

(2000) 09 BOM CK 0061

In the Bombay High Court

Case No : Writ Petition No. 1876 of 1993

Hakimsingh Ram Sumer Singh Yadav

APPELLANT

Vs

Vardhaman Sthanakwasi Jain Shravak Sangh and Others

RESPONDENT

Date of Decision : 29-09-2000

Acts Referred:

Constitution of India, 1950 — Article 30(2)

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 3(2)

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

Citation : (2001) 1 BomCR 313 : (2001) 1 BOMLR 333 : (2000) 4 MhLj 626

Hon'ble Judges : N.V. Dabholkar, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : S.R. Barlinge, for the Appellant; Mrs. Uma S. Bora holding for S.C. Bora and K.S. Patil, A.G.P., for the Respondent

Judgement

B. H. Marlapalle, J.—The petitioner came to be appointed as an Assistant Teacher at Shri Mahavir Sthanakvasi Jain Vidyalaya, Jalna, which is run by the respondent No. 1 (Shri Vardhaman Sthanakwasi Jain Shravak Sangh) vide order dated 11.6.1968. While in service, he passed his B. Ed. examination in 1972 and came to be promoted to the post of Supervisor in July, 1974. On the basis of his merit and seniority, he was again promoted to the post of Assistant Head Master vide order dated 20.7.1982 and since then he is continuously working as Assistant Head Master in the said school. It is also to be noted that his appointments to the posts of Assistant Teacher, Supervisor as well as Assistant Head Master were duly approved from time to time by the Education Officer (Secondary).

2. Till 31.5.1993, one Shri B. N. Pande was holding the post of Head Master and on his retirement, the said post fell vacant from 1.6.1993. The petitioner had made a representation in anticipation to the respondent No. 1 on 1.2.1993 with a request to promote him to the post of Head Master on the retirement of Shri Pande. He had also relied upon provisions of Rule 12 of the Maharashtra

Employees of Private Schools (Conditions of Service) Rules, 1981 read with Schedule F and submitted that he being the senior most teacher in category B as set out in Schedule F to the said Rules, he was required to be promoted to the post of Head Master. He had also submitted a representation on 27.5.1993 for supply of copy of the seniority list and when the same was not made available to him, he himself prepared the seniority list and submitted it to the management. In spite of these representations, the respondent No. 1 appointed respondent No. 3 to the post of Head Master by superseding the claim of the petitioner, and, therefore, the petitioner approached this Court challenging the appointment of the respondent No. 3 as Head Master in the instant petition.

3. By order dated 27.9.1993, the petition was admitted and interim relief in terms of prayer clauses (D) and (E) was granted by a Division Bench of this Court. Prayer clauses (D) and (E) read as under :

"(D) Pending hearing and final disposal of this writ petition, the respondent No. 1 be restrained from appointing any other candidate as Head Master.

(E) Pending hearing and final disposal of this writ petition, the respondent No. 1 be directed to promote the petitioner temporarily and subject to the decision of the writ petition to the post of Head Master."

4. This order came to be challenged by the respondent No. 1 management before the Apex Court in Civil Appeal No. 468/1994 and by order dated 28.1.1994, this Court's order granting interim relief passed on 27.7.1993 came to be set aside insofar as it related to the appointment of the respondent No. 3 as the temporary Head Master and the Apex Court further ordered maintenance of status quo as it existed on that day. This Court was also requested to dispose of the petition positively within a period of four months by the said order.

We are informed that pursuant to the order passed by the Apex Court, the respondent No. 3 continued to hold the post of Head Master.

5. The petitioner has, at the first instance, raised the challenge to the status of the respondent No. 1 society. It has been more particularly submitted that the respondent No. 1 is not a minority institution and the minority status granted to it by respondent No. 2 or respondent No. 4 some times in 1984 is illegal and it ought to be declared that the respondent No. 1 is not a minority institution as contemplated within the meaning of Article 30 of the Constitution of India.

6. In support of these contentions, Shri Barlinge, the learned counsel for petitioner, submitted that though the respondent No. 1 is managed by persons belonging to the religious minority (Jain religion), it does not cater to the exclusive needs of minority community students or members of the said religious minority community. Reliance has been placed on the statistics of the teachers employed in the school run by the respondent No. 1 as well as the strength of the students. The figures indicate that about less than 25% teaching staff is from the Jain religion and about 10% to 15% students belong to the said religion. Shri

Barlinge, therefore, submitted that when the institution is catering to the needs of vast majority and a small number of students coming from religious minority are admitted, it must be held that the respondent No. 1 is not a minority institution within the meaning of Article 30 of the Constitution. Shri Barlinge, in support of these contentions, has relied upon the following judgments of the Supreme Court.

- (1) A.P.C.M.E. Society v. Government of A. P.
- (2) Frank Anthony P.S.E. Association v. Union of India.
- (3) St. Stephen's College v. University of Delhi.

7. On the point of merit, the petitioner contends that respondent No. 3 was, at the relevant time, in category "C" as set out in Schedule F to the Maharashtra Employees of Private Schools (Conditions of Service) Rules. 1981, while the petitioner was in category "B" and, therefore, it was not permissible for the respondent No. 1 management to promote the respondent No. 3 superceding the claim of the petitioner and especially when there was nothing adverse against the petitioner and he was promoted twice on the basis of the seniority as well as performance. Shri Barlinge submitted that even if the rule of seniority is not required to be followed for promotion to the post of Head Master in a minority school such promotions cannot be given to a teacher who is not in category "B" and these categories, being in descending order, must be followed strictly.

8. The respondent No. 1 has filed a detailed affidavit in reply. The major portion of the said affidavit is in support of the status of the respondent No. 1 as being a religious minority institution. The activities of respondent No. 1 and its administrative constitution have been elaborately explained and there is no doubt that the persons who have established and are managing the respondent No. 1 society belong to the Jain religion. Smt. Bora has referred to following two different judgments :

- (1) A.S.E. Trust v. Director, Education (Delhi Admn.).
- (2) Sree Jam Swetamber Terapanthi Vidyalaya v. State, wherein both the High Courts held that Jain religion is a religious minority within the meaning of Article 30 of the Constitution. We are in respectful agreement with the said observations. What is disputed before us is that the respondent No. 1 is not a minority institution because it does not cater to the exclusive needs of the religious minority. It is well established in law that so long as an institution is established and administered by a religious or linguistic minority, it must be held to be a minority institution irrespective of whether it caters to the requirements of the minority community alone or to the requirements of the other communities. The status of beneficiaries is immaterial to decide the status of the institution. Both these tests are satisfied in the instant case and, therefore, we hold that the respondent No. 1 is a society run by the religious minority and, hence, protected under Article 30(2) of the Constitution.

9. Section 3(2) of the Maharashtra Employees of Private Schools (Regulation) Act, 1977, states that notwithstanding anything contained in sub-section (1) thereto, the provisions of the Act shall not apply to the recruitment of the head of minority school and any other persons not exceeding 3, who are employed in such school and whose names are notified by the management to the Director or as the case may be the Deputy Director for this purpose. As per the said provision, the recruitment to the post of Head Master and 2 other persons is excluded from the purview of the Act in view of the protection granted under Article 30(2) of the Constitution. A question regarding the Constitutional validity of section 3(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, has already been decided by this Court (Coram: Pendse and Rane. JJ.) in the case of Gunvantlal K. Khamar v. State of Maharashtra and others. In the said case, this Court has referred to a number of judgments of the Supreme Court as well as the judgments of the Full Bench of Kerala High Court in the concluding paragraph, this Court observed :

The importance of the post of the Head of the institution has thus been reiterated in several decisions and considered as a right to administer the institution and protected by Article 30(1) of the Constitution. It is, therefore, not possible to accede to the submission of Shri Vashi that sub-section (2) of section 3 confers arbitrary powers upon the minority institutions. The apprehension that there is likelihood of misuse is not sufficient to strike down the sub-section as violative of Article 16. Indeed the departure from the general rule in respect of the recruitment of a head of minority school is protected by Article 30(1) of the Constitution. The contention that the right reserved to recruit head of the minority institution without complying with the provisions of the Act had no nexus to the object to be achieved by Article 30 cannot be accepted. The excellence of the education provided by an institution would depend directly on the excellence of the head of the school. Even while recruiting the head of a minority school, it is not permissible to bypass conditions of service pertaining to the minimum qualifications, but once the appointee is found to be eligible, then the choice cannot be questioned on the ground that the appointee was not a senior most teacher. To insist that only the senior most eligible teacher should be appointed to the post of a head of the school would amount to denial of right guaranteed by Article 30(1) of the Constitution. It was contended that sub-section (2) of section 3 of the Act would lead to oppression and discontentment amongst the senior teachers as the chance of promotion to the head of the school would be in jeopardy. A teacher entering service in a minority institution knows fully well that the right to be posted as head master does not depend upon the seniority but on the selection to be made by the management. In our judgment, the challenge to the validity of sub-section (2) of section 3 of the Act is without any merit and the appeal must fail."

10. It has been held by catena of decisions that notwithstanding the protection granted to a minority institution under Article 30(2) of the Constitution, the State Government has the right to regulate the working of such minority institutions

and this implies that the minority institutions must be administered in keeping with the provisions of law within the ambit of which such administration falls. When the appointments of Assistant Teachers, Supervisor. Assistant Head Master or for that matter Head Master, are being made, it is incumbent upon the minority institutions as well to ensure that all these appointees fulfil the requirements regarding eligibility, both educational as well as experience wise .We may usefully refer to recent judgment of the Supreme Court in this regard in the case of Board of Secondary Education and Teachers Training v. Jt. Director of Public Instructions, Sagar, and the observations of Their Lordships in para 3 read thus :

"The decisions of this Court make it clear that in the matter of appointment of the Principal, the management of a minority educational institution has a choice. It has been held that one of the incidents of the right to administer a minority educational institution is the selection of the Principal. Any rules which take away this right of the management have been held to be interfering with the right guaranteed by Article 30 of the Constitution. In this case, both Julius Prasad selected by the management and the third respondent are qualified and eligible for appointment as Principal according to rules. The question is whether the management is not entitled to select a person of their choice. The decisions of this Court including the decision in State of Kerala v. Very Rev. Mother Provincial, and Ahmedabad St. Xavier's College Society v. State of Gujarat, make it clear that this right of the minority educational institution cannot be taken away by any rules or regulations or by any enactment made by the State. We are, therefore, of the opinion that the High Court was not right in holding otherwise. The State has undoubtedly the power to regulate the affairs of the minority educational institutions also in the interest of discipline and excellence. But in that process, the aforesaid right of the management cannot be taken away, even if the Government is giving hundred per cent grant. We need not go into any other question in this appeal."

11. Rule 3 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, sets out qualifications required for the appointment of the head of the secondary school and it states that a person to be appointed as the head of secondary school shall be a graduate possessing bachelor's degree in teaching or education of a statutory University or any other qualification recognised by the Government as equivalent thereto and possessing not less than 5 years total full time teaching experience after graduation in a secondary school or a junior college of education, out of which at least 2 years experience shall be after acquiring degree in teaching or education. Sub-rule (2) of the said Rules also deals with the other conditions which are not required to be considered in the case at hand. Shri Barlinge, the learned counsel, referred to the provisions of sub-rule (3) of rule 3 and submitted that for appointment to the post of Head Master, the guidelines laid down in Schedule F appended to the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, must be followed and they are mandatory.

12. The respondent No. 1, in its affidavit, has clarified that the respondent No. 3, at the relevant time when he was appointed to the post of Head Master, was holding M. A. degree with bachelor's degree in education and had 12 years teaching experience. This clearly indicates that the respondent No. 3 fulfilled the requirements of rule 3(1)(b) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. So far as reliance placed on the provisions of sub-rule (3) of rule 3 of the said Rules is concerned, it is to be noted that guidelines for fixation of seniority of teachers in secondary schools are provided in Schedule F. the seniority is required to be drawn by following the provisions of rule 12 of the said Rules. These guidelines are required to be followed for adjudicating the issue of seniority. However, this Court in the case of Gunvantlal, (supra) by following the enunciations of the Apex Court held in no uncertain words that the issue of seniority cannot come in the way of the management for appointing a candidate of its choice to the post of head of the school under the protection available to it under Article 30 of the Constitution. The contentions raised by Shri Barlinge in this petition are, therefore, no more res integra and the reliance on the guidelines set out in Schedule F cannot assist his case especially when they are meant only for adjudicating the issue of seniority of the teachers.

13. We have also noted that the respondent No. 1 management had passed a resolution regarding the appointment of respondent No. 3. A proposal was submitted to the Education Officer (Secondary) for approval and the said appointment has been approved by the Education Officer by order dated 18.5.1993. The Education Officer, being a statutory authority for the supervision of the secondary schools, it must be presumed that he has examined the eligibility criteria properly and after having satisfied himself, has passed an approval order. The respondent No, 3 has been working on the said post for the last about 7 years, and in the facts and circumstances that we have discussed in the foregoing paragraphs, we find no case to disturb his appointment.

14. In the result, the challenge raised by the petitioner must fail and the petition is hereby dismissed. Rule discharged. No costs.