
(2006) 09 BOM CK 0124
In the Bombay High Court
Case No : Writ Petition No. 126 of 2001

Chalisingaon Education Society and Another	APPELLANT
Vs	
State of Maharashtra and Others	RESPONDENT

Date of Decision : 15-09-2006

Acts Referred:

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

Citation : (2007) 3 ALLMR 212 : (2007) 3 BomCR 311 : (2006) 6 MhLj 696

Hon'ble Judges : R.M. Borde, J;A.P. Deshpande, J

Bench : Division Bench

Advocate : P.R. Patil, for the Appellant; V.H. Dighe, for Respondent Nos. 1 and 2 and S.B. Talekar, for the Respondent

Final Decision : Allowed

Judgement

R.M. Borde, J.—The petitioner is assailing the order dated 14th December, 2000, passed by Education Officer (Secondary), Nasik at Exhibit-O. The petitioner No. 1 is the public trust, registered under the Bombay Public Trust Act and is an educational institution. The petitioner No. 2 is working as Head Master of Anandibai Bankat Boys High School, Chalisingaon. The respondent No. 2 is Education Officer, Zilla Parishad, Jalgaon, who has passed the impugned order, whereas the respondent No. 3 is Assistant Head Master of the school, who was directed to act as the Incharge Head Master by the respondent No. 2 Education Officer. The petitioner No. 2 was appointed as Assistant Teacher by an order dated 12th June, 1973 whereas the respondent No. 3 Vijayalaxmi Patil came to be appointed on 22nd July, 1983 as Assistant Teacher. It is contended that respondent No. 3 is, from amongst a reserved category and belongs to Rajput Bhamta caste.

2. It is contended that in pursuant to the directions issued in an earlier Writ Petition No. 2138 of 2000 one Mr. A.V. Yeole was appointed as Head Master by an order dated 30th September, 2000. The petitioner No. 2, who was serving as an

Assistant Teacher was promoted as an Assistant Head Master. Mr. Yeole's date of superannuation was also 30th September, 2000 and on his superannuation, by an order dated 1st October, 2000, the petitioner No. 2 Ramkrushna was appointed as Head Master. On 17th October, 2000, the petitioner No. 1 trust communicated the factum of appointment of petitioner No. 2 as Head Master to the Education Officer and requested to grant necessary approval. However, the respondent No. 2, by a communication dated 27th January, 2000, sought explanation from the petitioner No. 1 educational institution, as to why the petitioner No. 2 was appointed as a Head Master and further directed that the proposal of the respondent No. 3 for appointment as Head Master be forwarded. In reply to the show cause notice, issued by the Education Officer, the petitioner No. 1 trust informed that the petitioner No. 2 is the senior most person and is eligible for being appointed as a Head Master. The explanation tendered by the petitioner No. 1 trust was not accepted by the respondent No. 2 and he further, by an order dated 14th December, 2000, authorised the respondent No. 3 to sign the pay bills as an officiating Head Master. It was also communicated that the respondent No. 3 would, at the same time, hold the charge of the post of Assistant Head Master. The said order dated 14th December, 2000, passed by the respondent No. 2 is called in question in this petition, by the petitioners.

3. It is submitted by the petitioners that the petitioner No. 2 is the senior most Assistant Teacher, who was appointed on 12th June, 1973 whereas the date of appointment of respondent No. 3 is 22nd July, 1983. Considering the claim of respondent No. 3, from amongst the reserved category, she came to be promoted as an Assistant Head Master with effect from 1st February, 1992. The petitioner No. 2 came to be promoted as an Assistant Head Master by an order dated 30th September, 2000. The petitioner No. 2 is at serial No. 3 in the seniority list whereas the respondent No. 3 is placed at serial No. 4 in category-B. It is contended that, taking into consideration the provisions of Rule 3(3) of Schedule-F, the petitioner No. 2 shall have to be considered as senior and the institution did not commit any error in promoting petitioner No. 2 to the post of Head Master. The petitioners also placed reliance on a judgment, reported in *Ajit Singh and Others Vs. The State of Punjab and Others*, ". The Apex Court, in the aforesaid judgment, considered the matter in relation to the Quota-rota rule and observed that the roster point promotees cannot count their seniority for the promoted category from the date of their continuous officiation in the post of promotion vis-a-vis the general categories, who were senior to them in lower category and who were later promoted. The petitioners, as such, canvassed that the petitioner No. 2 was appointed earlier in point of time. The respondent No. 3 was considered from amongst the reserved category and was promoted earlier than that of the petitioner No. 2 to the post of Assistant Head Master. However, only because of the promotion, earlier in point of time the respondent No. 3 cannot be considered senior to that of the petitioner No. 2. The petitioners, therefore, contend that the order passed by the respondent No. 2 is erroneous and liable to be quashed.

4. On the other hand, the respondent No. 3 has contended that she has been promoted to the post of Assistant Head Master earlier in point of time and has entered category-B earlier to that of the petitioner No. 2. Therefore, she is required to be considered senior to that of the petitioner No. 2. Respondent No. 3 canvassed that no error has been committed by the respondent No. 2 in issuing directions, directing the respondent No. 3 to sign the pay bills and act as officiating Head Master.

5. Rule 3 of the Maharashtra Employees of Private Schools Conditions of Service Rules, 1981 relates to qualifications and appointment of Head. As per Rule 3(1) (b) a person to be appointed as the Head of a Secondary school shall be a graduate possessing Bachelor's degree in teaching or education of a statutory University or any other qualification recognised by Government as equivalent thereto and possessing not less than five years total full-time teaching experience after graduation in a secondary school or a Junior College of Education out of which at least two years experience shall be after acquiring Bachelor's degree in teaching or education. Sub-rule (3) of Rule 3 provides that the management of the school shall fill up the post of Head by appointing the senior most member of teaching staff in accordance with guidelines laid down in Schedule-F from amongst those employed in a school or schools who fulfil the conditions laid down in Sub-rule (1) and who has a satisfactory record of service.

6. It is revealed from the perusal of seniority list at Exhibit-G that the petitioner No. 2 is placed at Serial No. 1 in category-B whereas the respondent No. 3 is at serial No. 2. The petitioner No. 2, obviously, will have to be considered as senior, taking into consideration his date of appointment. Merely because the respondent No. 3 has been promoted to the post of Assistant Head Master before petition No. 2, she cannot be considered as senior to that of the petitioner No. 2. One of the questions, considered in Ajit Singh's case (supra) was (i) can the roster point promotees (reserved category) count their seniority in the promoted category from the date of their continuous officiation vis-a-vis the general candidates who were senior to them in the lower category and who were later promoted to the same level. While answering the said point, the Apex Court concluded in para 77 :

77. We, therefore, hold that the roster-point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post, vis-a-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate - he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level. We shall explain this further under Point 3. We also hold that Union of India and others etc. Vs. Virpal Singh Chauhan etc., and Ajit Singh Januja and others Vs. State of Punjab and others, have been correctly decided and that Jagdish Lal

and others Vs. State of Haryana and others, is not correctly decided. Points 1 and 2 are decided accordingly.

In view of the observations, quoted above, it will have to be concluded that the petitioner No. 2 is required to be held as senior to that of the respondent No. 3. The respondent No. 1 management was, therefore, not in error in promoting petitioner No. 2 to the post of Head, vide order dated 1st October, 2000. The impugned communication issued by the respondent No. 2, dated 14th December, 2000 is illegal and runs counter to the settled legal position enumerated above and, therefore, the same is required to be quashed.

7. By an interim order, while admitting the petition, dated 13th March, 2001, it was clarified that the petitioner No. 2 is entitled to hold the post of Head Master as per the appointment letter issued by the petitioner No. 1. However, it has been made subject to the decision of the writ petition. It was also further directed that the petitioner No. 2 shall draw salary as an Assistant Teacher till the disposal of the petition and his claim for salary as an Assistant Head Master or Head Master will be subject to the decision of the petition. As the impugned order dated 14th December, 2000 is being quashed, the petitioner No. 2 would be entitled for the consequential benefits.

8. In the result, the petition is allowed. Rule is made absolute in terms of prayer Clauses (C) and (D) of the petition.