
(2002) 09 BOM CK 0088
In the Bombay High Court
Case No : Writ Petition No. 737 of 1997

J.S. Mishra

APPELLANT

Vs

Education Officer (Secondary), Zilla Parishad and Others

RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 16(2A)
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 12

Citation : (2003) 4 ALLMR 213 : (2003) 1 BomCR 509 : (2003) 1 MhLj 589

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : V.V. Bhangde, for the Appellant; A.S. Killor, A.G.P. for Respondent No. 1 and A.C. Dharmadhikari, for the Respondent

Final Decision : Dismissed

Judgement

S.A. Bobde, J.—This petition is directed against an order dated 20-11-1996 by which the Education Officer has held that respondent No. 2 Joshi is senior in service to the petitioner-Mishra. Petitioner's seniority has been fixed in category "C" of the Schedule "F" to the Rules framed under the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 (hereinafter, called as the Rules) with effect from 28-11-1998. This is the date on which the petitioner's degree of Senior Hindi Shikshak Sanad has been recognised as a qualification for teacher in category "C".

2. The facts in brief are :

The petitioner was appointed on 13-7-1970 as an Assistant Teacher in respondent No. 4's school. His qualifications were B. Com. with Senior Hindi Shikshak Sanad.

3. The respondent No. 2-Joshi was appointed as an Assistant Teacher on

2-8-1976. His qualifications were M.A. B.Ed.

4. According to the law in force then, i.e. the Secondary Schools Code, the following categories of teacher existed-

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 of:

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 year Course); or

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

Category C : Holders of:

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

Category D : Holders of S.S.C., S.T.CTDip. Ed.,/Dip. T. (one year course) or its equivalent, Category E : Holders of:

Untrained Graduates or holders of equivalent qualifications.

Category F : Holders of:

Untrained Matriculates or holders of equivalent qualifications.

Category G : The rest.

There can be no dispute that respondent No. 2 Joshi would, by virtue of the fact that his qualifications were M.A. B.Ed., be entitled to be categorized in to be categories in category "E" since he did not have the degree of B.Ed.; and the degree he had was not recognised as a qualification.

4. The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act was enacted in the year 1977. Rules were framed under that Act in the year 1981. Rule 12 require the framing of seniority list. The relevant part of Schedule *F" which provides for various categories reads as follows :

Category A : Heads of Secondary Schools having an enrolment of students above 500 and Principals of Junior Colleges of Education having more than four Divisions on the basis of the dates of their appointments to the respective posts.

Category B : Heads of secondary schools having an enrolment of students of 500 and below, Principals of Junior Colleges of Education having four or less Divisions and Assistant Heads of Secondary schools having more than 20 classes on the basis of the dates of their appointments to the respective posts.

Category C: Holders of-

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

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

B.A./B.SC./B.Com./Dip. T (old two years course); or

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

[B.A. or its equivalent plus Senior Hindi Shikshak Sanad with five years service; or Junior Hindi Shikshak with ten years service [after obtaining both academic and training qualifications].]

Category D ; Holders of-

B.A., B.Sc./B.Com/S.T.C./Dip.Ed. (one year course) [Senior or Junior Hindi Shikshak Sanadi or its equivalent.

5. Before 28-11-1988 the petitioner's degree of Senior Hindi Shikshak Sanad with five years' service was not considered to be a qualification for enabling a teacher to be fixed in category "C". The bracketed portion above was introduced by notification No. PST/1087/36/SE-3-Cell dated 28-11-1988. The explanation reproduced above was introduced simultaneously. It appears that the Education Officer who had alone shown the petitioner as senior to respondent-Joshi refixed their seniority and showed Joshi as senior to petitioner. This was done sometime on or about 4-4-1995. The respondent No. 2 Mishra challenged the action of the Education Officer by filing Writ Petition No. 3266 of 1995. This Court disposed of that petition by accepting respondent No. 2's contention that the seniority list ought not have been changed without affording him a hearing. The Division Bench of this Court which heard the writ petition directed the Education Officer to decide the objection of the parties to the seniority list afresh by granting necessary opportunity and upon consideration of all relevant aspects,

6. The impugned order has been passed thereafter on 28-11-1970. The education Officer has in exercise of power conferred under Rule 12(3) of the Rules held that respondent No. 2 Joshi is senior to Mishra and Mishra's seniority is fixed in category "C" with effect from 28-11-1988.

7. The main contention raised by Mr. Bhangde, learned counsel, for the petitioner is that Joshi could not have been shown senior to Mishra in category "C" in view of the fact that petitioner-Mishra is admittedly senior in service having been appointed on 13-7-1970. Since he always had the degree of Senior Hindi Shikshak Sanad, he is entitled to be considered as senior. According to the

learned counsel, the explanation to Schedule "F" requires the Education Officer to fix the seniority of a teacher with the qualification Senior Hindi Shikshak Sanad in category "C" with reference to "the date of their acquiring both the qualifications". The explanation reads as under :

Explanation--On and after the date of publication of this notification in the Official Gazette and without affecting the promotion made until that date the inter se seniority of teachers with qualification Senior Hindi Shikshak Sanad or Junior Hindi Shikshak Sanad in service should be fixed in Category "C" with reference to the date of their acquiring both the qualifications, i.e. B.A. or its equivalent and the Senior (5 years) or Junior Hindi Shikshak Sanad (10 years) as the case may be by the teachers concerned."

8. According to the learned counsel, since the petitioner had acquired the qualification in the year 1970, i.e. when he was appointed he must be taken to have acquired the qualification in that year itself. A brief look at the way the Rule has undergone a change, reproduced earlier, would show that the contention is not correct in law. The degree of Senior Hindi Shikshak Sanad with five years service was not a qualification for a teacher in category "C" at any point of time earlier. It is only on 28-11-1988 that it was introduced for the first time. It is the very notification which recognised that degree as a qualification, which also provided the manner in which the seniority of such teachers should be fixed in category "C". Reading the amendment to Schedule F, namely the amendment by which the degree of Senior Hindi Shikshak Sanad is introduced as qualification along with the explanation, it clearly does the following-

Firstly, it holds that the degree of Junior Hindi Shikshak Sanad with 10 years service will be treated as a qualification for fixation of senior in Category C;

Secondly, it fixes the time with reference to which the seniority of such teacher should be fixed and it fixes that time as the date of their acquiring both the qualifications.

9. The question that has been raised at the bar is as to the meaning of the phrase "the date of their acquiring both the qualifications". On a reading of text and context of the amendment, I am of view the date of their acquiring both the qualifications contemplates the date on which the degree became a qualification, i.e. 28-11-1988 or in a case where the qualifications are acquired subsequent to 28-11-1988- the date on "which the degree was acquired. A distinction must be made between the "degree" and a "qualification". A person may have a degree which does not qualify him/her to hold a particular post simply because it is not prescribed as such. Therefore, in a case such as this, where an employee has acquired a degree long back, it cannot be said that he therefore acquired the qualification also. Simultaneously, he must be taken to have acquired the qualification when the degree was prescribed as a qualification. In the present case, that date is 28-11-1988, the date on which the degree of Senior Hindi Shikshak Sanad was deemed a qualification by the amendment. Moreover, a

plain reading of the explanation suggests that it is intended to have prospective effect which is apparent from the words in the explanation which state that the seniority should be fixed without affecting the promotion made until that date.

10. Mr. Dharmadhikari, learned counsel, further relied on, and in my view rightly, section 16 of the M.E.P.S. Act which confers the rule making power on the State Government. Section 16 insofar as it is relevant reads as follows :

"Section 16. Rules.--(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :

(a) the minimum qualifications for recruitment of employees of private schools (including its procedure);

(b) their scales of pay and allowances;

(c) their post-retirement and other benefits;

(d) the other conditions of service of such employees including leave, superannuation, re-employment and promotion;

(e) the duties of such employees and Code of Conduct and disciplinary matters;

(f) the manner of conducting enquiries;

(g) any other matter which is required to be or may be prescribed. [(2A) The power to make rules under Clauses (a) to (d) conferred by Sub-section (2) shall include the power to give retrospective effect to the rules or any of them but not retrospective effect shall be given to any rule so as to prejudicially affect the interest of any person to whom such rule may be applicable.]

In particular a reference to Sub-section (2A) shows that the intention of the legislature is very clear that no retrospective effect shall be given to any rule so as to prejudicially affect the interest of any person to whom such rule may be applicable. It is clear that if the argument on behalf of the petitioner is accepted and the fact that the post of Hindi Shikshak Sanad has been declared to be a qualification in the year 1988 by the amendment to the rule is given effect to as desired by the petitioner, it would result in giving him a higher place in seniority in Category C over the respondent Joshi even though the petitioner was otherwise untrained for the purpose of fixation in Category B under the Schools Code and in Category C under the subsequent Act and Rules.

11. The next point urged on behalf of the petitioner is that the fixation of respondent No. 2's seniority over the petitioner is vitiated by the delay and laches. According to the learned counsel, the amendment to the Rules by which the petitioner's degree of Hindi Shikshak Sanad was recognized as a qualification, was given effect to in the year 1988. Throughout thereafter the petitioner has been shown as senior to the respondent-Joshi. Thus, Joshi's

objection to Mishra as having been shown senior, which was raised in the year 1994, is vitiated by delay and laches. In support of this proposition, Mr. Bhangde, learned counsel, for the petitioner mainly relied on a decision of Supreme Court in R.S. Makashi and Others Vs. I.M. Menon and Others, . He relied, in particular, on paragraph 16 of the judgment of the Supreme Court. The relevant part of the observations of the Supreme Court are as follows :

"It was urged by the respondents before the High Court that in view of the aforesaid conduct of the petitioners, it was not legally open to them to raise a challenge against the said Resolution in the writ petition filed after eight years and thereby upset the seniority position of personnel which had become settled during the course of the period of eight years and disrupt rights which have become vested in others by virtue of the various postings and promotions that have taken place in the meantime."

I find the said observations not applicable to the present case since there has been no change in the status of the petitioner or the respondent since 1988. Both have remained Assistant Teachers and neither of them has got any promotion or posting in the meanwhile. The reliance on the said decision is, therefore, misplaced.

12. The learned counsel for the petitioner next referred to the decision of Supreme Court in Ramvir Singh Vs. Union of India (UOI) and Others, . I find this decision of no assistance to the petitioner particularly since the case before Their Lordships involved the correction of a mistake of educational qualification after a period of about ten years which resulted in making the respondent No. 4 therein senior to the petitioner. The present case is not a case where a mistake has been crept. It is a case where seniority has been refixed in accordance with the amendment to the Rules, in particular Schedule F. In the result, the petition must fail and is hereby dismissed. There shall be no order as to costs.