

(2002) 12 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No. 2933 of 1993

Chhaganlal Bangalkar

APPELLANT

Vs

Additional Commissioner, Nagpur Division and Others

RESPONDENT

Date of Decision : 16-12-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 105 BOMLR 734

Hon'ble Judges : V.M. Kanade, J;R.G. Deshpande, J

Bench : Division Bench

Judgement

V.M. Kanade, J.—The petitioner has filed this petition under Article 226 of the Constitution of India and is seeking an appropriate writ, order of direction for quashing the order dated 17th August, 1993 passed by the Additional Commissioner, Nagpur Division, Nagpur in Appeal No. 32 of 1992-93 and for further quashing and setting aside the order dated 4.6.1992 retiring the petitioner at the age of 58 years.

2. Brief facts which are necessary for the purpose of deciding the writ petition are as follows :

The petitioner was born on 22.12.1934 and he was initially appointed as an Assistant Teacher on 2.4.1954 in I. M. School, Mahadi. The petitioner was confirmed in I. M. School, Sihora and, thereafter, was promoted in Indian English Middle School as an Assistant Master on 22.9.1958. The services of the petitioner were governed by the Madhya Pradesh School Code which was framed under the provisions of Madhya Pradesh Education Act.

3. It is the case of the petitioner that before 1962, Janpada Sabha School where the petitioner was initially working were abolished and these schools were thereafter attached to the Zilla Parishad, Bhandara and it was converted into a Zilla Parishad School and in view of this, the services of the petitioner were transferred to the Zilla Parishad, Bhandara, It is the case of the petitioner that

under the M.P. School Code as also under the M. P. Education Act, the age of retirement of teacher in Secondary School was 60 years and, therefore, the teachers were entitled to continue in service till they attained the age of 60 years.

4. It is the case of the petitioner that he passed S.T.C. training in January, 1962 and his Graduation in 1967. The petitioner had also completed his B.Ed, training on 7.5.1971.

5. The petitioner states that after the reorganisation the C.P. & Berar State merged into the State of Maharashtra and the service conditions of these schools were regulated by the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. However, so far as the Zilla Parishad teachers were concerned, the provisions of the Rule 17 were made applicable to them. It is the contention of the petitioner that as per the provisions of Section 241 of the Zilla Parishad Act, teachers working in Zilla Parishad School were entitled to continue in service till they attain the age of 60 years.

6. The petitioner received an order dated 31.8.91 passed by the respondent No. 2 Chief Executive Officer, Bhandara, whereby a direction was given to the Head Master of the Zilla Parishad School, Sihora, District - Bhandara that the petitioner should be retired from service on 31.12.1992 on his completing 58 years of age. The petitioner preferred an appeal against the said order as provided under Rule 13 read with Rule 14 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964.

7. The respondent No. 1 heard both the sides and decided the appeal of the petitioner on 17th August, 1993 and rejected the appeal of the petitioner and the order passed by the second respondent was confirmed by order dated 17th August, 1993. The petitioner has filed this petition under Article 226 of the Constitution of India challenging the aforesaid orders.

8. I have heard the learned Counsel appearing on behalf of the petitioner and learned Counsel appearing on behalf of the respondents. The learned Counsel appearing on behalf of the petitioner has taken us through the memo of the petitioner, annexures thereto and also the reply filed by the respondents.

9. It is contended by the learned Counsel appearing on behalf of the petitioner that the order passed by the respondent No. 2 is arbitrary, illegal because it has been passed without taking into consideration the applicability of the M.P. Act and M.P. School Code. The learned Counsel appearing on behalf of the petitioner contended that the Additional Commissioner, Nagpur Division, Nagpur also did not consider that the age of superannuation of the teachers who were appointed in the Secondary School before the schools were taken over by the Zilla Parishad was 60 years and as per the M.P. Code, the age of superannuation was 60 years. Even under the M.E.P.S. Act, under Rule 17 of M.E.P.S. Rules, a teacher of a recognised private secondary school in the Vidarbha Region of the State who was permanent in the service on the 31st December, 1965 would retire on the date on which he attains the age of 60 years. It is contended by the petitioner that he

was promoted in Indian English Middle School on 22.9.1958 and, therefore, he was confirmed secondary school teacher before 31.12.1965.

10. The learned Counsel appearing on behalf of the petitioner relied upon the judgment of the Apex Court in the case of M.G. Pandke and others Vs. Municipal Council, Hinganghat, Dist. Wardha and others, wherein it has been held that the age of superannuation of the teachers working in the Municipal Schools in Vidarbha Division of Maharashtra is 60 years and that the by-laws framed by the Municipal Council reducing the age of superannuation to 58 years were invalid. The petitioner also relied upon the judgment in the case of Hanumansingh Thakur Vs. Municipal Council and Others, wherein Division Bench of this Court has held that a teacher in a High School run by the Municipal Council who was in service on 31.12.1965 as provided in the proviso to Rule 17 of the Maharashtra Employees of Private School (Conditions of Service) Rules, 1981 will be covered by the proviso to Rule 17 and his age of retirement will be on attaining the age of 60 years in spite of a by-law to the contrary providing 58 years as the age of retirement. He submitted that the Additional Commissioner has overlooked the two judgments mentioned hereinabove which were cited by him.

11. The learned Counsel appearing on behalf of the respondent No. 2 submitted that only those teachers who were confirmed in secondary school run by Janpada on or before 31.12.65 were entitled for continuation of services till the completion of 60 years of their age. It was contended by the learned Counsel appearing on behalf of the respondent No. 2 that the present petitioner was upgraded in the High School with effect from 22.11.1969 and, therefore, he was not confirmed as secondary school teacher on or before 31.12.1965 and, therefore, he was not entitled to get benefit, of M.E.P.S. Act and, therefore, it was submitted that the petitioner was rightly superannuated on his completing 58 years of age.

12. It is an admitted position that the petitioner was appointed as an Assistant Teacher in I. M. School, Mahadi on 2.4.1954 and on 22.9.1958 he was promoted as an Assistant Teacher in Indian English Middle School.

13. I have perused the original Service Book of the petitioner, in which, it is clearly mentioned that he was promoted as an Assistant Teacher in Indian English Middle School in 1958. A Government Resolution dated 13th November, 1995 was issued by the Rural Development and Irrigation Department, Mantralaya, Bombay, in which, a decision was taken that the age of retirement of teachers/Head Master, who had come in services of the Zilla Parishad from the services of Janpada Sabha of earlier Vidarbha Region and who were confirmed in the services on 31.12.1965 was decided to be 60 years. A query had been raised whether the provisions of the said rules were applicable to the teachers of 5th to 7th standard and by the said Resolution, it was clarified that the facility of retirement at the age of 60 years was available to the teachers who were appointed to teach the standards of 8th to 10th. A short question which falls for our consideration is as to whether the petitioner was working in a secondary

school and teaching standard 8th to 10th. It is an admitted position that those teachers who were confirmed prior to 31.12.1965 in secondary school were entitled to work till they attain the age of 60 years.

14. The Division Bench of this Court had an occasion to consider a similar issue in the case of Mrs. Susheela w/o Sudhakar Pathak v. The Chief Executive Officer and Ors. Writ Petition No. 510 of 1996. In the said judgment, the Division Bench has obeyed as follows :

In the first place the expression "Secondary School" is no longer *res integra* having been interpreted in the judgment of this Court in the case of Prohhakar s/o Romchandra Deshpande v. Zilla Parishad. Akola and 2 Ors. Writ Petition No. 263 of 1993 dated 4.2.1993 (Per H.W. Dhabe & G.D. Patil, JJ.). In Prabhakar's case (*supra*), the facts were almost similar. The Court was called upon to interpret the expression "Secondary School" as used in the M.P. School Code. After examination of the relevant provisions of the M. P. School Code, this Court pointed out that the High School would mean, an educational institution preparing the candidates for examination of the Board and recognised by the Board for such a purpose. It is further pointed out that, under the relevant provisions of Regulation No. 10 of the M.P. School Code, only a middle school attached to a High School and an Indian English Middle School were covered by the Regulation No. 10, which mean that, other middle schools *simpliciter* were not covered by the M.P. Secondary School Code. This Court further delineated on the concept of Secondary School and pointed out in para 10 of the judgment that a primary school is one which conducts classes from 1st to 7th Standards and does not prepare the candidates for the examination of the Board, as contemplated by the relevant regulations framed under the M.P. Education Act, 1951. A careful perusal of this judgment would indicate that, in order to be qualified as a "Secondary School", the School must, prepare its students to appear in the School's final examination by the recognised Board. As long that is done, the fact that a School has classes, not only from 8th to 10th Standards, but also from 5th to 7th Standards, is wholly irrelevant. As far as the petitioner is concerned, it is not in dispute that the petitioner was working in a School which conducted classes from 5th to 10th Standards and prepared the students for the purpose of appearing in the recognized Board examination at the end of 10th Standard. Thus, in our view, the School in which the petitioner was teaching at the material time was without doubt a "Secondary School".

15. The Division Bench in the said case came to the conclusion that the petitioner was confirmed teacher prior to 31.12.1965 and that she was entitled to the salary and allowances and retirement benefits as a consequences of having retired at the age of 58 years.

16. In the present case, the petitioner admittedly was promoted in Indian English Middle School in the year 1958 which is equivalent to secondary school and as such it will have to be held that, though the petitioner was confirmed in the said post in the year 1969, the petitioner having worked continuously in the said post

for more than two years from 1958 was deemed to be confirmed as on 31.12.1965. The contention of respondent No. 2 that the petitioner was upgraded in the High School with effect from 22.11.1969 as High School Teacher cannot be accepted. Merely because the petitioner was confirmed on 22.11.1969 as per the entry made in the Service Book of the petitioner, it cannot be said that as on 31.12.1969 he was not deemed to be permanent. The provisions of the M.P. Education Act and M.P. Code are similar to the M.E.P.S. Act and the provisions of deemed confirmation which is provided u/s 5 Sub-clause (2) of the M.E.P.S. Act. is also incorporated under the M.P. School Act. As a result, the contention of the Government that by virtue of a written order of confirmation was passed on 22.11.1969 and, therefore, that would be the date on which the petitioner stood confirmed cannot be accepted.

17. We are satisfied from the record that since the petitioner continued to work in a Indian English Middle School right from 1958 by virtue of his promotion as an Assistant Teacher in the secondary school, he is deemed to have become permanent on 31.12.1965. The order of the Additional Commissioner will have to be quashed and set aside. Similarly, the order of retiring the petitioner from 4.6.1992 on his attaining the age of 58 years also will have to be set aside. The petition is, therefore, allowed. It is declared that the age of retirement of the petitioner shall be 60 years and on that basis the petitioner would be entitled to the salary and allowances and retirement benefits after setting of the benefits, if any, he has already received from the respondents as a consequence of having been retired at the age of 58 years. The respondents shall ensure that all the monetary benefits admissible to the petitioner under this judgment shall be made available to him within a period of six months from today. Rule is made absolute in the above terms with no order as to costs.