
(2002) 12 BOM CK 0033

In the Bombay High Court

Case No : Writ Petition No. 4094 of 2000

Chintaman Ramaji Mahakalkar

APPELLANT

Vs

Education Officer (Primary), Zilla Parishad and Others

RESPONDENT

Date of Decision : 04-12-2002

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 12

Citation : (2003) 2 ALLMR 658 : (2003) 3 MhLj 438

Hon'ble Judges : R.K. Batta, J;A.P. Shah, J

Bench : Division Bench

Advocate : N.S. Abde, for the Appellant; Neeta Jog, AGP for respondent No. 1 and S.P. Kshirsagar, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Batta, J.—The petitioner claims seniority over respondent No. 3 and seeks to quash the orders dated 12-10-2000 and 30-11-2000 passed by the respondent No. 1 Education Officer vide which the respondent No. 3 was held to be senior to the petitioner. The petitioner also seeks quashing and setting aside of the communication dated 1-2-2001 issued by the respondent No. 1 granting approval to the services of the respondent No. 3 as in-charge Head.

2. The petitioner is a primary school teacher in respondent No. 2 School. The petitioner joined respondent No. 2 School from 1-7-1972 and at that time he possessed qualification of SSC, D.Ed. He, therefore, claims that he was eligible and qualified for appointment as Assistant Teacher and continues to be in uninterrupted service of respondent No. 2. According to the petitioner, respondent No. 3, though initially appointed from 13-10-1971, yet he did not possess the requisite qualification. According to him, respondent No. 3 acquired D. Ed. Qualification only in the year 1979. Thus, the respondent No. 3 became eligible for the purpose of appointment as also for seniority only with effect from 1979 when he completed D.Ed, course. Petitioner's case further is that he was

shown senior to respondent No. 3 in Seniority List prepared by the management which is at Annexure-I to the petition. Respondent No. 3, just before the retirement of one Shri Yelne, racked up the issue of seniority before the Education Officer. The Education Officer by order dated 12-10-2000, passed behind the back of the petitioner, held that respondent No. 3 was senior. The petitioner represented to the Education Officer vide representations dated 19-10-2000 and 3-11-2000, but the Education Officer reiterated his decision vide letter dated 30-11-2000 holding the respondent No. 3 to be senior to the petitioner. Relying upon schedule "B" to the Maharashtra Employees of Private Schools Rules, 1981, the petitioner contended that the respondent No. 3 could not be treated as trained teacher till he acquired qualification in the year 1979 and since the petitioner had the requisite qualification from the date of his appointment in the year 1972, his claim in regard to seniority has been wrongly turned down.

3. Respondents have taken stand that Rule 2 (1)(f) and Rule 6 of the MEPS Rules are not applicable in the present case as the qualification for the primary teacher is laid down in Schedule "B" appended to the MEPS Rules. It is also claimed that the respondent No. 3 was granted seniority in terms of Rule 12(1) and Schedule F(1) of the MEPS Rules. According to the respondents, the acquisition of training qualification does not make any difference.

4. Learned counsel for the petitioner, after relying on Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, urged that the management is under obligation to fill every permanent vacancy by appointment of a person duly qualified to fill such vacancy, but when respondent No. 3 was appointed, he was not qualified to be appointed as a result of which he was given appointment from year to year and he became eligible for appointment only in the year 1979 when he acquired D. Ed. qualification. In this connection, learned counsel for petitioner also placed reliance on Rule 6 of the MEPS Rules and particularly, proviso thereto, in order to show that the appointment of the petitioner was made thereunder. Learned counsel for petitioner then relied upon Schedule "B" appended to the said Rules 2(1)(j) and 6 which provides for qualification for primary teachers and finally relying on Note 2 under Schedule "F", urged that the seniority has not been fixed in accordance with the said Rules. It was also urged by him that seniority was upset by the Education Officer without hearing the petitioner.

5. On the other hand, learned AGP as also learned Advocate for respondent No. 3 urged before us that the issue in question has been concluded by judgment of the learned Single Judge in *Shripad Shikshan Mandal and Ors. v. Rajaram Bhandari Chavan and Ors.* 2001(2) Mh.LJ. 896. It has also been pointed out by them that Rule 2(1)(j) and Rule 6 of the MEPS Rules are not applicable as the qualification for primary teacher is laid down in Schedule "B" appended to the said Rules. Our attention was particularly drawn to Rule 12 and Note 1 under Schedule "F" which provides for guidelines for fixation of seniority of teachers in

primary schools.

6. The challenge before us is basically to the seniority of respondent No. 3 who has been held to be senior to the petitioner. In this context, the petitioner had tried to rake up question pertaining to initial appointment of respondent No. 3. Section 5 of the MEPS Act deals with the obligations of the management of private schools. It provides for filling up a permanency vacancy on probation for a period of two years. It also provides for filling up of a temporary vacancy by a person who is duly qualified to fill such vacancy. Rule 6 of the MEPS Rules provides for the minimum qualifications for the post of teachers and non-teaching staff in Primary Schools, Secondary Schools etc. as specified in Schedule "B". The relevant clauses of Schedule "B" with which we are concerned are as under:--

"SCHEDULE "B" [See Rules 2(1)(j) and 6]

1. Qualifications for Primary Teachers; Appointment to the post of Primary school teachers (other than special teachers-Drawing teachers) shall be made by nomination from amongst candidates who have passed S.S.C. examination or Matriculation examination of Lokshala examination or any other examination recognised as such by Government and the Primary Teachers Certificate examination or Diploma in Education examination, or a Diploma in Education (pre-primary of two years" duration. Note

(a).....

(b).....

2.

3.

4. Primary School teachers recruited prior to the 30th June, 1972 and who are possessing academic and training qualifications according to the rules in force at the time of their appointment are exempted from the S.S.C. and D.Ed, qualifications. Those who were recruited after the 30th June 1972 and who do not possess the S.S.C. and training qualifications should acquire the same before June 1985. Failure to acquire these qualifications before June 1985 shall make them liable for termination of their services.

5."

7. The respondent No. 3 at the time of appointment possessed Diploma in Education and had also acquired D.Ed, in 1976. The appointment of the respondent No. 3, therefore, cannot be faulted in view of the above position as the respondent No. 3 had, in fact, acquired D.Ed, qualification in the year 1976.

8. We are, in fact, concerned with Rule 12 of the MEPS Rules which deals with seniority. Rule 12 provides that every management shall prepare and maintain seniority list of the teaching staff including Head Master and Assistant Head

Master and non-teaching staff in the School in accordance with the guidelines laid down in Schedule "F". Note 1 under Schedule "F" appended to the MEPS Rules provides for guidelines for fixation of seniority of teachers in the primary schools. It provides that seniority in Primary Schools shall be based on the date of joining service and continuous officiation. Note 2 of Schedule "F" upon which reliance has been placed by learned counsel for petitioner, has no application. Note 1 in Schedule "F" is crystal clear and the seniority of primary school teachers in Primary Schools has to be determined on the basis of the date of joining service and continuous officiation. In fact, this issue was also dealt with by the learned Single Judge of this Court in *Shripad Shikshan Mandal and Ors. v. Rajaram Bhandari Chavan and Ors.*, (supra). In that case, petitioner No. 2 was appointed as a teacher on 6-12-1966 when he was merely a matriculate. He acquired D.Ed. qualification in 1992. Respondent No. 1 in that case was appointed on 1-7-1976 when he was not only a matriculate but also was holding training qualification D.Ed. The learned Single Judge held -

"Rule 3 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules framed, lays down that a person to be appointed as Head insofar as primary school is concerned shall be the senior most trained teacher who has put in not less than five years" service. Rule 12 of the Rules lays down that every management shall prepare and maintain seniority list of the teaching staff including Head Master and Assistant Head Master and non-teaching staff in the School in accordance with the guidelines laid down in Schedule "F". Perusal of Schedule "F" of the Rule shows that insofar as the seniority of primary school teacher is concerned, it is to be based on the date of joining of service and continuous officiation. The seniority in primary school shall be based on the joining of service and continuous officiation. So far as teachers in primary schools are concerned, it is their date of joining service which is relevant and therefore, according to this Rule it will be the petitioner No. 2, who will be senior to respondent No. 1. A comparison of the provisions of Rules 1 and 2 in Schedule "F" clearly bring out the situation that insofar as for working out of seniority of teachers working in secondary school, acquisition of training qualification has been given importance whereas while working out seniority of teachers in primary schools acquisition of training qualification has not been considered. The only requirement of the Rule is that at the time of appointment as Head Master or promotion of the Head Master, the teacher must be a trained teacher. It is further to be seen here that the Act and the Rule framed thereunder have come into force in 1981. The petitioner No. 2 was appointed in 1966 i.e. before the commencement of the Act and Rules. It is clear that insofar as the question of working out seniority of teachers in primary school is concerned, the date of acquisition of training qualification is not relevant. Promotion to the post of Head Master is on the basis of seniority and thus the petitioner No. 2 was senior to the respondent No. 1 and as on the date of his appointment, he was also a trained teacher. Petitioner No. 2 was entitled to the promotion."

9. Taking into consideration the relevant provisions, it was held that the date of

acquisition of training qualification is not material. We have no reason to take a different view of the matter. Therefore, the contention of the petitioner that respondent No. 3, though he was appointed prior to him but had acquired D.Ed. qualification only in 1979 and that the petitioner should be treated as senior, is without any merit whatsoever. The petitioner made representations dated 19-10-2000 and 3-11-2000 to the Education Officer against order dated 12-10-2000 whereby the respondent No. 3 was treated as senior to the petitioner, but the Education Officer vide order dated 30-11-2000 reiterated the seniority of the respondent No. 3 over the petitioner. Therefore, the petitioner cannot be heard to say that the order dated 30-11-2000 reiterating seniority of respondent No. 3 was passed behind his back.

10. In view of the above, we do not find any merit in this petition and the petition is liable to be rejected. Petition is accordingly dismissed. Rule is accordingly discharged. Interim order granted on 8-2-2001 is hereby vacated. No order as to costs.