

(2008) 06 BOM CK 0060
In the Bombay High Court
Case No : Writ Petition No. 953 of 1998

Jivan Vikas Shikshan Sanstha and Others	APPELLANT
Vs	
Shashikant Shravan Chaudhari and Another	RESPONDENT

Date of Decision : 30-06-2008

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 12, 2, 3

Citation : (2008) 5 BomCR 690 : (2008) 6 MhLj 43

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : V.A. Gangal and Ashok Gade, for the Appellant; M.B. Mehre, for the Respondent

Final Decision : Allowed

Judgement

D.Y. Chandrachud, J.—These proceedings arise out of a judgment of the School Tribunal in an appeal u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The First petitioner conducts a Post Basic Ashram School at Shigaon. The school was recognized in June, 1990 and was allowed to conduct secondary school classes. Besides the Ashram school at Shigaon, the petitioners conduct a secondary school at Palghar and at Dandi. All the schools are in receipt of grant-in-aid from the Government. The first respondent was an assistant teacher who had completed his B.Sc. in 1988 and his B.Ed. in 1989 and his date of appointment was 18th June, 1990. The management of the school passed a resolution of its managing committee on 4th July, 1993 resolving to appoint him as a Headmaster with effect from 7th July, 1993. On 18th August, 1993 the Project Officer Integrated Tribal Development, granted his approval to the appointment of the first respondent for the academic year 1993-94. For the year 1994-95 the management once again resolved to submit a proposal to the Project Officer for the approval of the first respondent

as a Headmaster in a permanent capacity. By a communication of 18th May, 1995 the Project Officer informed the management that insofar as the First respondent was concerned his appointment had been approved only for the year 1993-94. The Project Officer further stated that for 1995-96 a combined seniority list should be prepared of all the secondary schools which were being conducted by the management and on that basis an appointment should be made to the post of Headmaster in the Post Basic Ashram School at Shigaon of the seniormost teacher. On 10th June, 1995 the first respondent was reverted to the post of Assistant Teacher from the post of Headmaster. The first respondent challenged the appointment before the School Tribunal. The challenge succeeded and by the order that is impugned in these proceedings the School Tribunal allowed the appeal, directing the management to reinstate the first respondent with consequential benefits.

2. The order passed by the School Tribunal was stayed when the Petition was admitted, by an order of a Learned Single Judge dated 17th March, 1996.

3. On behalf of the petitioners it has been urged that in view of the judgment of the Full Bench in *Suryakant Sheshrao Panchal Vs. Vasantrao Naik Vimukta Jati, Bhatakya Jamati Aadarsh Prasarak Mandal and Others*, , the Post Basic Ashram School conducted by the petitioners which is an institution conducting secondary school classes falls within the purview of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the rules framed thereunder. Rule 3 provides for the qualifications for appointment as a Head of the secondary school; the requirement being of a graduate possessing a Bachelor's degree in teaching and possessing not less than five years' full time teaching experience after graduation in a secondary school, out of which atleast two years shall be after acquiring the Bachelor's Degree in teaching or education. In the present case, it is urged that the first respondent did not meet this qualification and his appointment was approved by the Project Officer only for the year 1993-94. Secondly, it was urged that under Note 5 to Rule 2 of Schedule F to the Rules a combined seniority list was liable to be prepared where the management runs more than one school. The Project Officer had directed the management to prepare a combined seniority list of all the three secondary schools of the petitioners and it is an admitted position that the first respondent was not the seniormost Assistant Teacher. Consequently in the year 1994-95 there was no approval to the appointment of the first respondent. Though as a matter of fact, the management had desired to appoint the first respondent in a permanent capacity, his appointment could not be consistent with the rules both by reason of the fact that he did not fulfil the required experience when he was initially appointed and because he was not the seniormost Assistant Teacher.

4. On the other hand, Counsel appearing for the first respondent urged that the resolution which was passed by the management in the meeting of the managing committee on 4th July, 1993 was for his appointment as a Headmaster with effect from 7th July, 1993. Learned Counsel submitted that the approval of the

Project Officer was sought to the appointment of the First respondent as a permanent Headmaster, when the management submitted a proposal on 12th July, 1993 for the year 1993-94. Again for the subsequent year it was urged that the management had intended to fill up the post by the appointment of the First respondent in a substantive capacity and that consequently it would stand estopped from setting up a case that the first respondent was ineligible on the ground that he did not fulfil the requirements of experience or of seniority. Moreover, it was urged that the reversion of the first respondent from the substantive post of Headmaster to an Assistant Teacher was without holding an enquiry and would therefore have to be quashed and set aside. The submission was that upon appointment to the post of Headmaster, the first respondent acquired a substantive entitlement to fall in category B to Rule 2 of Schedule F from which he could not be reverted without holding an enquiry.

5. In dealing with the rival submissions which have been urged on behalf of the contesting parties, it would merit emphasis that in view of the judgment of the Full Bench in Suryakant Sheshrao Panchal's case (supra), it is now a settled position in law that the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the rules framed thereunder would govern the service of an employee in the case of an Ashram School which is conducting classes in secondary education. There is no dispute about the fact that the school in question is one of the three schools conducted by the petitioners each of them being secondary schools. Under Rule 12 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 every management is required to maintain and prepare a seniority list of the teaching staff including Headmaster and Assistant Headmaster and of the non-teaching staff in the school in accordance with the guidelines laid down in Schedule F. Note 5 to Rule 2 of Schedule F provides that where a management runs more than one school, the seniority list for a particular cadre shall be a combined seniority list of all persons in that cadre working in all the schools.

6. The contention of Counsel appearing for the first respondent is that the first respondent was the seniormost teacher in the Post Basic Ashram School at Shigaon, but that submission suffers from a basic error. Since the management conducted three secondary schools, the requirement under the rules was for the preparation of a combined seniority list on the basis of which the post of a head had to be filled up by appointment of a seniormost teacher. It is not the case of Counsel appearing for the first respondent that the first respondent was the seniormost teacher in the combined seniority list of all the three schools. On the contrary, Exhibit D to the Petition which is a copy of the seniority list would indicate to the contrary. Undoubtedly that seniority list is of the teaching staff as on 13th June, 1995, but even if the seniority on the date of the original appointment of the first respondent is taken into account, it is not the case of the first respondent that he was the seniormost teacher amongst all the qualified Assistant Teachers of the three secondary schools.

7. The management had resolved to appoint the first respondent in a substantive capacity by its resolution of 4th July, 1993. The record, however, shows that the Project Officer approved the appointment of the first respondent as head only for the academic year 1993-94. In fact thereafter, by a communication of 18th May, 1995 the Project Officer drew the attention of the management to the fact that the appointment of the First respondent was valid only for the year 1993-94 and that thereafter from 1995-96 a combined seniority list would have to be prepared of all the employees in the three secondary schools on the basis of which an appointment would have to be made to the post of Headmaster at the Post Basic Ashram School, Shigaon of the seniormost teacher. As a matter of fact, for the year 1994-95 there was no approval of the Project Officer to the appointment of the first respondent. On 10th June, 1995 the first respondent was reverted to the substantive post of Assistant Teacher.

8. The situation therefore as it emerges is that the First respondent was on the date of his initial appointment not the seniormost Assistant Teacher and his appointment was not approved in a substantive capacity. The approval was valid for one year viz 1993-94. The management proceeded to bring an end to the appointment of the first respondent as Head in June 1995 in accordance with the direction of the Project Officer that it should prepare a combined seniority list of all the three secondary schools run by the same management. This direction was consistent with the provisions of Note 5 to Rule 2 of Schedule F and had to be complied with by the management.

9. There is no merit in the submission that an enquiry ought to have been held. The first respondent did not hold a substantive appointment to the post of Headmaster. His appointment was approved only for the year 1993-94. There could have been no estoppel against the statute for the rules which were framed under statute postulate the manner in which the seniority list has to be prepared and appointments are to be made.

10. The judgment of the School Tribunal has completely failed to assess both the nature of the appointment of the First respondent and whether the first respondent met the required condition for appointment as a Headmaster in a substantive capacity. On both the counts for the reasons noted above, the view which has been taken by the School Tribunal is unsustainable. The first respondent was not the seniormost teacher and his appointment as noted above was approved only for the year 1993-94. Counsel appearing for the management has stated before the Court that the management would hereafter strictly follow the seniority list in making appointments to the post of headmaster and the claim of the first respondent would be considered in accordance with law when a vacancy occurs. The Petition would have to be allowed and is accordingly allowed. Rule is made absolute in terms of prayer Clause (c) and the judgment of the School Tribunal dated 16th January, 1998 shall accordingly stand set aside.

11. The Petition shall stand disposed of in the aforesaid terms. There shall be no order as to costs.