
(2019) 01 BOM CK 0147
In the Bombay High Court
Case No : Writ Petition No. 2928 Of 2016

Khalil Ahamad Khan

APPELLANT

Vs

Amolakchand Mahavidyalaya And Ors

RESPONDENT

Date of Decision : 31-01-2019

Acts Referred:

Maharashtra University Act, 1994 — Section 59
Maharashtra Non-Agricultural Universities And Affiliated Colleges Standard Code
(Terms And Conditions Of Service Of Non-teaching Employees) Rules, 1984 — Rule 8,
8(h), 8(2)(h), 14, 14(4), 14(7)

Citation : (2019) 2 AllMR 339

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : K.V. Deshmukh, A.S. Deshpande, S.B. Bissa, Anup Dhore

Final Decision : Partly Allowed

Judgement

Manish Pitale, J.

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.

2. By this writ petition, the petitioner has challenged judgment and order dated 04.04.2016 passed by the University and College Tribunal, Nagpur, whereby an appeal filed by the petitioner before the Tribunal was dismissed. By the said appeal filed under Section 59 of the Maharashtra University Act, 1994, the petitioner had raised a grievance in respect of order/resolution dated 12.06.2013 passed by respondent nos. 1 and 2, reverting the petitioner from the post of Head Clerk in the Amolakchand Law College, Yavatmal, to the post of Senior Clerk with effect from 12.03.2013. It was the case of the petitioner that respondent no.5 was appointed by promotion on the said post of Head Clerk in the respondent no.1 College while the petitioner on the same date i.e. 01.06.2006 was appointed by promotion in the Amolakchand Law College and that in the absence of determination of inter se seniority between the two, the

petitioner could not have been reverted to the post of Senior Clerk.

3. The facts in brief, leading up to the filing of the present writ petition, are that respondent no.5 was appointed in the post of Library Attendant in the respondent no.1 College i.e. Amolakchand Mahavidyalaya, Yavatmal on 28.07.1981 and thereafter the petitioner was appointed on the said post on 14.12.1981. With passage of time, the petitioner and respondent no.5 were considered for promotion and on 13.02.1989, both of them were appointed by promotion in the post of Junior Clerk. Thereafter on 27.09.2002, the respondent no.5 was appointed in the post of Senior Clerk by promotion and on 29.01.2003, the petitioner was promoted to the said post. It is undisputed that in the cadre of Senior Clerk, respondent no.5 was senior to the petitioner. On 01.06.2006, both the petitioner and the respondent no.5 were appointed in the post of Head Clerk and the petitioner was transferred to the Amolakchand College of Law, managed by the same management i.e. respondent no.2 Vidya Prasarak Mandal, Godhni Road, Yavatmal.

4. On 12.03.2013, the respondent no.3 Joint Director of Higher Education, communicated a decision to respondent nos. 1 and 2 that, due to reduction in the strength of students, the approved post of Head Clerk in the Amolakchand College of Law, could not longer be continued as approved post. Upon the said decision being communicated by respondent no.3, respondent Nos. 1 and 2 passed the impugned resolution dated 12.06.2013 cancelling the promotion granted to the petitioner and reverted him to the post of Senior Clerk w.e.f. 12.03.2013.

5. Aggrieved by the said resolution/order of respondent nos. 1 and 2, the petitioner filed the aforesaid appeal before the Tribunal at Nagpur. By the impugned judgment and order dated 04.04.2016, the Tribunal dismissed the appeal of the petitioner, on the ground that when both the petitioner and respondent no.5 had been appointed in the post of Head Clerk on the same day, i.e. 01.06.2006, their inter se seniority in the lower post i.e. Senior Clerk was to be taken into consideration and as the petitioner was admittedly junior to the respondent no.5 in the category of Senior Clerk, the order of reversion was correctly passed by respondent Nos. 1 and 2. The present writ petition challenges the aforesaid view taken by the Tribunal in the impugned judgment and order.

6. Mr. K.V. Deshmukh, learned counsel for the petitioner, by relying upon the Rules i.e. Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Service of Non-teaching Employees) Rules, 1984, particularly Rules 8 (2) (h) and 14(4) thereof, submitted that the impugned action of respondent nos. 1 and 2 in reverting the petitioner was bad in law. It was pointed out that the Tribunal committed a grave error by taking into consideration inter se seniority of the petitioner and respondent no.5 in the lower cadre of Senior Clerk, while dismissing the appeal filed by the petitioner. It was pointed out that under Rule 8(h), the junior most employee in the cadre of

Head Clerk could have been reverted and that in the absence of determination of inter se seniority in the cadre of Head Clerk between the petitioner and the respondent no.5, the impugned action of respondent nos. 1 and 2 was wholly unsustainable. In order to substantiate his contention that Head Clerk formed a separate and distinct cadre, apart from relying upon the aforesaid Rules, the learned counsel placed reliance on judgment of the Hon'ble Supreme Court in the case of Union of India .vs. Lt. Col. P.K. Choudhary - (2016) 4 Supreme Court Cases 236.

7. On the other hand, Mr. A.S. Deshpande, learned counsel for respondent nos. 1 and 2 and Mr. Anup Dhore, learned counsel for respondent no.5, submitted that when the petitioner and the respondent no.5 had been admittedly appointed in the post of Head Clerk on the same date i.e. 01.06.2006, in the absence of any guidance in the aforesaid Rules regarding determination of inter se seniority between the two, reliance placed on the inter se seniority of the petitioner and respondent no.5 in the lower post of Senior Clerk by the Tribunal was justified and in such a situation, since the respondent no.5 had admittedly joined initial service before the petitioner, it could not be said that the reasoning given by the Tribunal was erroneous. On this basis, it was submitted that the writ petition deserved to be dismissed.

8. Mr. Bissa, learned AGP, has appeared on behalf of respondent no.3.

9. Heard counsel for the parties and perused the record.

10. In order to examine the contentions raised by the counsel for the respective parties, it is necessary to refer to the relevant Rules in the present case. Rule 8 of the said Rules pertaining to substantive appointment and Rule 14 pertaining to seniority would be relevant. The portions of the said Rules which would assist this Court in determining the controversy arising in the present writ petition read as follows:-

"8. Substantive Appointment -

(2) (h) Subject to the provisions of these rules whenever any employee is rendered surplus in the cadre for the reasons such as the reduction in the strength of cadre, return of the senior employee from deputation or from leave, or by reversion of the senior employee from higher cadre to the lower cadre, or for joining of the employee by selection in the cadre etc., the junior most officiating employee shall be reverted to the lower cadre.

14. Seniority :

(1) The seniority of the employee in a cadre under the University or the College under same Management shall be determined on the basis of date of continuous service in that cadre. The date of joining the service on probation or as the case may be, the date of promotion shall be taken as the date of continuous service for this purpose. The service rendered by an employee in other recognised institution or affiliated college under the same management, whether aided or

unaided, or in the office of the management shall be treated as foreign service and the same shall be counted for seniority.

(2)

(3)

(4) The employee promoted to a post in higher cadre shall rank below those employees in that cadre on the date of his promotion irrespective of their interse- seniority in the lower cadre. The employee promoted to a post in higher cadre earlier shall be considered senior to the employee promoted to that cadre at a later date, irrespective of their respective seniority in the lower cadre or the pay drawn.

(5)

(6)

(7) The Seniority list of all the employees in a cadre shall be prepared and maintained upto date by the University or the College. The seniority list so prepared shall be circulated in April every year among the employees concerned and their signatures obtained. Any subsequent change made in the seniority list from time to time shall be similarly circulated. Objections, if any, to the seniority list or to the changes made therein shall be duly taken into consideration by the Registrar or the Principal as the case may be before finalising the seniority list. Disputes, if any, shall be referred to the Vice-Chancellor or the Chairman of the Management whose decision shall be final."

11. Apart from this, Form No.5 appended to the said Rules provides for duties and responsibilities assigned to non-teaching staff helping in identification of separate cadres of the non-teaching staff. In this regard, the cadre of Head Clerk and Senior Clerk is relevant in the present case.

12. There is no dispute about the fact that, by application of the aforesaid Rules, till the time the petitioner and respondent no.5 were in the cadre of Senior Clerk, the respondent no.5 was placed one position higher to the petitioner in seniority because the respondent no.5 was appointed by promotion as Senior Clerk on 27.09.2002 while the petitioner came to be promoted on the said post on 29.01.2003. Thereafter, when the petitioner and respondent no.5 were considered for promotion to the next higher post of Head Clerk, both came to be appointed by promotion to the said post with effect from the same date i.e. 01.06.2006. The order of confirmation of the petitioner as well as respondent no.5 on the said post of Head Clerk shows that both were confirmed in the said post also on the same date i.e. 01.06.2008.

13. Due to the decision dated 12.03.2013 communicated by the respondent no.3 Joint Director of Higher Education, the post of Head Clerk in the Amolakchand College of Law, wherein the petitioner was appointed by promotion, was deleted from the list of approved post, due to which respondent nos. 1 and 2 were faced

with the question as to who was to be reverted from the post of Head Clerk to Senior Clerk. It is undisputed that the respondent no.5 was working as Head Clerk in the respondent no.1 College at the relevant time. But, since the seniority list for the employees of all the institutions of the respondent no.2 Management was a common seniority list, it was to be decided as to who between the petitioner and respondent no.5 would have to be reverted, as a consequence of the aforesaid decision dated 12.03.2013 communicated by the respondent no.3.

14. A perusal of the above quoted Rule 8(2)(h) of the Rules shows that the junior most officiating employee in a cadre has to be reverted to the lower cadre whenever any employee is rendered surplus in the said category for any reason. It is clearly stated in the said Rules that the junior most officiating employee shall be reverted to the lower cadre. In order to determine inter se seniority of an employee in the same cadre, Rule 14(4) quoted above, would apply, which specifies that the employee promoted to a post in higher cadre earlier shall be considered senior to the employee promoted to that cadre at a later date, irrespective of their respective seniority in the lower cadre or the pay drawn. In other words, upon being promoted to a higher cadre, the inter se seniority of the employees in the lower cadre remains of no consequence. In the present case, respondent nos. 1 and 2 passed the impugned decision/order dated 12.06.2003, reverting the petitioner from the post of Head Clerk to Senior Clerk, without first determining inter se seniority between him and the respondent no.5.

15. There cannot be any doubt about the fact that when the cadre of Head Clerk and Senior Clerk are two distinct cadres in terms of the aforesaid Rules, as elaborated in Form No.5 appended to the Rules wherein separate and distinct duties and responsibilities of the two cadres have been specified, the inter se seniority between the petitioner and respondent no.5 in the cadre of Senior Clerk could not have been taken into consideration in the present case. The learned counsel appearing for the petitioner is justified in relying upon judgment of the Hon'ble Supreme Court in the case of Union of India .vs. Lt. Col. P.K. Choudhary (supra), wherein the Hon'ble Supreme Court has clarified that when two posts have different pay-scales and the duties and responsibilities of two posts are distinct, they constitute the separate units and separate and distinct cadres. Therefore, there cannot be any doubt about the fact that when the petitioner and respondent no.5 stood promoted in the cadre of Head Clerk by operation of Rule 14(4) of the said Rules, their inter se seniority in the lower cadre i.e. the cadre of Senior Clerk could not have been taken into consideration at all to come to a conclusion as to who among the two was required to be reverted to the cadre of Senior clerk.

16. Thus, it becomes clear that the reasoning given by the Tribunal in the impugned order in paragraphs 7 and 8 is wholly unsustainable. The tribunal was not justified in taking into consideration the inter se seniority of the petitioner and respondent no.5 in the lower cadre of Senior Clerk. Therefore, it becomes clear that the impugned order passed by the Tribunal is rendered unsustainable

and liable to set aside.

17. In this backdrop, the further question that arises for consideration is, as to what relief can the petitioner be granted in the facts and circumstances of the present case and by operation of the aforesaid Rules that govern the service conditions of the petitioner and respondent no.5. It is evident that before a decision to revert the petitioner could have been taken by respondent nos. 1 and 2, it was necessary for them to have determined the inter se seniority between the petitioner and respondent no.5. The reliance placed by the said respondents on the confirmation order would not be enough because the said document itself shows both the petitioner and respondent no.5 were appointed by promotion to the post of Head Clerk on the same date i.e. 01.06.2006 and that both of them were confirmed in the said post on 01.06.2008. In the absence of determination of inter se seniority between the petitioner and respondent no.5, the petitioner could not have been reverted to the post of Senior Clerk by operation of Rule 8(2) (h) of the said Rules because the said Rules specifically provide that the junior most officiating employee shall be reverted to the lower cadre. The said Rule, therefore, requires that before an employee is reverted, it has to be first concluded that he or she was the junior most to be so reverted. Rule 14(7) mandates respondent nos. 1 and 2 to prepare seniority list of the employees in a cadre and the record in the present case shows that such exercise of determination of seniority was not undertaken by respondent nos.1 and 2 before the impugned action of reverting the petitioner was undertaken. To that extent, respondent nos. 1 and 2 acted in the teeth of the Rules applicable to the petitioner and respondent no.5. In this situation, it becomes necessary for respondent nos. 1 and 2 to determine the inter se seniority between the petitioner and respondent no.5, upon which it shall be determined as to who amongst the petitioner and respondent no.5 was required to be reverted.

18. It is no doubt true that in the absence of the said exercise, the petitioner can be said to have suffered prejudice of having been reverted to the post of Senior clerk and having been made to work in the said lower cadre with effect from 12.03.2013.

19. In the facts of the present case, this Court is of the opinion that it would be necessary to direct respondent nos. 1 and 2 to undertake the aforesaid exercise of determining the inter se seniority between the petitioner and respondent no.5 as per the said rules. If it is found that the petitioner was not the junior most employee in the cadre of Head Clerk when the question of reversion arose, he would be certainly entitled to all consequential benefits, including pecuniary benefits. The learned counsel appearing for the petitioner has expressed apprehension that at this stage if respondent nos. 1 and 2 are given liberty to undertake the exercise of determining inter se seniority between the petitioner and respondent no.5, since the question of grant of pecuniary benefits to the petitioner would arise, respondent nos. 1 and 2 would necessarily be biased in their approach. But, Rule 14(7) of the said Rules governing the service conditions

of the petitioner and respondent no.5 specifically enjoins respondent nos. 1 and 2 to determine the seniority of the employees and, therefore, by operation of the said Rule, such a direction for determining inter se seniority cannot be given to any other authority. In fact, the said Rules, particularly Rule 14(7) thereof, provides a regime under which a person aggrieved by the determination of his/her seniority can raise a dispute. In these circumstances, there can be no other option but to direct respondent nos. 1 and 2 to carry out the aforesaid exercise, which they shall undertake as per Rules, in accordance with law and obviously without any bias.

20. In the light of the above, the present writ petition is partly allowed in the following terms:-

(i) The impugned judgment and order of the Tribunal dated 04.04.2016 is quashed and set aside so also the impugned resolution/order passed by respondent nos. 1 and 2 dated 12.06.2013 is consequentially quashed and set aside.

(ii) Respondent Nos. 1 and 2 are directed to carry out the exercise of determining inter se seniority of the petitioner and respondent no.5 in the cadre of Head Clerk within a period of eight weeks from today.

(iii) Respondent Nos. 1 and 2 shall hear all affected parties before taking any decision on the aforesaid question of inter se seniority.

(iv) The grant of pecuniary benefits i.e. difference of salary to the petitioner shall be contingent upon decision on the aforesaid question of inter se seniority.

21. It is made clear that this Court has not expressed any opinion on the rival claims that may be raised by the petitioner and respondent no.5 as regards their inter se seniority and the same shall be decided by respondent Nos. 1 and 2 in terms of the aforesaid Rules and in accordance with law.

22. Rule in the aforesaid terms with no order as to costs.