

(2006) 11 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No. 7013 of 2005

Laxman Khanderao Ekhande

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 20-11-2006

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 12, 2(3)

Citation : (2007) 1 ALLMR 321 : (2007) 1 BomCR 60 : (2007) 1 MhLj 860

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : S.R. Chaukidar, in Writ Petition Nos.7014, 7015, 7016, 7017, 7018, 7019 and 7020 of 2005, for the Appellant; K.M. Suryawanshi, A.G.P. for R. Nos. 1 to 4, S.V. Natu, for R. No. 5 and S.R. Barlinge, for R. No. 6 in Writ Petition Nos.7014, 7015, 7016, 7017, 7018, 7019 and 7020 of 2005, for the Respondent

Final Decision : Allowed

Judgement

V.R. Kingaonkar, J.—This group of petitions is being disposed of by common judgment since identical questions are involved therein. The petitioners are Head Master, Supervisor and Assistant Teachers having qualification of B.P.Ed. besides the degree in graduation of Arts/Commerce/B.Sc. They impugn order dated 14th July, 2005 and consequential seniority list drawn by the respondent no.4 Education Officer. By the impugned order, the respondent no.6 -Tulshiram s/o Tukaram Kale marched ahead of the petitioners in the seniority list which is under challenge in these petitions.

2. Maratha Shikshan Sanstha - respondent no.5 runs various schools, including three Junior Colleges in Aurangabad and Jalna districts. The petitioners are appointed to work as Assistant Teachers and hold educational qualification of B.P.Ed. apart from basic qualification of being graduates. Respondent No.6 - Tulshiram Kale is also working as Assistant Teacher in a school run by respondent no.5. He is B.Com., B.Ed. He raised objections regarding the correctness of

seniority list and promotions made on its basis. He filed Writ Petition No.4367/2003 in this Court, challenging the seniority list and the inaction of the Education Officer in the context of his representation dated 1.8.2003 for re-fixation of the seniority. The writ petition was partly allowed and the Education officer -respondent no.4 was directed to decide the seniority of the petitioners in accordance with law. The Education Officer considered the representation of the respondent no.6, heard Head Master, Supervisor and Assistant Teachers. The petitioners opposed the contentions of the respondent no.6 on the ground that the B.P.Ed. qualified teachers were included in the seniority list before Government Resolution dated 14th June, 1987 was issued and hence the seniority list could not be retrospectively changed. The representation of respondent no.6 was allowed. The Education Officer held that the petitioners were not eligible to be enlisted in the seniority list of Assistant Teachers before the date of Government Resolution dated 25th November, 1988 whereby relaxation was granted and they were allowed to be included in the category "C". The objection regarding erroneous placement of eleven (11) Assistant Teachers having B.P.Ed. qualification in the seniority list from the dates of their appointments was upheld by the Education Officer. The Education Officer - Respondent no.4 directed, therefore, to rectify the seniority list of category "C". The end product of the impugned order would be that the respondent no.6 will get seniority position over and above the petitioners. The petitioners are aggrieved by such order passed by the respondent no.4 - Education Officer.

3. Briefly stated, the case of the petitioners is that they were appointed on various dates as Assistant Teachers. They are senior to the respondent no.6 in the seniority list which was in existence much before the impugned order was passed. They were appointed before the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 (for short, "M.E.P.S. Act") came into force. Some of them were promoted in view of the seniority position indicated in the previous seniority list. The respondent No.6 was appointed on 1st October, 1973 and is B.Com. B.Ed. He acquired B.Ed. qualification on 5.6.1978. He never raised objection about their eligibility of being appointed as Assistant teachers and their inclusion in the seniority list of category "C" employees. He made representation to the respondent no.4 - Education Officer only after the promotions were being made. They were not added as parties in Writ Petition No.4367 of 2003 filed by respondent no.6 Tulshiram Kale. Respondent No.4 - Education Officer failed to consider the relevant provisions of the law and rules of seniority. Respondent No.4 did not consider the fact that by virtue of the Government Resolutions dated 4.7.1973 and 13.5.1986 the H.D. Ed./B.P.Ed. and B.Ed. (physical education) ought to be considered on par with B.Ed. qualification for seniority purpose as well as for promotion. The impugned order is not in consonance with the provisions of Rule 12 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, "M.E.P.S. Rules") and in accordance with Schedule "F" which provides for guidelines for fixation of seniority of teachers. Hence, they impugn the order dated 14th July, 2005

passed by the Education Officer and the proposed seniority list which is fall out of the said order.

4. Heard learned Counsel Shri S.R. Chaukidar for the petitioners, learned A.G.P. Shri K.M. Suryawanshi for Respondents No.1 to 4, learned Advocate Shri S.V. Natu for R.No.5 and learned Advocate Shri S.R. Barlinge for R.No.6.

5. The question involved in these petitions is: "Whether the petitioners are entitled to claim seniority in the category "C" shown in Schedule "F" of Rule 12 of the M.E.P.S. Rules from the date of their respective appointments?"

6. The petitioners were appointed to teach subjects besides imparting physical training. They were not, appointed exclusively to impart physical training. The seniority of the teaching staff of a school is regulated in accordance with Rule 12 of the said rules. The guidelines are provided in Schedule "F" and the seniority list is required to be drawn in accordance with the principles stated in such guidelines. As per guideline No.2, for the purpose of fixation of seniority of teachers in the Secondary Schools and Junior Colleges, heads of the school would come in the Categories "A" and "B" as per the strength of students. Category "C" of Schedule "F" is thus:

"Category "C": Holders of M.A./M.Sc./M.Com., B.T./B.Ed., or its equivalent; or B.A./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.Ed/ 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 Junior Hindi Shikshak Sanad with ten years service, after obtaining both academic and training qualifications].

7. The clinching question is as to when the petitioners can be said to have borne in category "C". Their entry in the Category "C" could not be automatic when the B.P.Ed. qualification is not covered by guidelines shown under the Schedule "F". I mean to say, when they were not regarded as eligible for appointment as Assistant Teachers then they could not have entered category "C" unless the condition was relaxed by any Government Resolution so as to treat them on par with B.Ed. for all the purposes, including seniority and promotion. Thus, it is necessary to see whether their continuous length of service is the criteria for determination of the seniority or that their entry in category "C" at a particular point of time would be the determinative factor.

8. The seniority of Assistant Teachers is required to be fixed as per Schedule "F" Para 1 of the said rules. A significant Rule is found in Note 8 of Schedule "F". Para 2 therein gives guidelines for the purpose of fixation of seniority of teachers. Higher pay scale or any other comparison is not relevant for the purpose of fixation of seniority of teachers. An Assistant Teacher with B.A./B.Sc./B.Com. B.Ed. would be enlisted in the seniority list according to the date of appointment

and continuous officiation. A plain reading of Schedule "F", particularly Category "C" envisaged therein, would make it manifest that the assistant teachers with the training qualifications shown therein are the only eligible teachers to claim seniority position. The training qualification basically include B.T./B.Ed. or Dip.T. (old two years course) and other courses with 10 years post-S.T.C. service. Needless to say the assistant teachers with B.P.Ed. qualification are not included in Category "C" under the Rule 12.

9. There was a demand of teachers who had acquired B.P.Ed. (Bachelor of Physical Education) and B.Ed. (Physical Education) to treat them on par with those who had acquired B.Ed. qualification. For the first time, by virtue of Government Resolution dated 4th July, 1973, the demand was acceded to for the purpose of status, pay-scales and promotion etc. and such teachers were directed to be treated as qualified physical education teachers for service in Secondary Schools. Still, however, they were not qualified to be appointed as assistant teachers to teach regular subjects. Thereafter, came Government Resolution dated 14th May, 1987 which would show that those school teachers having B.P.Ed qualification, who have been appointed to teach regular subjects, could not be regarded as regular teachers for teaching general subjects. The principles for regularization of their services were set out. They were regarded as equivalent to the teachers having B.Ed. qualification after appropriate regularization in accordance with the principles set in the Government Resolution referred to above. Thereafter, by Government Resolution dated 25th November, 1988 again clarification was issued regarding status of B.P.Ed. qualified teachers. By virtue of the said Government Resolution, it was clarified that such teachers, having B.P.Ed. qualification, may be included in Category "C" from the date of the Government Resolution i.e. 25th November, 1988. By a further Resolution dated 9th April, 2003 (Exh.K) the words "from date of the order (resolution)" came to be deleted. However, again by yet another Government Resolution dated 15th July, 2004 vide the corrigendum issued the earlier Government Resolution dated 9th April, 2003 was cancelled. In other words, the prospectivity of regulating entry of B.P.Ed. qualified teachers in Category "C" as per Government Resolution dated 25th November, 1988 was maintained.

10. Though the above discussion would show that the intention of the Government was to treat the Resolution dated 25th November, 1988 only for the purpose of prospective application yet the extent of its prospectivity needs to be examined. In Letters Patent Appeal No.44 of 2002 in case of *Saraswati Prasadik Shikshan Sanstha v. The state of Maharashtra and Ors.* a Division Bench of this Court has dealt with an identical issue. The Division Bench has considered the question of seniority in the context of teachers having H.D.Ed. (Bifocal) qualification. The Division Bench also considered earlier resolution dated 24.7.1969 which was issued with an intention of fixing pay scales of teachers who had obtained H.D.Ed. (Bifocal) qualification and making them eligible on par with persons having B.Ed. qualification. The Division Bench observed:

7)... In our view, this Resolution of 1969 categorically holds that the person, who has obtained Higher Diploma in Education is treated academically on par with B.Ed. course and what is stated in Clause 2 is independent of what is stated in Clause 1. It is to be noted that Government Resolution of 1969 pre-dates M.E.P.S. Rules. Therefore, the argument that respondent no.4 must be treated as a person falling category "F" of Schedule "F" cannot be accepted. On reading of the definition of trained graduate, which is contained in Rule 2(j) read with Schedule "B" it is clear that person who has obtained qualification of H.D.Ed. cannot be said to be an untrained Graduate. In the circumstances only category in which he can fall would be as equivalent to B.Ed. within the meaning of category "C".

11. An argument was advanced before the Division Bench that such equation of H.D.Ed. (Bifocal) teachers in Government Resolution dated 24.7.1969 was only for the purpose of granting scale to them on par with that of the B.Ed. qualified teachers. This argument was rejected outrightly by the Division Bench. So far as the purport of the G.R. dated 25.11.1988 is considered it is most important to note as to what the Division Bench has held. The Division Bench has observed:

8) ... The learned Counsel urged that effect of such Resolution would be prospective and not retrospective. We do not find any merit in the submission of the learned Counsel. It is pertinent to note that rule of treating H.D.Ed. on par with B.Ed. was in existence in the year, 1969 and some of the School Managements were not following that Rule scrupulously and therefore, Government of Maharashtra had to make it clear to the School Management to follow the Rule regarding qualification of H.D.Ed. The Government Resolution dated 25.11.1988 is clarificatory in nature and, therefore, argument that the Government Resolution would operate prospectively must be rejected.

12. The legal position clarified by the Division Bench of this Court would govern the field. The Government Resolutions which were issued subsequently, making the Government Resolution dated 25th November, 1988 retrospective at one point of time and again withdrawing the retrospectivity thereof by virtue of subsequent communication dated 9th April, 2003 are of no avail. For, once it is noticed that the Division Bench of this Court has held that the Government Resolution dated 25th November, 1988 as retrospective for its application for the reason that it is only of clarificatory nature, then it goes without saying that by same analogy it would cover the case of the petitioners. A copy of the Government Resolution dated 4th July, 1973 is placed on record (Exh. H). By virtue of said resolution dated 4th July, 1973 the Government clarified its earlier resolutions dated 24th July, 1969 and 12th January, 1973. It is clarified that B.P.Ed. and B.Ed. (Physical Education) courses of the Marathwada University and Bombay University, respectively, are academically on par with B.Ed. course in all respects and, therefore, the graduates with B.P.Ed. or B.Ed.(Physical Education) should be treated as trained graduates on par with other B.Ed. teachers for the purposes of "status, payscale, promotions etc.". The Government further clarified

that they should be treated as qualified physical education teachers for service in secondary schools or as qualified Directors of Physical Education in colleges and universities. Needless to say this equation, in so far as the qualification is concerned, was made by virtue of the Government Resolution dated 4th July, 1973 and hence there could be no discrimination between the graduate teachers with B.Ed. qualification and the graduate teachers with B.P.Ed. qualification for any purpose. As stated before, the Government Resolution dated 25th November, 1988 is held as clarificatory and would apply retrospectively in view of the above referred judgment of the Division Bench of this Court. All the petitioners were appointed much before commencement of the M.E.P.S. Act, 1977. In any case, they were appointed before framing of the M.E.P.S. Rules, 1981. Hence, their service conditions cannot be unilaterally changed to their disadvantage.

13. The learned Counsel Shri Barlinge for the respondent invited my attention to the Government Resolution dated 14th May, 1987. The said Government Resolution (Exh.I) would show that appointment of B.P.Ed. qualified teacher could not be made as regular Assistant Teachers instead of B.Ed. qualified teachers. In other words, they could not be appointed as regular Assistant Teachers for teaching the regular subjects though they could be appointed exclusively as Physical Education Teachers. The careful reading of the G.R. dated 14th May, 1987 will make it manifestly clear that such irregularity was sought to be curbed by issuing directions vide letter of the Director of Education issued on 24th May, 1985 but thereafter too some such teachers were irregularly appointed up till end of educational year, 1986 and those appointments were approved by the concerned Education Officers. The G.R. Dated 14th May, 1987 would cover only a specific class of such appointees who were appointed during the period between 24th May, 1985 till end of education year, 1986. To that extent the directions were given for regularization of their services. The paragraph 4 of the said Government Resolution would make it clear that such B.P.Ed. qualified teachers shall be treated equivalent to the teachers having B.Ed. qualification, as per the directions which were issued from time to time. So, this Government Resolution too supports the contention that up till then the B.P.Ed. qualified teachers were treated on par with B.Ed. qualified teachers for the purpose of seniority and other service conditions.

14. It is undisputed that the petitioners are being paid the salary in the scale of Assistant Teachers like those who are qualified B. Ed. teachers. There is no difference of status, pay and other service conditions in respect of the petitioners and the other B. Ed. qualified teachers including respondent No.6. Learned Advocate Shri Barlinge contended that the appointments of the petitioners could not be made as regular teachers for want of required qualification. He contended that they cannot be treated as trained teachers. He seeks to rely on Shivshakti Shikshan Sanstha Kotha (Veni) and Another Vs. Nilkanth Kawaduji Shivankar and Another, and Jalgaon Zilla Kala Adhyapak Sangh, Jalgaon and Anr. v. State of Maharashtra and Ors. 1997 (1) Mh.L.J. 517. It is held in the given cases that the candidate holding B.Com., B.P. Ed. qualification would not be eligible for

appointment as Assistant Teacher in substantive capacity for teaching the general subjects. It is further held that a person to be appointed to the post of Assistant Teacher should be first graduate in any faculty and B.Ed. if he has to teach relevant subjects or B.P.Ed. if he has to teach physical education only. These cases are of no much help in the context of present controversy. It appears that in both the above cases eligibility criteria under the M.E.P.S. Rules, 1981 has been considered. It need not be reiterated that the appointments of the petitioners were prior to the commencement of the M.E.P.S. Rules, 1981. Moreover, the question as to whether they can be appointed as regular trained Assistant Teachers is not the subject of present controversy. The controversy relates to the question of seniority.

15. Significant question is as to in which cadre the petitioners were working prior to commencement of the M.E.P.S. Rules, 1981. If it is found that they and respondent No.6 were in the same cadre, then the internal seniority cannot be altered without any specific change effected in the rules itself. Rule 12 of the M.E.P.S. Rules, 1981 deals with the question of seniority and is independent rule without having any nexus with the rules regarding qualifications required for appointment of Assistant Teachers. The Schedule "F" appended to Rule 12 will make it clear that those who are holders of B.A./B.Sc./B.Com., B.T./B.Ed., or its equivalent will fall within the said category. The expression "or its equivalent" would widen the category "C" so as to include the graduates with B.P. Ed. or like equivalently qualified persons. An attempt was made by learned Counsel Shri Barlinge to show that the petitioners would come within zone of category "D" or "F". I do not agree. The category "F" would cover untrained graduates or holders of equivalent qualification. The category "D" covers holders of degree in any faculty like arts, commerce, science and STC / Dip. Ed. (one year) or its equivalent qualification. B.P. Ed. qualification cannot be treated as equivalent of STC or Dip.Ed. by applying any yardstick. There is no Government Resolution to permit such equivalence. Under these circumstances, it goes without saying that the petitioners were borne in category "C" of Schedule "F" when the M.E.P.S. Rules, 1981 came into force. They could not be subsequently de-categorised from category "C".

16. From the foregoing discussion it can be gathered that the impugned finding of the Education Officer is improper and incorrect. The impugned seniority list is not in keeping with tenor and purport of Rule 12 of the M.E.P.S. Rules and particularly, Schedule "F" appended thereto. The objection raised by the respondent No.6 vide his application dated 1.8.2003 should have been rejected. The previous seniority list ought not to have been disturbed by allowing such objection. The impugned order dated 14.7.2005 is illegal, invalid and improper.

17. In the result, the petition is allowed. The impugned order dated 14.7.2005 and consequent changed seniority list are hereby quashed. The previous seniority list dated 1.5.2003 be restored and deemed as legal and proper. Rule made absolute accordingly. No order as to costs.