
(2016) 02 BOM CK 0158
In the Bombay High Court
Case No : Writ Petition No. 6399 of 2015

Jahed Ilahi Khan Pathan

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-02-2016

Acts Referred:

Citation : (2016) 2 AIRBomR 493 : (2017) 2 ALLMR 186 : (2016) 3 BCR 123 : (2016) 5 MhLJ 574

Hon'ble Judges : S.S. Shinde and P.R. Bora, JJ.

Bench : Division Bench

Advocate : V.D. Gunale, Advocate h/f. S.G. Rudrawar, Advocate, for the Appellant; S.D. Kaldate, AGP, for the Respondent

Final Decision : Partly Allowed

Judgement

S.S. Shinde, J.—1. Heard.

2. Rule. Rule made returnable forthwith, and heard with the consent of the parties.

3. This Writ Petition takes exception to the impugned order dated 16.02.2015 passed by the Education Officer, declaring the petitioner surplus teacher from the respondent no. 3 school and holding him junior than the respondent nos. 4 and 5, and also to the impugned communication issued by the respondent no. 2 confirming the order dated 16.02.2015 by communication dated 06.06.2015.

4. It is the contention of the petitioner that, he is serving in respondent no. 3 school. He is possessing qualification of S.S.C.D. Ed., and his date of birth is 5th July, 1970. The petitioner was appointed in the respondent no. 3 school on 01.11.1991, on clear, permanent and vacant post, after following due procedure. The Education Officer granted approval to his appointment, and he is permanent employee of the respondent no. 3. His service record is unblemished. Respondent no. 3 school is a recognized and receiving 100% grant-in-aid from the State Government.

5. It is the case of the petitioner that, respondent no. 2 declared petitioner as surplus, though he is senior to respondent nos. 4 and 5. As per the provisions of the Maharashtra Employees of Private Schools [Conditions of Service] Rules, 1981, [in short "the said Rules, 1981"], and Schedule "F" of the said Rules, 1981, the respondent no. 3 has prepared seniority list of the teaching and non teaching staff, working in the said school, which is duly signed by all the teaching as well as non teaching employees. In the said seniority list, the name of the petitioner is at serial no. 19, and the names of the respondent nos. 4 and 5 are at serial no. 21 and 25 respectively. The petitioner has placed on record copy of seniority list prepared by the respondent no.3. In the year 2013-14, during inspection of respondent no. 3 School, the respondent no.1 found that, there is no sufficient workload available in the said school. Therefore, respondent no. 2, declared 3 posts of the teachers surplus.

6. It is the case of the petitioner that, for the academic year 2014-15, 5 teachers are declared surplus. The Headmaster of the said school has sent the names of the teachers, who can be declared as surplus, as per the seniority including the names of the respondent nos. 4 and 5. The petitioner has placed on record copy of the list of surplus teachers forwarded by the Headmaster for the academic year 2014-15.

7. It is the case of the petitioner that, respondent no. 2 conducted the hearing on 27th January, 2015, and during the course of hearing, the petitioner pointed out that, the respondent nos. 4 and 5 are junior to him. Respondent no. 4 was appointed as untrained teacher, and she has acquired the qualification of C.T.C. on 25th October, 1991. The said C.T.C. is not equivalent to D.Ed. The D.Ed. training course is of 2 years duration, whereas C.T.C. is of one year duration, and it is Craft Teachers Certificate Course, whereas appointment of respondent no.5 in the said school is dated 12th June, 1993, and the petitioner is appointed on 1st November, 1991, and therefore, the petitioner is senior most to the respondent nos. 4 and 5.

8. It is the case of the petitioner that, the Education Officer, without considering the Rules for seniority and Schedule "C", "D" and "F" of the said Rules, 1981, decided seniority amongst the employees and held that, respondent nos. 4 and 5 are senior than petitioner, and 4 teachers including the petitioner held junior in the said school, and those were declared surplus. The salary of the petitioner and other 3 teachers, who were declared as surplus, has been withheld by the respondent no.2. The petitioner has placed on record copy of order dated 16th February, 2015, passed by the respondent no.2.

9. The learned counsel appearing for the petitioner submits that, the order of the respondent no. 2 dated 16.02.2015, which is impugned in this Petition, is against the provisions of law and against the facts inasmuch as the petitioner is appointed in the year 1991 and the respondent no. 5 was appointed in the year 1993, and the respondent no. 4 did not possess the D.Ed. qualification at the relevant time, and the petitioner was appointed on 1st November, 1991, being

fully qualified. It is submitted that, the Education Officer himself did not conduct the hearing, however, one Shri Garkar, who was Deputy Education Officer conducted the hearing. The said Deputy Education Officer, deliberately and under the political pressure of political organizations, submitted his report and on the basis of that report, the Education Officer illegally passed the order, declaring the petitioner and other 3 teachers as surplus. It is submitted that, the Education Officer has illegally directed to appoint respondent no. 5 as trained graduate in the said school, who is junior most. Though, there is no post of trained graduate in the school and already one Shri Shaikh Nasima as per her seniority has been appointed as a trained graduate in the said school, and respondent No. 2 has also given approval to her appointment, hence, there was no question of appointing the respondent no. 5 as trained graduate teacher.

10. It is further submitted that, the respondent no. 2 made a farce of hearing on 29th May, 2015, and without considering the record and legal aspects confirmed the decision dated 16.02.2015 taken earlier by him, vide communication dated 06.06.2015. It is submitted that, the Education Officer has not considered the Schedule-C and F of the said Rules, 1981. It is submitted that, respondent no. 4, who is junior most, acquired qualification of C.T.C. for the first time in the year 1991. The said qualification is not equivalent to D.Ed. whereas the petitioner is having qualification of D.Ed. which is of 2 years duration. It is submitted that, the said seniority list prepared by the management, which was duly signed by all employees, and in the said seniority list, names of the respondent no. 5 stood at serial no. 21 and respondent no. 4 stood at serial no.25, and the name of the petitioner stood at serial no. 19. The said seniority list was not challenged by the respondent nos. 4 and 5. Therefore, the learned counsel appearing for the petitioner submits that, Petition deserves to be allowed.

11. Respondent no. 2 has filed affidavit-in-reply. It is stated in the said affidavit-in-reply that, in the year 2012-13, there were 14 posts of teaching graduate staff, sanctioned for the standard 8th to 10th. Two graduate teaching staff was sanctioned for standard 5th to 7th. For 5th to 7th standard, 9 posts of undergraduate teaching staff are sanctioned. In respondent No. 3 School, the petitioner and respondent nos. 4 and 5 were working as undergraduate teachers for 5th to 7th standard. The petitioner is having qualification of D.Ed. and the respondent no. 4 is having qualification of C.T.C. Respondent No. 4 is working as Craft Teacher since the date of her appointment. Respondent no. 5 is having qualification of D.Ed. and after that, he acquired qualification of graduation i.e. B.A. It is stated in the said affidavit in reply that, the petitioner was appointed on 01.11.1991, whereas respondent no. 4 was appointed on 25.10.1991, having qualification of C.T.C. and the respondent no. 5 was appointed as undergraduate teacher on 12.06.1993.

12. It is stated in the said affidavit in reply that, in the year 2013-14, the staffing pattern was sanctioned to the respondent no. 3 school. In the said staffing pattern, 9 posts of graduate teachers for standard 9th and 10th standard are

sanctioned. It is stated that, 8 graduate posts were also sanctioned for standard 6th to 8th standard and three undergraduate posts are sanctioned for 5th standard. It is stated that, in the year 2013-14, graduate teachers are sanctioned for 6th to 8th standard for the first time. Prior to that, undergraduate teachers were sanctioned for 5th to 7th standard as per the ratio 3 : 1 i.e. 3 posts of undergraduate teachers and one post is of graduate teacher. It is stated that, in the year 2013-14 for 6th to 8th Standard, 8 posts and for standard 9th to 10th, 9 posts, in all total 17 graduate teachers posts are sanctioned. Whereas, only three posts of undergraduate teachers are sanctioned for 5th standard. In the year 2013-14, six undergraduate teachers posts are surplus due to decrease in the strength of students in the respondent no.3 school. Among six surplus teachers, the petitioner and respondent nos. 4 and 5 are included. It is stated that, as per the list, the petitioner is senior to respondent no. 5 only. But, the respondent no. 5 is having graduate qualification, hence he was not declared surplus. It is stated that, one post of graduate teacher is increased in the year 2013-14 and on that increased graduate teachers post, respondent no. 5 was shown as per the Rules and Regulations.

13. It is further stated that, the respondent no. 4 is having qualification of C.T.C. and the petitioner is having qualification of D.Ed. and it makes no difference in the appointment as both the qualifications are as per MEPS Rules, 1981, in Schedule "B" for the appointment of undergraduate teachers.

14. Respondent no. 5 has filed affidavit-in-reply. It is stated in the said affidavit-in-reply that, there is close relations between the petitioner and the Headmaster of the school. The petitioner is the husband of sister of the Headmaster. The President and Secretary are also close relations with the petitioner. The list submitted by the Headmaster was with a mala fide intention. The Education Officer corrected the seniority and rightly declared respondent No. 5 as surplus teacher. Respondent no. 5 approached the respondent no. 2 and the respondent no.2 keeping in view qualification possessed by the petitioner did not declare respondent no. 5 surplus. The Education Officer conducted hearing on the applications filed by the Headmaster and the petitioner, and vide order dated 06.06.2015 has confirmed the order dated 16.02.2015, by assigning proper reasons. It is further stated that, the impugned orders passed by the Education Officer are keeping in view the educational qualification of the respondent no.5, therefore, this Court may not interfere in the impugned decision.

15. The learned counsel appearing for the respondent no.4 invited our attention to the Maharashtra Employees of Private Schools [Conditions of Service] Rules, 1981, and submits that, C.T.C. is equivalent to D.Ed. and to that effect there is entry in Schedule "B", and also it is mentioned in the affidavit in reply filed by the Education Officer. Therefore, the learned counsel appearing for the respondent no. 4 submits that, the respondent no. 4 was appointed prior to the petitioner, and therefore, she is treated as senior to the petitioner.

16. We have heard the learned counsel appearing for the petitioner, learned AGP

appearing for the respondent nos.1 and 2, learned counsel appearing for the respondent no. 3 and the learned counsel appearing for the respondent nos.4 and 5. With their able assistance, perused the pleadings in the petition, annexure thereto, affidavit-in-replies filed by the respective respondents, and the relevant Rules and the Judgment of the Bombay High Court cited across the bar. The relevant Rule determining the seniority list is Rule 12 of the said Rules, 1981, which reads thus:

12. Seniority list.

(1) 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". The seniority list so prepared shall be circulated amongst the members of the staff concerned and their signatures for having received a copy of the list shall be obtained. Any subsequent change made in the seniority list from time to time shall also be brought to the notice of the members of the staff concerned and their signatures for having noted the change shall be obtained.

(2) Objections, if any, to the seniority list or to the changes therein shall be duly taken into consideration by the Management.

(3) Disputes, if any, in the matter of inter se seniority shall be referred to the Education Officer for his decision.

17. It appears that, respondent no. 3 school prepared seniority list of the teachers and the same was forwarded to respondent no.2 by the Headmaster of respondent no.3 school. The said seniority list is placed on record at Exhibit-A Page 18 to 20 of the compilation of the Writ Petition, wherein the petitioner's name is shown at serial no. 19, and name of the respondent no.4 is shown at serial no.25, and name of the respondent no.5 is shown at serial no.21. It appears that, petitioner, respondent nos.4 and 5 are teaching all the subjects, which are shown in the column . Keeping in view of the provisions of Rule 12 of the said Rules, 1981, so as to fix seniority. The guidelines laid down in Schedule "F" are required to be followed. In Schedule "F", it is stated that, the seniority of primary school teachers in Primary Schools shall be based on the date of joining of service and on continuous officiation. In Mangala d/o. Anand Chowdhary Vs. Shreyas Shikshan Prasarak Mandal & others , 1998 [3] Mh.L.J. 384, the learned Single Judge of the Bombay High Court Bench at Aurangabad, while considering the provisions of Maharashtra Employees of Private Schools [Conditions of Service] Rules, 1981, and in particular Rule 2 [K] held that, C.T.C. certificate examination is not equivalent to passing D.Ed. examination. In para 8 of the said Judgment, it is held thus:

"8. Each claim and contention of the petitioner is required to be rejected as the same is either baseless or contrary to the legal provisions. Firstly, the petitioner does not possess necessary qualification for being appointed as a teacher for primary school. The discussion of Schedule "B" made above is clearly shows

that C.T.C. certificate examination is not equivalent to passing D.Ed. examination. A perusal of the certificate filed at page 19 of the petition shows that the same is granted to the petitioner for period work and book binding regular teacher course i.e. completing such course in April, 1989. No serious interpretation of law is necessary to conclude that primary students are never taught by craft like book-binding. This course is taught to secondary school students and, therefore, possession of CTC certificate or certificate of CTC examination does not clothe the petitioner with necessary qualification for appointment as primary school teacher and CTC examination certificate is not equivalent to D.Ed."

In the case of In charge President, Shri Gurudeshmukh Ashram Trust, Nanded & another Vs. Jaywant Tukaram Pandagale & another , 2010 [1] Mh.L.J. 178 while considering Schedule ""F"", Guideline 2, Category ""C"" and Note 3 of the Rules, 1981, the learned Single Judge of the Bombay High Court, Bench at Aurangabad, has taken a view that, the only criteria for fixation of seniority of trained graduate teachers is the continuous officiation in such post of teacher, depending upon their position on the ladder.

18. Admittedly, in the facts of the present case, respondent no. 4 does not possess D.Ed. qualification. As already observed, in the case of Mangala d/o. Anand Chowdhary Vs. Shreyas Shikshan Prasarak Mandal & others [cited supra], it is held that, C.T.C. certificate examination is not equivalent to passing D.Ed. examination. Though, the respondent no. 5 has acquired B.A. qualification subsequent to his appointment, as the same qualification was not necessary qualification for his appointment as primary teacher. His appointment was on 12th June, 1993, and the petitioner's appointment was on 1st November, 1991.

19. In the light of the discussion in the foregoing paragraphs, in our considered view, respondent no.2 has not kept in view the correct position borne out of the record maintained by the respondent no.3, and also relevant Rule and Schedules thereunder, and also Judgments referred hereinabove, while considering seniority. It further appears that, the Education Officer instead of considering seniority on the date on which list of surplus teacher has been drawn, in case of respondent no.5 observed that, respondent no. 5 being graduate has been appointed from the said category, and shown senior to the petitioner. But, according to us, the relevant date is the date on which respondent no.2 had taken decision to declare teachers surplus. Therefore, seniority list maintained as per relevant rule of the said Rules, 1981, was the relevant factor.

20. In that view of the matter, the impugned order passed by the respondent no. 2 dated 16.02.2015 [Exhibit-D Page 26], and also the impugned communication dated 06.06.2015 [Exhibit-F Page 31] stand quashed and set aside. Respondent no. 2 is directed to reconsider the issue of surplus teachers, keeping in view the Rule 2 [K], Rule 12, and other relevant Rules and Schedule ""B"", ""C"" and ""F"" under the said Rules, and also Judgments of the High Court including the reported Judgments of which reference is made hereinabove, after hearing the

petitioner, respondent nos. 3 to 5, and any other affected employees, if any, as expeditiously as possible, however, within 12 weeks from today and communicate the said decision to all concerned within aforesaid period.

21. Rule made absolute on above terms. Petition is allowed to above extend.