No. 21 of 1999 came to be dismissed while in Writ Petition No. 703 of 1999 this Court directed the Education Officer (Secondary), Zilla Parishad, Amravati, to decide the dispute regarding inter se seniority between the present petitioner No. 2 and respondent No. 2 herein at the earliest and not later than six months from the date of the said order. In pursuance of the aforesaid order passed by this Court in Writ Petition No. 703/1999 the present respondent No. 1 decided the dispute regarding inter se seniority between the present petitioner No. 2 and the respondent No. 2 herein vide his order dated 4.8.1999 holding the respondent No. 2 herein as senior to the present petitioner No. 2, which is under challenge in this petition.

5. Heard Shri Bhangde, the learned Counsel, for the petitioners, Shri Sonare,

learned A.G.P., for respondent No. 1 and Shri Gordey, learned Counsel, for respondent No. 2.

6. The guidelines for fixation of seniority of teachers in non-Government Secondary Schools are laid down by the Government in the Secondary School Code at Annexure (45) and in Schedule "F" of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as "the Rules 1981"). The guidelines laid down by the Government about fixation of seniority in Secondary School Code and the Rules, 1981 are almost identical. It is provided in the Rules 1981 that for the purpose of fixation of seniority of the teachers in the Secondary Schools, the teachers should be divided into Category "A" to Category "H".

7. Undisputedly, in the case in hand, the petitioner No. 2 and respondent No. 2 both came to be appointed as assistant teachers on 1.7.1972. At that time, petitioner No. 2 was untrained matriculate and therefore he fell in category "G", while respondent No. 2 being untrained graduate fell in the category "F". The petitioner No. 2 then improved his qualifications and passed his B.Sc. Examination on 13.7.1974 and, hence he entered in category "F". Thereafter, the petitioner No. 2 and the respondent No. 2 both passed their B.Ed. Examination on 26.5.1976 and entered category "C".

8. Now, if it is contended by Shri Bhangde, the learned Counsel for the petitioners that since the petitioner No. 2 and the respondent No. 2 both entered category "C" on one and the same date, i.e. on 26.5.1976 their inter se seniority will have to be fixed as per the principle laid down in Note 3 in Schedule "F" of the Rules 1981, which reads as under:

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.

According to Shri Bhangde, in the present case, since the petitioner No. 2, whose date of birth is 20.8.1945 is obviously senior to the respondent No. 2, who was born on 5.5.1946 but the Education Officer, respondent No. 1 herein failed to consider this vital aspect and, therefore, the impugned order being in contravention of the aforesaid guideline is incorrect and not sustainable in law.

9. It is further contended by Shri Bhangde, the learned Counsel for the petitioners, that earlier the respondent No. 1 had taken correct view in the affidavit filed by him in W.P. No. 21/1999, wherein he had in clear terms stated that while determining inter se seniority of teachers, who acquired the qualification as trained teacher on one and the same date, a teacher who is senior-most in age will be treated as senior and, bearing-in-mind the said principle, he submitted in the said petition that petitioner No. 2 herein was senior to respondent No. 2 herein. However, now by the impugned order he changed his stand and held the respondent No. 2 as senior to petitioner No. 2 without considering the guidelines laid down by the Government in this regard. According

to Shri Bhangde, the learned Counsel for the petitioners, in case the impugned order is allowed to stand then it would mean that the affidavit filed by respondent No. 1 in W.P. No. 21/1999 was false entailing him for an action for perjury.

10. If it is also contended by Shri Bhangde, the learned Counsel for the petitioners, that since there is no other rule in Schedule "F" of the Rules, 1981 in this regard, (he inter se seniority in such a situation will have to be fixed as per the principle laid down in the above referred Note 3 of Schedule "F" and in case this is not followed then that, would certainly lead to absurdity, which needs to be avoided. For this, he placed reliance on a decision in The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha, . So also relying on a decision in B.N. Shankarappa Vs. Uthanur Srinivas and others, . It is submitted by Shri Bhangde, the learned Counsel for the petitioners, that if the view other than mentioned in above referred Note 3 of Rules, 1981 is taken then that would also create a vacuum resulting in injustice.

11. Further relying upon a decision in Sudama Singh Vs. Nath Saran Singh and Others, , it is contended by Shri Bhangde, the learned Counsel for the petitioners, that, in the said case in an identical situation, seniority among two lecturers was determined on the basis of age by virtue of Regulation 3(1)(b) in Chapter II of the Regulations made under (U.P.) Intermediate Education Act, 1921 as introduced by U.P. Education Laws Amendment Act, 1977 and the applicant in that case being older in age was treated as senior to respondent No. 1. According to Shri Bhangde, even in the case in hand, on the same principle, petitioner No. 2 who is senior by age than respondent No. 2 will have to be treated as senior to respondent No. 2 in view of Note 3 in Schedule "F" of Rules, 1981.

12. As against this, it is vehemently contended by Shri Gordey, the learned Counsel for respondent No. 2, that since the petitioner No. 2 and respondent No. 2 both entered Category "C" on one and the same date, i.e. 26.5.1976, on their passing B.Ed. Examination, their inter se seniority will have to be fixed on the basis of their initial appointments as contemplated under Rule 12 in Schedule "F" of the Rules, 1981 and not on the basis of their date of birth. According to Shri Gordey, admittedly in the case in hand, the respondent No. 2 entered into Category "C" on 1.7.1972 whereas the petitioner No. 2 entered into the said Category on 13.7.1974 and, therefore, considering their parental seniority respondent No. 1 has rightly held that respondent No. 2 is senior to petitioner No. 2. In support of the aforesaid contention Mr. Gordey has relied upon the decision in A. Janardhana Vs. Union of India (UOI) and Others, .

13. Shri Sonare, the learned A.G.P., for respondent No. 1 while supporting the impugned order submitted that the view taken by the Education Officer, respondent No. 1 herein, being consistent with the guidelines laid down by the Government in this regard, no interference at the hands of this Court is called for.

14. Now, as per the guidelines laid down by the Government for fixation of seniority of teachers in non-Government. Secondary Schools, the teachers shall be divided in Category "A" to Category "H". The categories mentioned in Schedule "F" of the Rules, 1981 represent the ladder of seniority and have been mentioned in descending order. If any teacher improves his qualification and switches over to higher category, the guidelines mentioned in Schedule "F" of the Rules, 1981 shall apply so far as the fixation of his seniority in the higher category is concerned.

15. In my view, the entire controversy in this case centers around the interpretation of Note 3 in Schedule "F" of the Rules, 1981, which reads as under:

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.

16. Admittedly, in the case in hand, the petitioner No. 2 and the respondent No. 2 both were appointed as assistant teachers on 1.7.1972. The initial appointment of petitioner No. 2 was in the category "G" being untrained matriculate, while that of respondent No. 2 in category "F" being untrained graduate. The petitioner No. 2 entered category "F" on 13.7.1974 after he passed his B.Sc. Examination. This clearly indicates that initial appointment of petitioner No. 2 in category "F" was on 13.7.1974 while that of respondent No. 2 was on 1.7.1972, i.e. earlier to petitioner No. 2.

17. Undisputedly after an initial appointment if the teacher improves his qualification, he switches over to higher category. In my opinion, this will be his entry in that category and not an appointment, though his pay scale changes and he gets higher pay. It is pertinent to note that as per Rule 12 of the Rules, 1981, higher pay scale is not relevant for the purpose of fixation of seniority of teachers. Moreover, switching over to higher category on improving qualification cannot be said to be a promotion in that category. Had it been a promotion of a teacher in that category then the position would have been different, but admittedly it is not so and, therefore, according to me, it cannot be said that on improving qualification, if a teacher enters or switches over to higher category, his entry in that category will amount to his appointment in the said category.

18. Now, Note 3 in Schedule "F" of the Rules, 1981 provides that in case of teacher whose date of continuous appointment in one and the same category is common the teacher senior by age will be treated as senior. The words used in the said Note are "continuous appointment in one and the same category" (emphasis supplied) Here italicised and not an entry in that category and, therefore, in my view, in such situation for determining inter se seniority the principle regarding date of birth will have no application. Admittedly, no specific rule has been provided for fixation of inter se seniority in a situation like the one arises. Now, in the decision in A. Janardhana Vs. Union of India (UOI) and Others, , relied upon by the learned Counsel for respondent No. 2, the Apex

Court in para 31 observed that in the absence of any rule, continuous officiation would be the only available rule for determining inter se seniority, and, therefore, if the said ratio laid down by the Apex Court is applied to the case in hand then, the respondent No. 2 will have to be treated as senior to petitioner No. 2 as the initial appointment of respondent No. 2 in category "F" was on 1.7.1972 while that of petitioner No. 2 on 13.7.1974.

19. In view of the above referred facts and circumstances of the case, in my opinion, the Education Officer, respondent No. 1 herein, has rightly held respondent No. 2 as senior to petitioner No. 2 and I do not find any illegality, impropriety or perversity in the said order passed by the respondent No. 1 and, therefore, if Note 3 in Schedule "F" of the Rules, 1981 is interpreted in the above manner, in my opinion, there would neither be any absurdity nor it would lead to any hardship or complication nor create any vacuum, as contended by the learned Counsel for the petitioners and hence the decisions in *The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha*, and *B.N. Shankarappa Vs. Uthapur Srinivas and others*, , in my opinion, are of no assistance to the petitioners to support their contentions in this regard.

20. So far as the decision in *Sudama Singh Vs. Nath Saran Singh and Others*, , relied upon by the learned Counsel for the petitioners is concerned. I would like to state that in that case there was a Regulation 3(1)(b) in Chapter II of the Regulations made under the (U.P.) Intermediate Education Act, 1921 as introduced by (U.P.) Education Laws Amendment Act, 1977 wherein it was provided that when two persons appointed or promoted as lecturers on ad hoc basis on different dates would be deemed to have been appointed as such on substantive basis on the same date by virtue of Section 16-GG of the aforesaid Act and, in such a situation, seniority among them has to be determined on the basis of age in view of the aforesaid Regulation. However, in the case in hand, there is no any such rule or regulation about fixation of inter se seniority amongst the teachers in such situation. It is no doubt true that there is Note 3 In Schedule "F" of the Rules, 1981 but it speaks about continuous appointment in one and the same category and as I have held above that an entry in a particular category by virtue of improvement in qualification does not amount to an appointment in that category, the ratio laid down in the aforesaid decision, in my opinion, is not applicable to the facts of the present case. In view of this, the contention raised by the learned Counsel for the petitioners on the basis of the aforesaid decision that the principle laid down in Note 3 in Schedule T" of Rules, 1981 is applicable to the facts of the present case, cannot be accepted and the said contention, therefore, must fall.

21. The last submission made by Shri Bhangde, the learned Counsel for the petitioners, relates to the affidavit filed by the respondent No. 1 in earlier Writ Petition No. 21 of 1999. It is no doubt true that in the said affidavit it has been stated by the respondent No. 1 that while determining inter se seniority of

teachers who acquired qualification as trained teachers on one and the same date, a teacher who is senior-most in age will be treated as senior. According to Shri Bhangde this is the correct legal position and now respondent No. 1 cannot deviate from it else he would be liable for action for perjury. However, I fail to understand as to how this statement made by respondent No. 1 in earlier Writ Petition No. 21 of 1999 comes in the way of respondent No. 2 in this case when he is senior to petitioner No. 2 as per the guidelines laid down by the Government in this regard. Similarly, in my opinion, if respondent No. 1 has made any statement contrary to the provisions of law, the same cannot be said to be binding on respondent No. 2 and, therefore, the aforesaid contention raised by the learned Counsel for the petitioners cannot be accepted.

22. For the reasons stated hereinabove, the contentions raised by the learned Counsel for petitioner No. 2 must fail and the impugned order, in my opinion, being just and proper does not require any interference at the hands of this Court.

23. In the result, the writ petition is dismissed with no order as to costs. Rule discharged interim relief stands vacated.

24. At this juncture, Shri Bhangde, the learned Counsel for the petitioners, prays for continuation of interim relief granted by this Court for a period of four weeks. Shri Gordey, the learned Counsel for respondent No. 2 opposes. However, having regard to the facts and circumstances of the case and in order to enable the petitioners to carry the matter further in Letters Patent Appeal, I think it proper to direct that the interim, relief granted by this Court to continue for a period of two weeks from today.