

(2007) 08 BOM CK 0098

In the Bombay High Court

Case No : Writ Petition No. 2304 of 2007

Lata " Latadevi Motising Pardeshi

APPELLANT

Vs

Education Officer (Primary) and Others

RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 12, 12(3)

Citation : (2008) 2 ALLMR 141 : (2008) 1 MhLj 576

Hon'ble Judges : P.V. Kakade, J;P.R. Borkar, J

Bench : Division Bench

Advocate : B.L. Sagar Killarikar, for the Appellant; S.T. Shelke, for Respondent No. 1, N.R. Bhavar and S.R. Barlinge, holding for Netrali N. Gangwal (Jain) and Anil Kasliwal, for the Respondent

Judgement

1. Rule. Rule is made returnable forthwith. Heard learned advocate for the petitioner. Also heard learned advocate for the respondents, including respondent No. 5. With the consent of the parties, the petition is heard finally.

2. By this petition, the petitioner seeks direction to decide the issue of seniority and to reconsider the order dated 22-3-2007 in the light of judgment of Full Bench of this Court in the case of Shri Vaijanath Shinde Vs. The Secretary, Marathwada Shikshan Prasarak Mandal, Jeevanrao Deshmukh and The Education Officer (Primary), Zilla Parishad, .

3. The petitioner possesses qualification of S.S.C., D.Ed, and is in service of respondent No. 3 society since 1974. According to her, she is permanent employee of respondent No. 3 society and claims that she is seniormost Assistant Teacher in the school run by respondent No. 3 under supervision of respondent No. 2 Board. The post of Head Master/Head Mistress became vacant since 31-1-2007 and, therefore, issue of seniority came up for consideration. By keeping this issue pending, respondent No. 5 was promoted as Head Mistress

which fact is challenged by the petitioner in this petition relying upon the aforesaid Full Bench judgment of this Court.

4. It is submitted on behalf of the petitioner that Rule 12(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as, "the Rules of 1981") is a solitary provision for determining the seniority of teachers working in private schools by the Education Officer. Rule 12(3) of the Rules of 1981 mandatorily requires the Education Officer to determine dispute as to seniority of the employees working in private schools, the object being the seniority of the employees is properly drawn as per the principles laid down in the Rules, so as to avoid further disputes and litigation and supersession. It is alleged on behalf of the petitioner that respondent No. 1 thought otherwise and issued impugned direction by communication dated 22-3-2007 denying the claim of the petitioner and appointing respondent No. 5 as Head Mistress of the said school.

5. In the course of hearing, the Learned Counsel for the petitioner brought to our notice the ratio laid down by the Full Bench of this Court in *Vaijnath's case* (supra), particularly having reference to para 12 thereof. To counter this submission, the advocate for respondent No. 5 submitted that the petition is premature, especially when the representations made by the petitioner were of 2-3-2007 to the Education Officer (Primary) and to the Deputy Director of Education dated 21-3-2007 are pending and, therefore, without giving them opportunity to adjudicate upon the said representations, one way or the other, the petition came to be filed on 28-3-2001. It was further submitted that there is alternate remedy available to the petitioner by way of Rule 12 of the Rules of 1981.

6. Our attention was also brought to the judgment of this Court in the case of *Umesh Balkrishna Vispute v. State of Maharashtra and Ors.* 2001(3) Mh.L.R. 306 wherein it is laid down that Rule 12 Schedule F of the Rules of 1981 provides that the School Tribunal has jurisdiction to entertain appeal challenging the order of appointment by way of promotion superseding qualified employee and when issue of seniority is involved, the proper course to be adopted would be filing appeal before the School Tribunal as it has jurisdiction to decide the issue of seniority while adjudicating the appeal challenging supersession.

7. It was submitted on behalf of the respondent management as well as respondent No. 5 that by virtue of this Ruling the petition would be maintainable under Article 226 of the Constitution. However, on this proposition, we would definitely differ, in the sense that the said Division Bench has not gone into the issue of maintainability of the petition under Article 226 of the Constitution. What is observed is that in case there is a disputed question of fact it would be proper for the petitioner to approach the Tribunal and not the writ Court under Article 226 of the Constitution. In this regard, we must observe that the relief which we proposed to grant to the petitioner would not be one going into disputed facts of the matter, but issue directions simpliciter to the concerned respondent i.e. the

Education Officer to decide the matter of seniority within a time bound programme.

8. Under the circumstances, we hold that the ratio laid down by the Full Bench judgment of this Court in Vajinath's case (supra), must prevail and hence we make Rule absolute to the extent that respondent No. 1 is directed to decide the issue of seniority of the petitioner qua the seniority of others including respondent No. 5 in the light of the ratio laid down by the Full Bench judgment in Vajinath's case (supra), within a period of two months from the date of this order. It is also clarified that the impugned order dated 22-3-2007 shall be subject to the final decision arrived at by respondent No. 1 which shall be taken after hearing all the concerned parties and giving them opportunity to put up their cases.

With the above direction, the writ petition stands disposed of.