
(2019) 11 BOM CK 0091

In the Bombay High Court

Case No : Writ Petition (St.) No. 601, 873, 4086, 9486 Of 2019

Bharati Vidyapeeth And Ors

APPELLANT

Vs

Ulka Pradeep Adhav And Ors

RESPONDENT

Date of Decision : 11-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 11 BOM CK 0091

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : Nitin Deshpande, S.A. Rajeshirke, I.M. Khairdi, Prabhanjan Gujar, N.C. Walimbe, S.L. Babar, P.V. Nelson Rajan, C.D. Mali

Final Decision : Dismissed

Judgement

1. This order will dispose of Writ Petition (St.) No.9486 of 2019, Writ Petition No.601 of 2019, Writ Petition No.873 of 2019 and Writ Petition No.4086 of 2019.

2. Heard Mr.Nitin Deshpande, learned counsel for the petitioners in Writ Petition (St.) No.9486 of 2019 and Writ Petition (St.) No.4086 of 2019; Mr.S.A.Rajeshirke, learned counsel for the petitioners in Writ Petition Nos.601 and 873 of 2019; Mr.I.M. Khairdi, learned counsel for respondent No.1 in Writ Petition Nos.601 and 873 of 2019; Mr.Prabhanjan Gujar, learned counsel for respondent No.1 in Writ Petition (St.) No.9486 of 2019 and Writ Petition No.4086 of 2019; Mr.N.C.Walimbe, learned AGP for the respondent-State in Writ Petition (St.) No.9486 of 2019; Mr.S.L.Babar, learned AGP for the respondent-State in Writ Petition No.601 of 2019; Mr.P.V.Nelson Rajan, learned AGP for the respondent- State in Writ Petition No.873 of 2019; and Mr.C.D.Mali, learned AGP for the respondent-State in Writ Petition No. 4086 of 2019.

3. Subject matter of all the writ petitions pertains to inter-se seniority between two groups of teachers in secondary school and the consequential promotions to the post of Headmaster/ Headmistress.

4. For a proper perspective, it would be apposite to state individual facts of each case briefly.

Writ Petition (St.) No. 9486 of 2019

5. The two Petitioners in this case are Bharati Vidyapeeth and its Headmistress. Petitioners have assailed the legality and correctness of the order dated 27th February, 2019 passed by the School Tribunal, Pune in Appeal No.25 of 2017 filed by respondent No.1.

5.1 Case of respondent No.1 as projected in the appeal is that she was appointed in the Bharati Vidyapeeth, Pune (School) on 13th June, 1983 and at the time of her appointment her qualification was S.S.C., D.Ed. Prior to her appointment in the school she was serving in Sarvodaya Shikshan Sanstha since 16th July, 1981, but the said institution was transferred and amalgamated with the school on 13th June, 1983.

5.2 The school authority prepared seniority list in which respondent No.1 was shown as the senior-most teacher.

5.3. In the course of her service, respondent No.1 obtained B.A. degree in the year 2010.

5.4. On the other hand, Sharda Tatyasaheb Patil, who was arrayed as respondent No.3 in the appeal, was appointed in the school on 13th June, 1988. At the time of her appointment qualification of Sau. Patil was B.A., B.Ed.. From the date of her appointment, she was included in category 'C'.

5.5. After respondent No.1 acquired the higher qualification of B.A. in the year 2010, it is contended that she ought to have been placed in category 'C' with retrospective effect from the date of her appointment i.e. from 13th June, 1983 in terms of the provisions contained in the Maharashtra Employees of Private Schools (Conditions and Service) Act, 1977 and the Rules framed thereunder, but without considering this aspect of the matter, the school promoted Sau. Patil to the post of Headmistress on 1st July, 2017 superseding respondent No.1.

5.6. This was challenged by respondent No.1 by filing Appeal No.25 of 2017 before the School Tribunal.

5.7. The School Tribunal by the order dated 27th February, 2019 set aside the promotion order of Sau. Patil and directed the school to promote respondent No.1 to the post of Headmistress with full back-wages and consequential benefits with effect from 1st July, 2017 within 30 days.

5.8. It is this order which has been impugned by the petitioners in the present proceeding where Sharda Tatyasaheb Patil has been arrayed as respondent No.4.

Writ Petition No.601 of 2019

6. In this Writ petition also the two petitioners are the school and its Headmaster. They have assailed order dated 23rd October, 2018 passed by the School

Tribunal, Kolhapur in Appeal No.40 of 2018 filed by respondent No.1.

6.2. Respondent No.1 contended in his appeal that he was appointed as Assistant Teacher in the school on 11th June, 1987. At the time of his appointment, his qualification was S.S.C., D.Ed.

6.3. Respondent No.1 also belongs to S.C. category; in the course of the service, he obtained the higher B.A. degree and thus his educational qualification become B.A., D.Ed..

6.4. Respondent No.1 contended in the appeal that Shri Devthanekar Bhagwat Vasant was appointed as Assistant Teacher in the school on 26th November, 1987. At the time of his appointment, his educational qualification was B.A., B.Ed..

6.5. In the seniority list, the said Shri Vasant Devthanekar was placed at Sr.No.49 in category "C", whereas respondent No.1 was placed in the lower "E" category.

6.6 By superseding respondent No.1, the school authority promoted the said Shri Vasant Devthanekar as Headmaster of the school vide order dated 1st July, 2018.

6.7 Aggrieved by the aforesaid, Appeal No.40 of 2018 was preferred by respondent No.1 before the School Tribunal. By the order dated 23rd October, 2018, School Tribunal allowed the appeal and set aside the order dated 1st July, 2018 promoting Shri Vasant Devthanekar as Headmaster of the school with further direction to the school authority to promote respondent No.1 to the post of Headmaster of the school notionally with effect from 1st July, 2018 and regularly from the date of the order.

6.8. This order of the School Tribunal has been impugned by the petitioners in the present proceeding. Interestingly, Shri Devthankar Bhagwat Vasant has been arrayed as respondent No.3 in the present proceeding.

Writ Petition No. 873 of 2019

7. The school and its Headmaster are the two petitioners in this proceeding, wherein order dated 23rd October, 2018, passed by the School Tribunal, Kolhapur in Appeal No.89 of 2017 filed by respondent No.1 has been challenged.

7.1. In the appeal before the School Tribunal, respondent No.1 contended that he was appointed as Assistant Teacher in the school on 10th August, 1987, on which date he had the qualification of S.S.C., D.Ed.. Besides, respondent No.1 belongs to S.C. category. While in service, he obtained B.A. degree in the year 2006. Thus, his qualification became B.A., D.Ed..

7.2. While determining seniority, name of respondent No.1 was included in the "E" category despite his higher qualification which entitled placement in category "C".

7.3. Shri Nana Khashaba Patil was appointed as Assistant Teacher in the school

on 11th September, 1988 and at that time his educational qualification was B.Sc., B.Ed.. In the seniority list, he was shown at Serial No.14 in category "C".

7.4 When the post of Headmaster of the school fell vacant, the school authority promoted the said Shri Patil as Headmaster of the school vide order dated 10th June, 2017 superseding the petitioner.

7.5. At that stage, respondent No.1 preferred the related appeal before the School Tribunal.

7.6. By order dated 23rd October, 2018, School Tribunal allowed the appeal and set aside the order dated 10th June, 2017, promoting Shri Patil as Headmaster, further directing the school authority to promote respondent No. 1 as Headmaster notionally from 10th June, 2017 and thereafter, on regular basis from the date of the order of the Tribunal. Further direction was issued to the school authority to prepare the seniority list afresh in terms of the directions contained in the order.

7.7. This order of the School Tribunal has been assailed by the petitioners in the present proceeding, in which Shri Patil has been arrayed as respondent No.3.

Writ Petition No.4086 of 2019

8. Here also the two petitioners are the school and its Headmaster assailing the legality and correctness of the order dated 14th December, 2018 passed by the School Tribunal, Kolhapur in Appeal No.47 of 2018 filed by respondent No.1.

8.2. Respondent No.1 contended in the appeal that he was appointed as Assistant Teacher in the school on 20th August, 1987. At that time, he had the qualification of S.S.C., D.Ed..

8.3. In the seniority list prepared by the school authority, respondent No.1 was shown having joined on 20th August, 1987 and considering the date of his appointment, he was the senior-most teacher.

8.4. In the course of his service, respondent No.1 obtained B.A. degree in the year 1995 and thereafter M.A. degree in the year 2015. In the meanwhile, he had also obtained the B.Ed. degree in the year 1998. In spite of the above higher qualifications, name of respondent No.1 continued to be included under category "E", though he ought to have placed in category "C" in view of his higher qualifications.

8.5. Shri Eknath P. Dandage had joined as Assistant Teacher in the school on 11th September, 1987 after respondent No.1. At the time of his joining, he had the qualification of M.A., B.Ed.. In view of his higher qualification, he was straight away placed in "C" category and his name was reflected at Serial No.11 in the seniority list of "C" category. However, name of respondent No.1 was placed at Serial No.230 in "C" category seniority-list.

8.6. An order dated 10th June, 2017 came to be passed by the school authority

promoting Shri Dandage as Headmaster of the school by superseding respondent No.1. This came to be challenged by respondent No.1 before the School Tribunal in Appeal No.47 of 2018. The appeal was duly contested by the school as well as by Shri Dandage.

8.7. After hearing the matter and on due consideration School Tribunal vide the order dated 14th December, 2018 allowed the appeal by setting aside the promotion order of Shri Dandage dated 10th June, 2017, further directing the school authority to promote respondent No.1 to the post of Headmaster notionally from 10th June, 2017 and on regular basis from the date of the order. Further direction was issued to the school authority to prepare a seniority-list bearing in mind the discussions and directions made in the order dated 14th December, 2018. It is this order dated 14th December, 2018, which has been challenged by the two petitioners in the present proceeding. Interestingly, Shri Eknath P. Dandage has been arrayed as respondent No.4 in the present proceeding.

9. In Writ Petition No.601 of 2019 respondent No.3 has filed affidavit-in-reply contending that he was senior to respondent No.1 and considering his seniority as well as eligibility, he was promoted as Headmaster. Supporting the petitioners he submits that the writ petition should be allowed. Similar affidavit-in-reply has been filed by respondent No.3 in Writ Petition No.873 of 2019.

10. Learned counsel for the petitioners submits that the very foundation of adjudication of the appeals by the School Tribunal was erroneous in as much as the law on this point has now been settled by a Division Bench of this court in the case of Gaur Pratibha Vs. State of Maharashtra, Writ Petition No.14242 of 2018 and other connected cases, decided on 9th April, 2019. It is contended that in the said judgment Division Bench has held that seniority of secondary school teachers has to be reckoned from the date he enters the desired category i.e. from the date he acquires the higher qualification, but not from the date of his entry in service. In all the writ petitions, respondent No.1 had joined at earlier point of time but they had acquired higher qualification subsequently which enabled them to enter into a higher category, in this case category "C". However, though they might have entered the higher category on acquiring the higher qualification, they cannot dislodge the seniority of a teacher, who is already ensconced in the higher category from an earlier date.

11. In the light of the aforesaid pronouncement, the very foundation on which the School Tribunal proceeded is erroneous and, therefore, orders passed by the School Tribunal are liable to be set aside.

12. On the other hand, learned counsel for respondent No.1 in all the cases have argued that dispute as regards seniority is a dispute between two groups of teachers i.e., respondent No.1 and respondent Nos.3 and 4. School authority after passing the initial order fixing inter-se seniority would have no role in the dispute thereafter. It has to play a neutral role. Interestingly, though the orders

of the School Tribunal are in favour of respondent Nos.3 or 4, the said respondents have not challenged the said orders of the School Tribunal. It is the school and its Headmaster/ Headmistress who have assailed the orders of the School Tribunal and in the writ proceedings and the teachers who had superseded respondent No.1 have been arrayed as either respondent No.3 or respondent No.4. It is the contention of learned counsel for respondent No.1 that petitioners in all the four writ petitions cannot be construed as persons aggrieved in law and therefore, they lack locus-standi to file the related writ petitions, the persons affected having not come forward. On this ground itself, all the writ petitions are liable to be dismissed.

13. In their reply submissions learned counsel for the petitioners submits that in the facts and circumstances of the case petitioners can be treated as persons aggrieved in law and the writ petitions filed at their instance would be maintainable. That apart, equally important aspect of the dispute pertains to promotion of respondent Nos.3/4 as Headmaster or Headmistress in which case question of eligibility would also come into picture. In any case, the law having being settled by a Division Bench of this court in Gaur Pratibha (supra) which has been accepted by the Government of Maharashtra vide its communication dated 3rd May, 2019, the orders passed by the School Tribunal cannot be sustained.

14. Submissions made by learned counsel for the parties have been considered.

15. As would be evident from the factual narrative, subject matter of the appeals and the subsequent writ petitions is seniority dispute between respondent No.1 on the one hand and respondent Nos.3/4 on the other hand. In all the writ petitions there is no dispute that respondent No.1 had entered into service at an earlier point of time. It is also not in dispute that at the time of entry into service respondent No.1 did not have the higher qualification which they acquired subsequently. In view of acquiring of the higher qualification, respondent No.1 migrated from lower category to higher category, in this case to category "C", where respondent Nos.3/4 were already placed in view of having the higher qualifications at the time of entry into service, though later than respondent No.1. Considering respondent Nos.3/4 as senior to respondent No.1, the school authority promoted respondent Nos.3/4 to the post of Headmaster/ Headmistress superseding respondent No.1.

16. Respondent No.1 had preferred appeals before the School Tribunal which were allowed on contest. However, the writ petitions have been filed by the school and its Headmaster/Headmistress assailing orders of the School Tribunal in which respondent Nos.3/4 have been arrayed as respondents.

17. Question for consideration is whether the school and its Headmaster/ Headmistress can be construed to be the aggrieved persons to be clothed with locus-standi to file and sustain the writ petitions?

18. As discussed above, the basic controversy is the dispute relating to inter-se seniority between respondent No.1 on the one hand and respondent Nos.3/4 on

the other hand. The School Tribunal had adjudicated the dispute in favour of respondent No.1. Being the aggrieved person, it was respondent Nos.3/4 who ought to have filed the writ petitions challenging the decisions of the School Tribunal but they chose not to do so. Instead, the writ petitions have been filed by the school and its Headmaster/Headmistress. As has rightly been pointed out by learned counsel for respondent No.1, in a case of inter-se seniority dispute between two groups of school teachers, school authority has to maintain a neutral approach though it may have initially decided seniority in one way which has been reversed by the School Tribunal. Reversal of the order of the school authority by the School Tribunal would not make the school authority or the Headmaster or the Headmistress the aggrieved person. It is the teacher who has suffered the order of the School Tribunal who can be construed to be the aggrieved person and it is he/she who has to assail such order of the School Tribunal.

19. It is well settled that a person would have no locus-standi to file a writ petition if he is not personally affected by the impugned order. A person aggrieved in law must necessarily be one whose right or interest has been adversely affected or jeopardized. Only a person who has suffered a legal injury can seek relief under Article 226 of the Constitution of India.

20. In the facts of the present case, it is evident that respondent Nos.3 and 4 are the persons who can be construed to be aggrieved in law vis-a-vis the decision of the School Tribunal and not the school or its Headmaster / Headmistress. Merely filing affidavit by respondent No.3 in Writ Petition No.601 and 873 of 2019 supporting the case of the petitioners would not confer locus on the petitioners. It is trite that a respondent cannot seek relief in the writ proceeding instituted by the petitioner. Since the challenge has not been made by the person aggrieved, court is not inclined to entertain the same.

21. Consequently, all the writ petitions filed at the instance of the school and its Headmaster or the Headmistress are not entertained and are accordingly, dismissed. No costs.