

(1998) 02 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No. 1383 of 1991

Devlal Chauhan and Another

APPELLANT

Vs

Municipal Council Gondia and Others

RESPONDENT

Date of Decision : 27-02-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 2 ALLMR 374 : (1999) 101 BOMLR 384 : (1999) 1 MhLj 163

Hon'ble Judges : G.D. Patil, J; A.Y. Sakhare, J

Bench : Division Bench

Judgement

A.Y. Sakhare, J.—By this writ petition under Article 226 of the Constitution of India, the Petitioners have challenged the seniority list dated 2.5.1991 prepared by the Municipal Council, Gondia, the Respondent No. 1 herein. The petitioners and the respondents Nos. 3 to 9 are Assistant Teachers serving in various municipal schools run and managed by the respondent No. 1. The respondent No. 2 is the Education Officer of Zilla Parishad, Bhandara.

2. The petitioner No. 1 joined the respondent No. 1 with effect from 7.6.1960, while, the petitioner No. 2 joined the service of the respondent No. 1 with effect from 24.7.1959. Initially they were appointed in the middle school classes. The Petitioners have claimed that after improving their qualifications, i.e. acquiring B.A. Degree in the year 1962 and 1961, respectively, in the year 1962, they were promoted as high school teachers. The Petitioners acquired B.Ed. training on 11.5.1963. Thus they have claimed that they became qualified trained teachers for high school with effect from 11.5.1963. The petitioners have claimed that they were permanent employees of the municipal council on 31.12.1965 and that their services at the relevant time were governed by the provisions of Madhya Pradesh Secondary Education Act, 1951 and the Code framed thereunder (hereinafter referred to as the Act for the sake of brevity).

3. As per the petitioners, the respondent No. 3 was appointed on 19.7.1961 and acquired graduation in the year 1961 and B.Ed. training in the year 1964. The

respondent No. 4 was appointed in the year 1961, and acquired graduation in the year 1956 and B.Ed. training qualification in the year 1970. The Respondent No. 5 was appointed on 25.11.1959 and acquired graduation degree in the year 1962 and B. Ed. training qualification in 1967. The Respondent No. 6 was appointed on 1.8.1962 and has done her graduation in the year 1962 and acquired B.Ed. training qualification in the year 1971. The respondent No. 7 was appointed on 1.8.1962 and has done her graduation in the year 1962 and acquired B.Ed. training qualification in the year 1971. The respondent No. 8 was appointed on 1.8.1962, and has done his graduation in the year 1961 and has acquired B.Ed. training qualification in the year 1964. The respondent No. 9 was appointed on 4.8.1960, and has done his graduation in the year 1963 and obtained B.Ed. training qualification in the year 1971. As per the petitioners, as the respondents Nos. 3 to 9 have acquired B.Ed. training qualification much subsequent to the petitioners' acquiring B.Ed. training qualification, these respondents must be treated as juniors to them and the seniority list dated 2.5.1991 giving seniority to the respondents Nos. 3 to 9 above the petitioners is illegal. There is dispute as to when the Petitioners were appointed in the high school. As per the petitioners, they were appointed in the year 1962, while, the seniority list shows that they were appointed in the year 1964. We will deal with this issue separately in the subsequent part of this judgment.

4. As per the respondents Nos. 1 and 3 to 9, the seniority list dated 2.5.1991 showing the respondents Nos. 3 to 9 as seniors to the petitioners is proper. As per these respondents, the date of appointment is relevant and as the respondents Nos. 3 to 9 were appointed prior to the petitioners in the High School, they will be senior to the petitioners herein.

5. Initially on 29.2.1988, the seniority list was published by the respondent No. 1. In this seniority list, the petitioners were shown as seniors to the respondents Nos. 3 to 9. However, in the subsequent seniority list published on 2.5.1991, the petitioners have been shown as juniors to respondents Nos. 3 to 9 and this seniority list is challenged before us in this writ petition.

6. The question which falls for determination is, whether the petitioners should be treated as seniors to the respondents Nos. 3 to 9 as they have acquired B.Ed. training qualification earlier than the respondents Nos. 3 to 9.

7. At page 24, Annexure P-1, the petitioners have annexed the seniority list dated 2.5.1991. Seniority list gives details about the acquisition of graduation degree and acquisition of B.Ed. training qualification, the date of appointment in the middle school and date of appointment in the high school. The details for the petitioners and the respondents Nos. 3 to 9 are mentioned separately in the chart affixed hereto.

8. Our attention is invited by the respondents to Clause 7 of the Code under the Act which provides for conditions of service of teachers to contend that under the Act and the Code framed thereunder for appointing any permanent teacher,

acquisition of graduation and B.Ed, training was not a must and the teachers who were selected for high school classes have to offer themselves for degree examination for the subjects for which they seek appointment. On behalf of the petitioners, reliance is placed upon the decision of the Division Bench of this Court, consisting of Mr. Justice V.A. Mohta, (as he then was) and Mr. Justice A.A. Desai, in *Yeshwant v. Director of Education, Govt. of Maharashtra, Pune and Ors.* 1997 LI.C. 1611. By placing reliance upon the observations made in para No. 11 of the judgment it is contended that the seniority depended upon the length of service after acquiring the qualification and no untrained teacher will get seniority over trained teachers. In the case of *Sharad Vyankatesh Parsodkar v. The Director of Education, Pune and Ors.* Writ Petition No. 1899 of 1990 decided on 18.4.1996, the Division Bench of this Court, consisting of Mr. Justice A.A. Desai and Mr. Justice B.U. Wahane, (as he then was) it was observed that the observations made in the judgment of *Yeshwant v. Director of Education*, cited *supra*, are made in view of the facts and circumstances of the case. The subsequent decision in Writ Petition No. 1899 of 1990, to which Mr. Justice A.A. Desai was a party, has clearly explained the decision in *Yeshwant v. Director of Education and Ors.* Similar submissions which are advanced before us were advanced before the earlier Division Bench in Writ Petition No. 1899 of 1990 and these submissions were not accepted.

9. The Division Bench of this Court in *Madhav Govindrao Budhe v. Education Officer, Zilla Parishad, Nagpur and Ors.* 1994 Mh.L.J. 42, has considered the case of two teachers. The petitioner in the above case was appointed in the year 1956, acquired requisite qualification in the year 1970, while the respondent No. 3 whose promotion was challenged was appointed in the year 1968 and at that time the respondent No. 3 possessed all requisite qualification. Considering the provisions of Secondary Schools Code as framed by the State of Maharashtra, the Division Bench held that after the application of Secondary Schools Code as framed by the State of Maharashtra, the services of teachers will be governed by the Clause 5 of Annexure 45 of the Secondary Schools Code. This Code provides for categories of teachers, such as category Nos. A, B, C, D, E, F and G. These categories are on the basis of teachers possessing requisite qualifications. These categories are as under: Category "A":

This Category is applicable to Higher Secondary Schools only.

M.A. II/M.Sc. II/M.Com. II/M.Sc. (Agriculture) II, B.T./B.Ed.

Teachers of the above qualification appointed in higher secondary schools and teaching a subject offered by them at their Master's Degree Examination to the top standard of the higher secondary school.

Category "B":

Holders

M.A./M.Sc, B.T./B.Ed., or its equivalent;

OR

B.A./B.Sc, B.T./B.Ed., or its equivalent;

OR

B.A./B.Sc, Dip. T. (Old two years course);

OR

B.A./B.Sc, S.T.C./Dip. Ed./Dip. T. (One year course) with 10 years post S.T.C. etc., service.

Category "C":

Holders:

B.A./B.Sc, S.T.C./Dip. Ed. (One year course or its equivalent).

Category "D":

Holders of:

S.S.C., S.T.C./Dip. Ed./Dip. T. (One year course) or its equivalent.

Category "E":

Untrained graduates or holders of equivalent qualifications.

Category "F":

Untrained Matriculates or holders of equivalent qualifications.

Category "G"

The rest.

The Division Bench in Madhav's case, cited supra, after considering the categories as provided in Annexure 45 has held that after 1965 the services of the teachers will be governed by the Secondary Schools Code, the Respondent No. 3 (in Madhav's case) was possessing all qualifications on the date of appointment in the year 1968, was placed in higher grade, and the petitioner (in Madhav's case) who acquired requisite qualification in 1970 and who placed in lower grade, cannot claim the post of Head Master which was offered to the respondent No. 3. This decision has also made reference to the decision in Yeshwant's case, so also the Division Bench decision in Sopan s/o. Bhagwan Kinage v. Director of Education and Ors. 1990 Mh.L.J. Thus the Division Bench in Writ Petition No. 1899 of 1990, in Sharad's case and Madhav's case, cited supra, the Court has held that after 1965 the service conditions of the teachers will be governed by the Secondary Schools Code framed by the State of Maharashtra and Annexure 45 providing categories of the teachers for the purposes of seniority based upon their possessing qualifications will apply.

10. The Respondents have relied upon the decision in Sopan's case, cited supra,

to contend that the question of acquiring training qualification for the purposes of seniority was not applicable to teachers who were permanent on 31.12.1965 and that the length of service is only criterion for fixing the seniority. The respondents have relied upon Clause 5 of Annexure 45 of Secondary Schools Code framed by the State of Maharashtra to contend that the seniority of non Government secondary school teachers in Nagpur Region who were permanent on 31.12.1965 should not be disturbed.

11. In Sopan's case, cited supra, the facts were totally different. In the said case, on 1.7.1958 the petitioner and the respondent No. 4 were appointed. At that time the petitioner was B.A., B.Ed., while respondent No. 4 obtained the degree of Bachelor of Education only in 1961. As both these parties were appointed on one and the same day, the Division Bench was considering the question of their seniority. The Division Bench by considering the provisions of the Act and Code framed thereunder came to the conclusion that senior in age will have to be given seniority and that the provisions of Annexure 45 of the Secondary Schools Code is not applicable.

12. After considering the submissions, advanced by both the parties with reference to the provisions of the Act, Secondary Schools Code and the decisions referred to above, it will have to be now considered, whether the petitioners are right in their submissions that as they acquired training qualification earlier than the respondents Nos. 3 to 9 they must be given seniority over them. For answering this issue, Clause 5 of Annexure 45 of the Secondary Schools Code will have to be read as a whole. As per Clause 5 the seniority of non Government secondary school teachers in Nagpur Region who were permanent on 31.12.1965 should not be disturbed. The said clause further says that if any such teacher, however, improves his qualification and goes to the higher category, the revised guidelines of seniority will apply. So far as the determination of seniority in the higher category is concerned, the harmonious construction for Clause 5 of Annexure 45 of the Secondary Schools Code will be that the seniority of a non Government secondary school teacher in Nagpur Region up to 31.12.1965 will have to be governed by the provisions of the Act and the Code framed thereunder. However, after the application of Secondary Schools Code as framed by the State of Maharashtra, the concerned teachers will have to be placed under the appropriate category as contemplated under Annexure 45 of the Code and if the concerned teacher improves his qualification he will be placed in the higher category and guidelines of the seniority will apply so far as the determination of his seniority in the higher category is concerned. In Madhav's case, cited supra, the Division Bench has considered Clause 5 of the Secondary Schools Code as framed by the State of Maharashtra. In para Nos. 14, 15, 16 and 17 the Court has observed as under:

14. Let us test this contention. Clause 5 of the Secondary Schools Code is very clear. According to this clause, the seniority of the person like the petitioner who was permanent on 31.12.1965 will have to be determined as per the statutory

provisions, in M.P. Secondary Education Act and, therefore, there is no difficulty in holding that the petitioner's seniority will have to be determined on the basis of the length of service that he has put in. However, the Rule does not stop there. It proceeds further will a rider which is almost in the nature of a proviso to the effect that if any such teacher, like the petitioner, improves his qualifications and goes to the higher category, then it is not the provisions of the M.P. Act and Code, but the revised guidelines of Secondary Schools Code (Annexure 45) which would apply to the case in determining the seniority. The proviso thus has made all the difference. That it is a proviso is clear from the use of the words like "if" and "however". It is an admitted position that the petitioner was only a matriculate when he joined the service. He acquired diploma in teaching in the year 1962 and on 31.12.1965 he was an under graduate trained teacher. Thus he belonged to category "D" at the time when he was confirmed. Now after the advent of the Secondary Schools Code, the petitioner, for the first time in the year 1967, became a graduate and thus stepped into category "C". He stepped into this category because of the improvement of his qualifications. Category "C" is applicable to those who hold degree of B.A./B.Sc. S.T.C./Dip. Ed. (One year course) or its equivalent. Therefore, in the year 1967 the petitioner belonged to category "C" being a graduate and having a diploma in teaching. It is only in the year 1970 that he further improved upon his qualifications and acquired the degree of B.Ed. and, thus, from category "C" he stepped into category "B". The case of the petitioner is, therefore, on all fours covered by the ending words of Clause 5 of the Secondary Schools Code (Annexure 45) and the revised guidelines would apply to the case of the petitioner.

15. Now let us see whether in what manner these revised guidelines would apply to the case of the petitioner and whether their application has made any difference. Rule 3, which we have already quoted earlier, specifically mandates that the inter se seniority of the teachers falling in any single category should be determined on the basis of their length of continuous service in that category, in a single school or in schools run by the same management. Now it is an admitted position that the petitioner as well as the respondent No. 3 are serving in one and the same school. It is also an admitted position, on the basis of the facts stated before us, that the respondent No. 3 was a category "B" teacher on the date she entered the service, she being a graduate having the degree of B.Ed. While, in her comparison, the petitioner stepped into that category only in the year 1970. It is also an admitted position that the petitioner has improved upon his qualifications and, therefore, his case would be governed by Clause 5. Under such circumstances, the argument of Shri V.C. Daga that in the matter of seniority the provisions of M.P. Secondary Education Act, 1951 and more particularly Rule 10(1) would still apply must necessarily fail. We, therefore, find that in fact it is not the provisions of that Act but the provisions of the revised guidelines as provided by the Secondary Schools Code would apply to the cases of the petitioner as well as the respondent No. 3.

16. Shri V.C. Daga further urged that nothing would depend upon the subsequent

acquisition of the qualifications as on the date of promotion, the petitioner, and the respondent No. 3 are equally placed. This argument is obviously incorrect. In the M.P. Act as well as in the Secondary Schools Code the appointment of a Head Master is differently treated. There are definite qualifications required for the appointment to the post of a Supervisor or the Head Master as the case may be. We must add that the qualifications; required for the appointment to the post of a Supervisor or Head Master are identical under the Secondary Schools Code.

17. Admittedly, therefore, till 1970 the petitioner was totally out of zone of consideration for being appointed as a Head Master while the respondent No. 3 was qualified for being considered for being appointed as a Head Master right from the year 1968 when she was appointed. The respondent No. 3 after completing five years of service, i.e. in the year 1972, became for the; first time entitled to be appointed as a Head Master as per the provisions of the Secondary Schools Code. Therefore, it is clear that till 1970 the petitioner was not even in the zone of consideration. He could have been appointed as a Head Master only after five years of his acquiring the necessary qualifications and that would come somewhere in the year 1975. Under such circumstances, when the question of appointment to the post of Head Master falls for consideration, it will have to be held by the necessary logic that the respondent No. 3 was more experienced for being appointed as Head Master, she being senior and having put in more service in category "B", while the petitioner was sadly wanting in experience in comparison to respondent No. 3. Clause 3 of the revised guidelines more specifically mandates that the inter se seniority of teachers falling in any single category should be determined on basis of teachers falling in any single category should be determined on the basis of their length of continuous service in that category. Therefore, it will have to be held that the respondent No. 3 is senior to petitioner in category "B".

13. Thus as per Clause 5 of Annexure 45, if any teacher improves his qualification and goes in higher category then the revised guidelines of seniority will apply so far as the seniority in higher category is concerned. Thus the provisions of Annexure 45, of the Secondary Schools Code as framed by the State of Maharashtra will apply after 1965. The judgment in Madhav's case has also considered the judgment in Sopan's case so also the judgment in Yeshwant's case.

14. The conclusion thus emerges is that in view of Clause 5 of Annexure 45 up to 31.12.1965 the parties will be governed by the provisions of the Act and the Code framed thereunder and thereafter the parties will be governed by the provisions of the Secondary Schools Code as framed by the State of Maharashtra for the purposes of seniority. The teachers who were having requisite qualifications as on 31.12.1965 will have to be given seniority on the basis of length of service in appropriate category and the teachers who have acquired the requisite qualification after 1965 will have to be given seniority as per the provisions contained in Annexure 45 of the Secondary Schools Code. In the

present case, prior to 3.12.1965 the petitioners and the respondents Nos. 3 to 8 only were possessing qualifications of graduation and training course. The petitioners acquired B. Ed. qualifications on 11.5.1963, while the respondent No. 3 acquired the training qualification on 5.5.1964 and the respondent No. 8 acquired training qualification in the year 1964. On 31.12.1965, the respondents Nos. 4, 5, 6, 7 and 9 were not possessing the B.Ed. training qualification and this qualification was acquired by the respondent No. 4 on 10.5.1970, by the respondent No. 5 on 17.5.1967, by the respondent No. 6 on 8.5.1971, by the respondent No. 7 on 21.12.1971 and by the respondent No. 9 on 8.5.1971. Thus, as far as the petitioners, the respondent No. 3 and the respondent No. 8 are concerned they were possessing the requisite qualifications on 31.12.1965 and by application of Annexure 45 of the Secondary Schools Code after 1965 they will be placed in one category depending upon their length of service in the high school. The respondents Nos. 4, 5, 6, 7 and 9 were not possessing the training qualification on 31.12.1965, hence these respondents will have to be placed in lower category than the petitioners and the respondents Nos. 3 and 8 and from the date of their qualifications these respondents will be placed in the higher category as per the guidelines contained in Annexure 45 of the Secondary Schools Code for the purposes of seniority. Thus, the seniority of the petitioners and the respondents Nos. 3 and 8 as on 31.12.1965 will be on the basis of their length of service while the seniority of the respondents Nos. 4, 5, 6, 7 and 9 will be on the basis of date of their acquiring B.Ed. qualification. In view of Annexure 45 of the Secondary Schools Code, the respondents Nos. 4, 5, 6, 7 and 9 will have to be treated as juniors to the petitioners. The ultimate result will be that the seniority of the petitioners and the respondents Nos. 3 and 8 will depend on their length of service as they were possessing the requisite qualifications on 31.12.1965. After 1965 seniority between the petitioners and the respondents Nos. 3 and 8 cannot be disturbed.

15. One of the questions which also requires consideration is, whether the petitioners were appointed in the high school in the year 1962 as contended by them, or whether the petitioners came to be appointed in the high school on 1.11.1964 and 11.8.1964 respectively as contended by the respondents? No material is placed on record by the petitioners to show that they were appointed in the high school in the year 1962. Page 15 of the petition states that the petitioners were in fact working as teachers from the year 1962. In reply thereto, on page Nos. 87 and 88, the respondents have denied this fact and have stated that the petitioners came to be appointed in the high school on 1.11.1964 and 11.8.1964 respectively. Therefore, the petitioners' case that they are in service in the high school from 1962, cannot be accepted and it must be held that the petitioner No. 1 was appointed in the high school on 1.11.1964 while the petitioner No. 2 was appointed on 11.8.1964 and that will be the relevant date for the purposes of fixing the seniority between the petitioners and the respondents Nos. 3 and 8. The seniority of the petitioners and the respondents Nos. 3 and 8 will have to be fixed on the basis of their appointments in the high

school.

16. In view of the above conclusion, the respondent No. 1 is directed to re-fix the seniority of the petitioners and respondents Nos. 3 to 9 and after re-fixing the seniority accord the petitioners so also the concerned respondents necessary benefits such as promotion and consequential reliefs. If any of the party is deprived of the promotion and pay scale, the said party will be eligible to deemed promotion and difference in the pay scale. The respondent No. 1 is directed to re-fix the seniority and extend all consequential benefits which will be available to the parties upon such re-fixation within a period of four months from today.

17. Rule made absolute in the aforesaid terms with no orders as to costs.