
(2007) 08 BOM CK 0123
In the Bombay High Court
Case No : Writ Petition No. 732 of 1997

Bhagwat Akare

APPELLANT

Vs

Education Officer (Secondary) Zilla Parishad and Others

RESPONDENT

Date of Decision : 21-08-2007

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 2

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 2, 3(3)

Citation : (2007) 6 ALLMR 163 : (2008) 1 BomCR 328 : (2007) 6 MhLj 415

Hon'ble Judges : R.C. Chavan, J;A.H. Joshi, J

Bench : Division Bench

Advocate : A.Z. Jibhkate, for the Appellant; P.C. Madkholkar, for Respondent No. 3, R.R. Waikar and Bharti Dangre, AGP, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Joshi, J.—The petitioner who was a S.S.C. D.Ed, holder candidate, was appointed on the post of Assistant Teacher, in middle school on 3-12-1975. Petitioner then passed B.A. in the year 1978. He passed M.A. (Political Science) in Second Division, in the year 1980, and M.A. in Sociology in 1982. Trained graduate teacher's pay-scale was sanctioned to him from 1978. As a result of improvement of qualification, and availability of permanent a vacancy in the High School, the Respondent No. 2 was pleased to promote the petitioner a High School teacher w.e.f. 27-11-1983, and Education Officer granted approval to his promotion as a High School Teacher from said date. The petitioner passed B. Ed., examination in the year 1990.

2. The Respondent No. 3 was appointed by the Respondent No. 2 on the post of trained graduate High School teacher w.e.f. 21.07.1984. and this appointment was approved by the Education Officer.

3. Petitioner claimed that he is senior to the respondent No. 3, as the respondent

No. 2 - Management promoted him on the post of High School teacher, and Education Officer granted approval w.e.f. 27-11-1983.

4. According to the petitioner, since on the date of his promotion as High School Teacher, he was holding the qualification of Bachelor of Arts, and Diploma in Education, he was a qualified High School teacher. In support of the plea, the learned Advocate Shri Jibhkate for the petitioner has relied upon the Note No. 2 in Schedule "F" of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules 1981, which is quoted for ready reference as below:

Note 2: The entries in columns 10 and 11 should indicate only the beginning and end of completed years of Service at the time the half pay leave commences. In cases where an employee completes an year of service while on half pay leave the extra credit should be shown in columns 10 and 14 by making suitable additional entries and this should be taken into account when completing column 23.

Learned Advocate Mr. Jibhkate for the petitioner then placed reliance on the reported judgment in case of Pandurang Atmaramji v. State of Mah 1997 (3) M.L.J. 578, and in particular paras 14 and 15 thereof.

5. Second point which the learned Advocate for the petitioner has stressed is his alternative submission namely that sine the petitioner was promoted as High School Teacher on 27-11-1983, he is entitled to be treated as a confirmed employee on the said post, and should be treated as senior to the respondent No. 3 who admittedly entered the employment as a trained graduate High School Teacher on 21-7-1984, by use of principle of continuous officiation.

6. Learned Advocate Shri P.C. Madkholkar has opposed the petition arguing that the impugned order of the Education Officer (Annexure-VII), which grants a due weightage to the fact of respondent No. 3's possessing the qualification of B. Ed., on the date of entry i.e. 21-7-1984 as compared to the petitioner's having acquired B. Ed., in 1990, is based on existing law namely provisions contained in Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act and Rule.

7. Learned Advocate Mr. Madkholkar has drawn our attention to the definition of trained Teacher as given in Rule 2(k) and qualification of High School Teacher as prescribed in Para-II of Schedule B to MEPS Rules 1981. These provisions are quoted below:

Section 2(k):

"trained teacher" means a teacher who has secured a professional certificate, a diploma or a degree recognised by the Department which qualifies him for a teaching post in a school.

Para II of Schedule "B"

Qualifications for trained Teachers in Secondary Schools and Junior Colleges of

Education.

(1) For Graduate Teachers:

(i) A Bachelor's degree in Teaching or Education of any statutory University or a qualification recognised by Government as equivalent thereto.

(ii) A Teaching Diploma of any statutory University, if a person holding it is appointed for the first time before the 1st October 1970 and continues to serve as a teacher with or without break after that date.

(iii) A Secondary Teachers' Certificate of the Education Department of Maharashtra State, if a person holding it is appointed for the first time before the 1st October, 1970 and continues to serve as a teacher with or without break after that date.

(iv) A Diploma in Education of the Graduates Basic Training Centres;

(v) A Diploma in Physical Education or a qualification recognised by Government as equivalent thereto; or Bifocal Higher Diploma in Physical Education of the Government of Maharashtra as Physical Education with one of the method subjects) or B.P. Ed. (Maharathwada University) or B.P. Ed, (Shivaji University) or B. Ed. (Physical Education) (Poona University) or B. Ed. (Physical Education) (Bombay University) or B.P. Ed. (Nagpur University) or Diploma in Physical Education, Culture and Recreation awarded by Hanuman Vyayam Prasarak Mandal, Amravati; or

(vi) any other degree, diploma or certificate which Government or the Inter University Board may sanction as equivalent to any of the above qualifications....

8. The learned Advocate Mr. Madkholkar further submitted that Scheduled-F is a set of rules pertaining to fixation of seniority in different categories of High School Teacher. It takes into account a fact that there is a class of teachers having variety of qualifications already in the employment, comprising of even those who are not duly qualified, considering the qualifications prescribed under the Rules of 1981, and therefore, it provides for listing them in a suitable category. According to him, the petitioner does not fit in the category "C" since he did not hold any of the graduate training qualification or equivalent thereto as prescribed in para-II of Schedule B quoted in foregoing para as well those as narrated in Note 2 in Schedule F.

9. Learned Advocate Mr. Madkholkar then submits that nowhere in the rules equivalence is granted to the holder of D.Ed. qualification with Bachelor's Degree or equivalent thereto in education. According to him, Note-2 of Schedule "F" simply attaches tag of "Trained" in contrast with "untrained teachers", and upgrades him above the category EFG and H amongst the High School Teachers.

10. Learned Advocate Shri Madkholkar then placed reliance on two reported Judgments:

(1) 2006 (6) M.LJ.682 , Vaijanath v. Secretary, M.S.P. Mandal.

(2) Ashok Narayan Sathe Shree Shivaji Mahavidhyalay Vs. The Education Officer (Secondary), Zilla Parishad and Others,

11. The judgment in case of Ashok Sathe is relied upon to urge that an argument that D.Ed. 2 years and B. Ed., are equivalent degrees is fallacious, and that the words "senior most member of teaching staff found in Sub-rule (3) of Rule 3 of Maharashtra Employees of Private Schools Rules 1981 is required to be read as "qualified senior most member of teaching staff, and when qualifications as prescribed in Para-II of Scheduled-B is considered, Diploma in education i.e. D.Ed., is not included in any of the items referred to in items No. (i) to (iv) thereof.

12. We have given anxious consideration to rival submissions and examined the facts, and precedents cited at bar, we find that the reliance of learned Advocate Mr. Jibhkate on the reported Judgment in the case of Pandurang Atmaramji v. State of Maharashtra 1997(3) M.L.J. 578 totally misplaced, The petitioner in Pandurang Atmaram Tijare's case, was appointed in High School as a teacher in August 1977 though he acquired D.Ed., qualification in the year 1984. Relying on rules and notes incorporated in Schedule-F, the Division Bench of this Court held as follows:

74. Undoubtedly, petitioner and respondent No. 4 fall in "C" Category as per the seniority list published in 1987 itself It is the contention of the respondent No. 4 that petitioner Shri Tijare cannot be an Assistant Teacher in the Secondary School and he cannot be classified under Category "C". However, by reading the guidelines as set out herein above, it is clear that a Graduate with Diploma in Education or S.T.C. or Diploma in Teaching (One Year Course) with 10 years post of S.T.C. etc. service also falls in Category "C" on par with an Assistant Teacher of Secondary School with B.A. + B. Ed or its equivalent. A Graduate teacher with Diploma in Education (D.Ed.--2 years" course) is required to satisfy an additional condition of 10 years experience to fall in Category "C" on par with an Assistant Teacher of Secondary School with B.A. plus B.Ed....

13. This Court thereafter, held in the same para that for a teacher holding Diploma in Education with a graduate qualification, but who does not hold the degree of B. Ed. would need 10 years service after attaining D.Ed. On facts of the case of Pandurang (supra), this Court found that he was in the employment, and had completed 10 years of service in 1980-1981 itself. He, therefore, entered in category "C" as High School teacher. Said Judgment does not help the petitioner.

14. On facts it is, therefore, liable to be held that the petitioner did not have qualification and eligibility required for High School Teacher, and inclusion in category "C".

15. We, therefore, conclude that the petitioner's claim is governed by two reported judgments of this Court in the case of Ashok Narayan Sathe and Full

Bench Judgment namely 2006 (6) M.L.J. 682 Vaijanath v. Secretary, M.S.P. Mandal and we hold that the petitioner is not entitled to be included in the category "C" based on his degree of M.A., D.Ed., due to absence of ten years post D.Ed., service in 1984 since admittedly, he has entered employment with S.S.C. D.Ed., qualification on 3-12-1975. In applying ratio in case of Pandurang Atmaramji v. State of Mah., relied upon by the petitioner, he would at the most be entitled to claim entry in category "C" on 3-12-1985 or thereafter when he completes actually ten years service and in any eventuality, this date of year 1985 i.e. on a latter date than the date of entry of respondent No. 3 as a trained teacher.

16. The contention of continuous officiation has no bearing or relevance.

17. In the result, petition is liable to be dismissed. Rule discharged. In the circumstances, let the parties bear own costs.