
(1998) 11 BOM CK 0120
In the Bombay High Court
Case No : W. P. No. 246 of 1994

Dadu Yeshwant Gaonkar

APPELLANT

Vs

State of Goa and others

RESPONDENT

Date of Decision : 02-11-1998

Acts Referred:

Citation : (1998) 11 BOM CK 0120

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

Bench : Division Bench

Advocate : D. P. Bhise, for the Appellant; H. R. Bharne, Government Advocate, and L.V. Talaulikar, for the Respondent

Final Decision : Dismissed

Judgement

R. K. Batta, J.—The petitioner was appointed as a Grade-I Teacher on full time on probation with effect from 6-8-1982 and he completed his training qualification in the year 1989. The petitioner was informed vide letter dated 14-9-1992 by the Directorate of Education that he was placed first in the seniority list above respondent No. 6 who had been appointed on full time on probation with effect from 1-9-1983. It may be mentioned here that respondent No. 6 had been initially appointed on probation as part time Grade-I Teacher with effect from 1-7-1982. Subsequently, vide letter dated 6th April, 1994, the Directorate of Education informed respondent No. 5 that in view of Circular No. 110 dated 19-1-1994, the seniority list prepared by the School by showing respondent No. 6 above the petitioner was correct. In view of the said change in the seniority, respondent No. 6 was appointed to the post of Principal in the School. The petitioner seeks quashing of the order of seniority vide which respondent No. 6 was placed above him and also the selection of respondent No. 6 as Principal of School. The petitioner also seeks directions to respondents Nos. 1 to 5 to consider afresh the appointment to the post of principal.

2. We have heard learned Advocate Shri Bhise for the petitioner, learned Government Advocate Shri H. R. Bharne for respondents Nos. 1 and 2 and the

learned Advocate Shri L. V. Talaulikar for respondent No. 5.

3. The main submission which has been advanced by learned Advocate Shri Bhise before us is that Clause 5 of Circular No. 110, on the strength of which, respondent No. 6 has been declared senior to him, is contrary to Rule 87(1) of the Education Rules, 1986 and that the Circular cannot override the provisions of statutory rules. In order to appreciate the submission made by learned Advocate Bhise, it is necessary to refer to Rule 87(1) and Clauses 2 and 5 of the Circular No. 110 dated 19-1-1994. Rule 87(1), upon which reliance has been placed by learned Advocate Shri Bhise reads as under :

"87. Seniority. - (1) Seniority of employees in each category shall be determined by the order of merit in which they were selected for appointment to the concerned post, and those selected on an earlier occasion being ranked senior to those selected later."

This rule deals with the question of seniority at the initial stage of appointment, which has to be determined taking into consideration the order of merit in which the candidates are selected to a particular post. Circular No. 110 is in the nature of clarification issued by the Directorate of Education pursuant to queries made and Clause 2 as well as Clause 5 to which reference has been made by learned Advocate Shri Bhise read as under:

"(2) In a cadre, the rank of an employee will be based in chronological order i.e employee appointed at earlier date shall be awarded higher seniority rank over the employees appointed on later occasion.

(5) When two or more teachers are on probation, the trained teachers shall be placed above untrained teacher during their probationary services even though he/she is appointed at a later date from the untrained teacher. An untrained teacher on acquiring prescribed training qualification shall immediately rank higher to remaining untrained teachers from the date of his/her acquiring the said training qualifications."

Clause 2 again deals with a situation that when an employee is appointed at earlier date he has to be awarded higher seniority rank over the employees appointed on later date. However, Clause 5 of Circular No. 110 deals with a situation that when two or more teachers are on probation, the teacher who completes the training first during the period of probation, shall be ranked senior to the teacher who does not complete the training. It is pointed out by learned Advocate Shri Bhise that training can be completed within a period of 5 years from the date of appointment and in this connection, he has relied upon a Judgment of the Division Bench of this Court in *Dominic Araujo vs. the State of Goa and others*. 1989 Mh.L.J. 538 = 1989 Lab.I.C. 1383 which lays down that the professional qualification of training is not a sine qua non for initial appointment and, therefore, it stands to reason that if a teacher is permitted to obtain his training qualification within a period of 5 years or within the extended period thereafter, the teacher cannot lose his seniority and the seniority will have

to be reckoned from the date of his appointment in the particular category.

4. The petitioner was appointed on probation with effect from 1-8-1992 and he completed his training in the year 1989 i.e. to say much beyond the initial period of 5 years; whereas the respondent No. 6 had completed the said training within a period of 4 years i.e. to say in the year 1987 even if we take his initial appointment as 1-9-1983 on full time on probation. Thus, respondent No. 6 had completed the training qualification within the prescribed period of 5 years. When respondent No. 6 completed the training, both the petitioner as well as respondent No. 6 were still on probation and according to Clause 5 of Circular No. 110, respondent No. 6 was entitled to claim seniority over the petitioner. There is distinct purpose sought to be achieved by the training qualification which acts as a incentive for untrained teachers on probation to acquire training qualification at the earliest and there cannot be two opinions that a trained teacher is certainly better qualified to teach the students in the schools. The ruling upon which reliance has been placed by learned Advocate Shri Bhise is not attracted to the facts and circumstances of the present case and does not, in any manner, help the cause of the petitioner. Shri Bhise also tried to point out that the Circular was issued in 1994; whereas the Directorate of Education had, in the year 1992, declared that the petitioner was senior to respondent No. 6. The above mentioned Circular was issued in view of large number of queries received from the Schools relating to the disputes arisen on account of seniority of the teachers and the guidelines were specified in the said Circular. It has not been pointed out to us as to how the said guidelines are, in any manner, contrary to the statutory rules. The reference to Rule 87(1) does not help the petitioner since it deals with placing of the candidates as per merit at the initial stage, but seniority can certainly be affected if an untrained teacher does not complete the training within the prescribed period or when two untrained teachers who are on probation complete the training qualification at different times and the one who completes earlier is ranked as senior. We do not see any vice in clause 5 of Circular No. 110 nor the said Circular has been specifically challenged by the petitioner in the writ petition in question.

5. In view of the above, we do not find any merit in this petition and the petition is liable to be rejected. The writ petition is, accordingly, rejected. Rule is discharged. In the facts and circumstances, we leave the parties to bear their own costs.