
(2000) 07 BOM CK 0033
In the Bombay High Court
Case No : Writ Petition No. 1650 of 1987

Kondiba Kiwande

APPELLANT

Vs

The Zilla Parishad and Others

RESPONDENT

Date of Decision : 03-07-2000

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 9(10)

Citation : (2001) 1 BomCR 71

Hon'ble Judges : V.K. Barde, J;R.J. Kochar, J

Bench : Division Bench

Advocate : Kiran Nagarkar, for S.B. Talekar, for the Appellant; Deelip Patil Banker, for Respondent No. 1, R.S. Deshmukh, A.G.P. for Respondent No. 2 and A.D. Gadekar, for P.G. Deshmukh, for the Respondent

Final Decision : Allowed

Judgement

R.J. Kochar, J.—The petitioner has approached this Court under Article 227 of the Constitution of India, for his being promoted as a Head Master in the school run by the respondent No. 3 at Sillegaon (Taluka : Gangapur, District : Aurangabad). Initially the petitioner was aggrieved by the appointments of respondent Nos. 4, 5 and 6 as the Head Masters of three different schools functioning under the society. The petitioner had, therefore, prayed for quashing and setting aside the orders of their appointments as Head Masters.

2. We are informed that from 13th January 1990, the petitioner has now been appointed as the Head Master of the school under the society. What the petitioner is presently praying is the deemed date of his promotion with effect from the dates on which respondent Nos. 4, 5 and 6 were promoted. He is also praying for all other consequential benefits from the deemed date. For that purpose, we will have to consider whether the petitioner was wrongly denied promotion when the promotions of respondent Nos. 4, 5 and 6 were considered.

3. By a letter dated 12-6-1985, the respondent No. 3-Society, had informed the

petitioner that under Rule 9, sub-rule (10), Clause ("a"), sub-clause ("i") of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, the post of Head Master was required to be filled in and was earmarked for him. The society required the petitioner to give his willingness for his appointment as Head Master of the school at Sillegaon under the management of the society. Accordingly, the petitioner had conveyed his willingness by his letter dated 12th June, 1985. It appears that meanwhile, he was not appointed but the respondent Nos. 4, 5 and 6 were appointed as the Head Masters of different schools under the management.

4. By a letter dated 22nd July, 1985, the petitioner had made a representation to the Chairman of the society, bringing to his notice the fact of his being superseded. He had pointed out that he belonged to reserved class and possessed the necessary qualifications for the post of Head Master and was the senior most Assistant Teacher in the service of the school. He had repeated his representation by his letter dated 16th August, 1985, but all in vain. In the aforesaid circumstances, he has approached this Court by filing the present petition challenging the appointments of the respondent Nos. 4, 5 and 6 and praying for his own promotion.

5. The State Government has filed its return in the form of affidavit in reply. There is no dispute about the facts. There is also no dispute about the eligibility and qualifications of the petitioner to be appointed to the post of Head Master. The affiant has also regretted the lapse on the part of his office that the appointments of respondent Nos. 4, 5 and 6 were approved though, in fact, the petitioner's claim was justified. It is an admitted position that under Rules 3(1) (a)(i) and (ii); 3(1)(b) and Schedule "F" of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, the petitioner was duly qualified and eligible for the post of Head Master. He was appointed to the said post on 13-1-1990 and the State Government has granted approval to his promotion as the Head Master. The State Government has fairly and candidly accepted that the grievance of the petitioner was genuine and that he was duly qualified and eligible to be appointed to the post of Head Master instead of respondent Nos. 4, 5 and 6 or one of them.

6. In the aforesaid circumstances, when the petitioner possessed all the required qualifications under the rules and he belonged to the reserved category, he ought to have been appointed as the Head Master of the school in the year 1986 itself when his willingness was also sought by the management. We fail to understand how and why the petitioner was not appointed when he was considered fit to be appointed to the post of Head Master in the year 1986. The school management-respondent No. 3 has not filed its return to justify its action of denying promotion to the petitioner.

7. In the aforesaid circumstances, we accept the case of the petitioner that he ought to have been appointed as the Head Master in the year 1986 when the respondent Nos. 4, 5 and 6 were appointed as Head Master. Since the petitioner

is already appointed as Head Master from 13-1-1990, we do not think proper to quash and set aside the appointments of respondent Nos. 4, 5 and 6. The petitioner, however, was wrongly superseded in the year 1986 and, therefore, he is entitled to the deemed date of his appointment as the Head Master from the date from which respondent Nos. 4, 5 and 6 were appointed, and the petitioner is also entitled to get the difference in the salary from that date. He is also entitled to all other consequential benefits of the post of Head Master on the basis of the deemed date of his promotion.

8. We, therefore, allow the petition and direct the respondents to give the petitioner all the benefits on the basis of the promotions from the deemed date of the promotions of the respondent Nos. 4, 5 and 6.

9. Rule is made absolute in terms of prayer Clause "C". No order as to costs.