

(2005) 01 BOM CK 0089

In the Bombay High Court

Case No : Writ Petition No. 2171 of 1992

Dulare Harinarayan Pandey

APPELLANT

Vs

Mahavir Shikshan Prasarak Samiti and Others

RESPONDENT

Date of Decision : 19-01-2005

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 9

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 3(1), 41(3)

Citation : (2005) 3 ALLMR 283 : (2005) 4 BomCR 289 : (2005) 3 MhLj 600

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : H.A. Deshpande, for the Appellant; B.N. Mohta, for the Respondent

Judgement

Dharmadhikari B.P., J.—By this petition, the petitioner, an employee working as assistant teacher in private school challenges the judgment of School Tribunal dated 19th September, 1992 delivered by the School Tribunal in Appeal Number STN/55/1989 and also the order dated 1-4-1989 passed by respondent No. 1 management whereby respondent No. 3 came to be promoted as Headmaster. The case of petitioner in short is that he was already a Headmaster when the said order came to be issued and it amounts to his reversion. The School Tribunal has found that petitioner was not promoted as headmaster and therefore there is no reversion.

2. Petitioner states that he was working as headmaster of a school by name Mahavir Hindi High School at new Majari Colliery which is administered by respondent No. 1 respondent No. 1 is a society duly registered as such under the Society's Registration Act and it is also a Public Trust registered under the provisions of Bombay Public Trust Act. It has got other School by same name at Wani. It is the case of petitioner that School at Wani was started in the year 1972 whereas the School at New Majari Colliery was started in the 1981. The School at Wani was admitted to grants long back while the School at New Majari

Colliery was admitted to 75 percent grants in 1988 and it got 100 percent grants in year 1989. There is no dispute about the qualifications held by petitioner. He has obtained Masters degree in Arts in the year 1977 and acquired training qualification of bachelor of education in the year 1978. He joined the School at New Majari Colliery in the beginning of academic session 1983. There were three other teachers who had joined earlier and one of them was designated as incharge headmaster. However all of them left the service and in the year 1985 petitioner alone was senior most qualified teacher working in that school with five years of post training teaching experience. Therefore he worked as headmaster since December 1985 and when School started receiving 75 percent grants from state exchequer i.e. in the 1988, Education Officer of State Government for the first time entered the picture for granting approved to the services of employees and for regulating the disbursement of Government grants, Education Officer physically inspected records of the School and till then no employee in the School including petitioner was supplied appointment orders. However as education Office was to accord approval to the staff, he directed respondent number 1 to issue appointment orders to the staff members and on 23 June, 1988 respondent Number 1 permanently appointed petitioner as Headmaster with effect from 18-6-88 petitioner contends that he was thus Headmaster from 2nd December, 1985 till the end of academic session 1988-89. He was accordingly granted approval by Education Officer in pay scale 600--950. Surprisingly according to petitioner impugned order came to be issued on 1-4-1989 and he was directed to handover the charge to respondent No. 3 who was promoted as headmaster in place of petitioner. He therefore filed appeal u/s 9 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 before School Tribunal and during pendency of said appeal respondent No. 3 did not join as headmaster of the school at New Majari Colliery and petitioner continued to work as headmaster even though there was no interim order passed by School Tribunal in appeal. However by its judgment dated 19th September, 1992 the learned School Tribunal dismissed the appeal of petitioner. The petitioner has challenged said judgment before this Court.

3. Advocate Deshpande argued the matter for petitioner while Advocate Mohta argued for respondent No. 1. Nobody appeared and for respondent Nos. 2 and 3.

4. Advocate Deshpande contended that the learned School Tribunal has given undue importance to technicalities in the matter and thereby has denied the substantive justice to petitioner. It is his argument that School Tribunal has considered the matter as if the petitioner was promoted under oral order or direction and this has resulted in failure on its part to exercise jurisdiction available to it in accordance with law. He states that not only he received salary in pay scale of headmaster from Government but there were several documents on record which demonstrated that the petitioner functioned as headmaster and not merely as in charge headmaster, however, the School Tribunal refused to accept those documents. He further contends that respondent No. 3 has been wrongly treated as senior by the School Tribunal because in the year 1988 or in

the year 1989, one of the schools of respondent No. 1 was not getting full grants and hence its seniority ought to have been maintained separately from the School which was getting full grants. He further stated that before his employment with the new Majari School he worked as Assistant Teacher in Uttar Pradesh at Varanasi and therefore had requisite experience before his promotion to the post of headmaster and the School Tribunal has not considered this angle at all. He also invited attention of this Court to several documents in which the respondent management has referred to the petitioner as headmaster and not as in charge headmaster. He contended that even if it is presumed that in December, 1985 he did not possess five years experience, still in the year 1988 he completed five years service in the School at New Majari Colliery and as such was rightly promoted as headmaster. At the time of arguments on 12-1-2005 he also filed on record an affidavit dated 6th December, 2004. Copy of this affidavit is served upon respondent number 1 of 7th December itself. With this affidavit petitioner has filed copy of affidavit dated 8-12-1988 filed by respondent No. 1 in Appeal No. 100 of 1988 preferred by one Shri B.M. Tiple against it before the Presiding Officer School, Tribunal. He points out that in said affidavit management has mentioned that appellant in that case was appointed by headmaster i.e. present petitioner. He contends that approach of School Tribunal is perverse and reveals total non application of mind by relying upon the provisions of Rule 41(3) of Maharashtra Employees of Private School Rules, 1981 he contended that transfer from Wani School to new Majari Colliery School would have resulted in loss of pay and denial of pension benefits to respondent No. 3 and such respondent No. 3 could not have been transferred to new Majari Colliery School and could not have been promoted as headmaster of that school. He contends that such transfers are prohibited even by policies of education department. He therefore prayed for quashing and setting aside of said judgment of School Tribunal and for granting him the post of headmaster of said School at New Majari Colliery.

5. Advocate Mohta appearing for respondent No. 1 contended that the petitioner has failed to show that he was at any time promoted as headmaster in substantive capacity. He states that the petitioner was senior most teacher at New Majari Colliery School and hence was given charge of post of headmaster and he worked as in charge headmaster. He contended that all the documents in which reference has been made to petitioner as headmaster are in fact referring to him as in charge headmaster. He contends that the headmaster is to be appointed by promotion/promoted by management and that is possible only through resolution of Managing Committee. Therefore no oral promotion can be given to the petitioner. He states that the alleged order of promotion produced as first annexure with present petition was not produced before the School Tribunal during appeal proceedings. He states that this order is alleged to be issued under the signature of President Shri Jaiswal of respondent No. 1 but said Shri Jaiswal has on 3rd August, 1988 made a complaint that the post of headmaster at new Majari Colliery School is being kept vacant. He states that because of this letter

of President of the Institution the meeting of Managing Committee was convened on 29th March, 1989 and resolution promoting respondent No. 3 with effect from 1-4-1989 came to be passed. He alleges that said order at Annexure 1 is fabricated one. He also points out that the approval given by education department was corrected by it on 28-8-1990 and petitioner was shown as in charge headmaster in pay scale of 365 -700. He further states that respondent Number 3 has already expired long back and petitioner has not taken any steps to bring his legal heirs on record.

6. Bare perusal of the impugned judgment of School Tribunal reveals that the School Tribunal has not accepted the contention of petitioner that he was not given any order in writing but he was asked only to work as headmaster. It has thereafter expressed an opinion that appellant before it could not have been promoted to the post of headmaster under an oral order or direction. Thereafter it has considered the fact that appellant had no experience required for his promotion to the post of headmaster as per rules and therefore it has refused to accept the case of oral promotion and has also reused to believe the documents placed on record. It has in this background reached conclusion that petitioner was entrusted the work of headmaster from year to year till regular appointment was made by management and as such he was substantively an assistant teacher. Thereafter it has considered service and seniority of respondent No. 3 at Wani School and has found that he was senior to petitioner/appellant and therefore his promotion as headmaster was legal and proper. The School Tribunal ignored the fact that with a view even to permit petitioner to work as in charge headmaster, an order in writing would be required. It should have further noticed that the Education Officer has on 27th May, 1989 while granting approval to the petitioner and other employees of new Majari Colliery School has directed the management to issue order of appointment/continuation to the person concerned. Thus in effect there was material on record of School Tribunal to hold that the respondent Number 1 did not issue appointment orders or promotion order to the employees and permitted them to work. The Education Officer was a third and disinterested person and remarks made by him after inspection should have been given due weight by the School Tribunal. The learned School Tribunal has totally overlooked this remark and its significance. It is to be noted that even an assistant teacher who is made in charge headmaster is entitled to additional allowance every month from Government if the School is recognized and is receiving grants. The School of respondent number 1 at New Majari Colliery started receiving 75 percent grants in the year 1988 and 100 percent grants in the year 1989. Hence, if petitioner was only an in charge headmaster, records of Education Officer would have revaluated that he was getting regular monthly allowance therefore from the year 1988. However, the approval given by Education Officer itself shows that petitioner was being paid regular salary as headmaster in pay scale of 600--950. This is the pay scale applicable to candidate substantively promoted to the post of headmaster and pay scale of assistant teacher, as is apparent from very same approval at that time was

365-760. The Counsel for respondent Number 1 has produced copy of approval letter dated 28-8-1990 issued by Education Officer in relation to petitioner in which his designation has been specifically mentioned as in charge headmaster and pay scale applicable to him has been mentioned as 365-760. This corrected approval produced by Advocate Mohta at the time of hearing on 12 January, 2005 shows that the approval has been granted from 26-6-89 till decision of School Tribunal and thus it is apparent that the same has been granted after the petitioner filed his appeal complaining about his reversion and grant of promotion to respondent No. 3 before the School Tribunal. The earlier approval dated 27th May, 1989, if read in contradistinction. Clearly shows that the designation of petitioner as headmaster and it also mentions the regular pay scale of full-time headmaster (600-950) in which salary was paid to the petitioner. It also mentions that approval to the appointment of petitioner is with effect from 2nd December, 1985 and till end of session 1988-89. It is thus clear that as per education department at the relevant time petitioner was full-time headmaster and not merely an in charge headmaster. This approval also shows that petitioner received salary as full-time headmaster from the Government grants. It is further apparent that the academic session for the year 1988--89 must have lasted till May, 1989 and hence the petitioner was full-time headmaster on 29-3-1989 when the respondent Number 1 decided to promote respondent No. 3 in his place.

The education department is not granting approval of its own. The management makes the appointments and thereafter forwards the appointment orders along with testimonials of appointed candidate for a approval to the education department. The department in turn scrutinizes the qualifications and the information to find out whether candidate appointed fulfils the requirements prescribed for the particular post. Thus, education department cannot of its own generate the approval. It is thus more than apparent that the respondent Number 1 prepared proposal for approval of services of petitioner as headmaster from 2nd December, 1985 and forwarded it to the education department. It is also clear that as education department got documents showing petitioner to be full-time headmaster, it granted approval accordingly and also extended to him regular pay scale of headmaster. Thus this is the case in which the management appointed petitioner as full-time headmaster and forwarded documents accordingly to the education department and therefore only the education department issued approval letter dated 27th May, 1989. It is thus apparent that the respondent number 1 only did not serve the copy of appointment orders or promotion order upon the petitioner. In view of said approval from education department, it cannot be said that petitioner was promoted orally as headmaster and such conclusion drawn by School Tribunal is perverse and unsustainable. The remark put in by education department itself shown that the management was not issuing appointment/continuation orders to the concerned persons but this does not mean that respondent Number 1 was making oral appointments or promotions. No approval from education department is possible in the absence of order of appointment.

7. The documents produced by petitioner before School Tribunal show that the petitioner has been addressed as headmaster. He has received salary as full-time headmaster. In any case, it cannot be presumed that the school was without any headmaster till 1st of April, 1989. It is thus clear that respondent number 1 did not provide copy of appointment orders to the petitioner and in such a situation, the School Tribunal could not have permitted respondent number 1 to take advantage of its own wrong and mistake. The proposal forwarded by respondent number 1 in relation to petitioner to the education department, copy of appointment order/promotion order forwarded to education department with it are within the knowledge and in custody of respondent number 1. However respondent number 1 did not produce these documents for scrutiny of School Tribunal or even before this Court. If petitioner was really an in charge headmaster and he got only officiating allowance, documents in this respect would also have been produced by the management. However, the same are not produced anywhere. In the circumstances of the case, the School Tribunal ought to have drawn adverse inference against respondent number 1 management and in favour of petitioner in the matter.

It is therefore clear that on 1-4-1989 the post of headmaster was not vacant and it was occupied by petitioner. It is further clear that the petitioner joined services of respondent number 1 in the beginning of academic session 1983 and at that time he was already a post graduate trained teacher. Provisions of Rule 3(1)(b) of MEPS Rules, 1981 require him to possess five years total full-time teaching experience after graduation and out of it at least two years experience is required to be after obtaining training qualification. The petitioner satisfied both these requirements. It is also more than clear that otherwise education department would not have granted in approval as full time headmaster in May, 1989. The School Tribunal has in single line recorded a finding that the appellant before it did not possess requisite experience but no reasoning for reaching such finding has been given. It is thus clear that by passing the resolution on 29th March, 1989 and by promoting respondent No. 3 as headmaster from 1-4-1989 and by asking the petitioner to handover charge of the post of headmaster to said the respondent No. 3 the respondent number 1 in fact has reverted the petitioner from the post of headmaster to that of assistant teacher.

8. There is no dispute that the school of petitioner started receiving 100 percent grants from State Government from the year 1989. The petitioner was already a full-time headmaster at that time. Prior to that said school was not receiving complete grants and hence in view of provisions of Rule 41 (3) of the MEPS rules, respondent No. 3 could not have been brought to said School, There was no question of both schools having any combined seniority list prior to 1989. In such circumstances there could not have been any comparison between petitioner and respondent No. 3. Hence, the School Tribunal has committed mistake in holding that respondent No. 3 is senior to the petitioner in 1989 when the impugned order came to be issued. The School Tribunal should have considered the position in the light of approval granted by education department and in respect of period

when the school of petitioner was receiving only 75 percent grants or no grants. Even in this view of matter the impugned order of School Tribunal shows total non application of mind and is unsustainable. Reliance placed by Advocate Mohta on the letter of Shri Jaiswal for lodging in the vacancies of headmaster in new Majari Colliery School in this background is totally irrelevant and misconceived.

9. Under the circumstances, I find that the impugned judgment of School Tribunal is unsustainable and is liable to be quashed and set aside. In the result, it will have to be held that the reversion of petitioner by order dated first April, 1989 is illegal and he is entitled to be reinstated as headmaster with continuity and with all consequential benefits. The judgment of School Tribunal dated 19 September, 1992 and the order of reversion dated 1st April, 1989 issued by respondent number 1 are accordingly quashed and set aside. Respondent number 1 is directed to reinstate petitioner as headmaster of new Majari Colliery School with continuity within three months and to pay to him all consequential benefits accordingly with further period of three months thereafter. Rule made absolute in above terms. No orders to costs.