
(2000) 07 BOM CK 0085

In the Bombay High Court

Case No : Writ Petition No's. 3228 and 3545 of 1997

Bhalchandra Tilak Juikar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 19-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 07 BOM CK 0085

Hon'ble Judges : B.H. Marlapalle, J;A.P. Shah, J

Bench : Division Bench

Advocate : Subhash Langote, for the Appellant; V.S. Gokhale, A.G.P. for State and Ms. Khot for Zilla Parishad, for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—The short question that falls for our consideration in these two writ petitions is whether the services rendered by the petitioners as an assistant teacher in Zilla Parishad School before their absorption in municipal school can be counted for the purpose of fixing the seniority amongst the teachers.

2. In both the petitions the petitioners were employed by the Raigad Zilla Parishad as assistant teacher. The petitioner in Writ Petition No. 3228 of 1997 viz. Shri Bhalchandra Juikar was working as assistant teacher in the primary school conducted by the Zilla Parishad with effect from 8-8-1961. However, after the formation of the Khopoli Municipal Council, the petitioner was transferred to the Municipal School with effect from 1-7-1975. He was given option vide letter dated 24-1-1975 whether he would like to join the employment in the Khopoli Municipal Council and the petitioner was absorbed in the Municipal School only after taking his consent. It seems that in the seniority list which was prepared in 1981, petitioner's seniority was fixed on the basis of his initial date of appointment in the year 1961. This position was maintained in the seniority list prepared in 1990 as well as in 1994 and the petitioner was shown senior the

respondents Nos. 5 to 8. In the year 1995 for the first time the seniority was disturbed and the petitioners position in the seniority list which was at Sr. No. 3 in the year 1994 was changed to 46 in the year 1995. On the basis of the said seniority list the respondents Nos. 5 to 8 were promoted but the petitioner was denied promotion. The petitioner made several representations but in vain and therefore the petitioner has approached this Court under Article 226 of the Constitution.

3. Shri J.V. Kulkarni the petitioner in Writ Petition No. 3543 of 1997 was appointed in the school conducted by the Zilla Parishad on 20-9-1961. In the year 1975 the President of the Khopoli Municipal Council had requested the Zilla Parishad to transfer the petitioner from the employment of Zilla Parishad Raigad to Khopoli Municipal Council. A formal letter to that effect was addressed by the President of Municipal Council to the Chief Executive Officer of Zilla Parishad which is annexed at Exhibit A to the petition. The Chief Block Development Officer vide his order dated 17-3-1976 had transferred the services of the petitioner with Khopoli Municipal Council with effect from 20-3-1976 and had relieved the petitioner with effect from the same day. So far as the seniority list during 1980-1981 to 1994 is concerned petitioner was shown senior to respondents Nos. 5 to 8. This was based on the petitioner's original appointment in Zilla Parishad. However, in the seniority list which was prepared in 1995 the petitioner was shown junior to respondents Nos. 5 to 8 and consequently the respondent Nos. 5 to 8 came to be promoted whereas the promotion was denied to the petitioner.

4. We have heard Shri Langote learned counsel for the petitioners and Shri Gokhale the learned AGP for the State Government and Smt. Khot appearing for the Zilla Parishad. The remaining respondents i.e. promotees are absent despite service of notice.

5. Our attention was drawn to the relevant Government Resolution which is annexed at annexure No. 2 to the affidavit in reply filed by the Zilla Parishad. The said Government Resolution is of 9-9-1986 and the office translation of the material portion thereof reads as follows:-

Government Resolution - After the limits of Municipality are extended, or after the Municipality is converted to Municipal Corporation, the Zilla Parishad Primary School in the extended area, along with the primary teachers working therein are transferred to the Municipality or Municipal Corporation. The question is to whether the service with the Zilla Parishad of those primary teachers who are transferred in this manner to Municipality or Municipal Corporation, should be considered for seniority or not, was under the consideration of the Government for some time. On taking an overall view as regards this question, the Government now orders that in order to fix the seniority of primary teachers or those Zilla Parishad in extended area who are transferred to Municipality/Municipal Corporation, " services as per rules, due to extension of the limits of Municipality as per the Government policy, or due to conversion of Municipality to Municipal

Corporation, their original date of continued service with the Zilla Parishad should be taken into consideration. Hence, except the transfer to Municipality/Municipal Corporation done due to extended area, those primary teachers who voluntarily get themselves transferred in Municipality/Municipal Corporation services, while fixing the service seniority of those teachers, they should not be granted benefit of the previous services with the Zilla Parishad. 2. The Government orders issued prior to this as per Government Resolution Education and Employment department No. MSB 1084/23848/(1954) P.E. 3 dt. 17-1-1985 are cancelled. By order and in the name of the Government of Maharashtra.

6. Thereafter a letter dated 14-6-1988 was addressed by the State Government to the Chief Officer to Zilla Parishad Sangli the office translation of which reads as follows :-

Government of Maharashtra No. MSP-1086/22307/PE Education and Employment Department, Mantralaya, Extension Bldg., Bombay-400032.

Dt. 14-6-1988

Chief Executive Officer, Zilla Parishad, Sangli.

Subject ; - Regarding transferring from Zilla Parishad to Municipal Council.

Kindly peruse your letter No. Primary/Establishment/-20/1318.86 dt. 4th December, 1986 on the aforesaid subject.

2. In this regard you are hereby informed that if Municipal Education Board passes a resolution and decides to appoint the primary teachers in Zilla Parishad service, on transfer, and if the concerned Zilla Parishad permits the same, one can join Municipal Education Board. Hence the concerned Zilla Parishad and Municipal Education Board is to fix the terms and conditions regarding their transfers. However, due to such transfers, the concerned teachers, will not get benefit of their earlier service for seniority.

7. In view of the Government Resolution dated 9-9-1986 it is clear that at the time of fixing the seniority, the previous services of those employees in the Zilla Parishad who have joined the services of the Municipal Council willingly and voluntarily with prior consent, cannot be counted. The object behind this direction is obvious that these transfers are effected not in due course of administration but because of willingness and voluntary act of the teachers. Therefore the benefit of prior service cannot be counted in case of voluntary transfers. This position is confirmed by State Government vide letter dated 14-6-1988 referred to above. So far as Shri Bhalchandra Juikar he was absorbed in the services of the Municipal Council on his consent. He had given written consent to his transfer which is annexed at page 21 of the writ petition. Consequently Bhalchandra Juikar is not entitled to any relief. More over he has taken voluntary retirement from service and therefore the question of granting him any relief"s does not arise.

8. The case of Shri Kulkarni stands on a different footing. He was transferred to the Khopoli Municipal Council on the request made by the President of the Municipal Council. Thus the transfer of Shri Kulkarni was not voluntary transfer and therefore his case would not be covered by the Government Resolution dated 9-9-1986. Therefore the management of the school was in error in disturbing his position in the seniority list which was prepared in 1995. The service of Shri J.V. Kulkarni in the Zilla Parishad is thus liable to be counted for the purpose of fixing his seniority. Therefore we direct the respondents Nos. 2 to 4 to refix the seniority of the petitioner-Shri J.V. Kulkarni on the basis of his services from 1961. Since he will be superannuated by the end of July 2000 respondent Nos. 2 to 4 will consider his case for promotion and if there is nothing adverse against him he will be notionally promoted by giving appropriate deemed date and will be entitled to all consequential benefits including the arrears of salary.

In the result writ petition No. 3228 of 1997 is dismissed. Writ petition No. 3543 of 1997 is allowed and Rule is made absolute to the extent mentioned herein above.

The parties and the authorities to act on the ordinary copy of this order duly authenticated by the personal secretary of this Court.