
(2003) 06 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 2387 of 1985 & Writ Petition No. 2387 of 1995

Laxmikant Balkrishna Joshi

APPELLANT

Vs

Shikshan Prasarak Mandal and Others

RESPONDENT

Date of Decision : 27-06-2003

Acts Referred:

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

Citation : (2004) 1 BomCR 843 : (2003) 4 MhLj 515

Hon'ble Judges : S.T. Kharche, J; R.J. Kochar, J

Bench : Division Bench

Advocate : U.S. Dastane, for the Appellant; C.S. Kaptan, for respondent No. 2, M.G. Bhangde, for respondent No. 3, A.M. Gordey, for respondent No. 4, V.P. Panpaliya and A.S. Sonare, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The petitioner, who was in employment with the respondent No. 2, as a Lecturer has filed the present petition under Article 226 of Constitution of India, for an appropriate writ or direction against the respondents to appoint the petitioner as Head of the Institute of Pharmacy known as "Geetadevi Khaldelwal Institute of Pharmacy, Akola", and to give all the benefits including the difference in salary from 1983 from the date of acceptance of resignation of the then Principal Shri A. P. Hardas. The petitioner has also sought a direction against the respondents that they should comply with the provisions of the Maharashtra Employees of Private Schools (Conditions of Service), Rules 1981 and the Act of 1978, and Pharmacy Regulations.

2. The facts in the present petition are not in dispute and are in a very narrow compass. The petitioner was appointed as a Lecturer in the institute vide the appointment order dated 8-8-1980 with effect from 21-8-1980. The post of Principal fell vacant on account of resignation by the incumbent of the post of Principal. The management of the institute, therefore, advertised the vacancy to

be filled in from the qualified and eligible candidate from the open market. It invited applications for the post of Principal in the institute instead of filling up the said post by appointing the petitioner being the senior-most Lecturer and also fully qualified and eligible to be appointed as Principal of the institute. It appears that the petitioner has also applied for the said post in response to the said advertisement given by the management though under protest, as according to him the procedure of selection of a candidate from the open market was in violation of the mandatory Rule 3 of the M.E.P.S. Act, which mandates that the post of Head of the institute should be filled in on the basis of the seniority. According to petitioner, he had never relinquished his claim for the post of Principal and that he was entitled under the Rules to be promoted as the Principal of the institute. There is no much dispute or difference that the petitioner was the senior-most Lecturer in the institute and that he was also holding the requisite qualifications for the post. The management, however, preferred to go in the open market to select the suitable candidate for the post of Principal. The management adopted the selection process instead of promoting in-house eligible candidate. Pursuant to the advertisement, the Selection Committee held the interview in the office of the Director of Education and selected the respondent No. 5 as the most suitable candidate for the post. The petitioner was not selected and he stood third in the list. The Selection Committee comprised of Director of Education and, therefore, the selection of the respondent No. 5 was deemed to have been approved by him as he was a party to the selection of the respondent No. 5. The nub of the complaint of the petitioner is only that under Rule 4, the management was bound to promote the petitioner and was not permitted to go out of the said Rule to resort to a selection process by giving advertisement inviting applications from the open market when in-house suitable qualified and eligible candidate was available in the person of the petitioner. The entire selection process and the appointment of the respondent No. 5 is, therefore, violative of the mandatory Rule 3 framed under the said Act is the gravamen of the petitioner. Shri U. S. Dastane, the learned counsel appearing for the petitioner has confined to the aforesaid contentions on behalf of the petitioner as set out in the petition. He has also further fairly accepted the position that as far as the selection of the respondent No. 5 is concerned, the petitioner will not be in a position to challenge the same and that he is not challenging the merits of the selection. The learned counsel submitted that his grievance was only to the extent of the decision of the management to resort to the selection process and not to promote the petitioner, under the Rules.

3. It is significant to note that the candidate who was not selected and who was at Sr. No. 2 of the selection list had also filed a writ petition challenging the selection of respondent No. 5, but his writ petition was rejected in limine by a Division Bench of this Court on 24-12-1985. Since the writ petition was rejected in limine by one word "rejected", we have no source to find out the reasons for rejection of the said petition. The said order, therefore, has no binding effect on

this Bench. Had there been a speaking reasoned order that perhaps would have made difference. We have, therefore, examined the contentions of the parties on merits of the present case independently.

4. Shri Bhangade, learned counsel for the respondent-management, has submitted that though the institute is governed by the M.E.P.S. Act as held by a Full Bench of this Court headed by The Hon'ble Chief Justice in the judgment dated 13th March, 2003 in a writ petition No. 137/1986, the Rule 3 on which very reliance was placed by the petitioner has no application at all. According to the learned counsel, the Polytechnic Institutes are not governed by the said Rules. He also submitted that in the entire scheme of the Act the Polytechnic Institutes were not covered and, therefore, the institute had to follow the process of selection to fill up the post of the Principal on the basis of the requisite qualifications, as prescribed by the Pharmacy Council of India under the Pharmacy Act, 1948. Shri Bhangade, therefore, submitted that the entire Rule related to the primary school, secondary school, night school and Junior College and it had no application to the Polytechnic Institute, particularly, because they are governed by the Pharmacy Act under which qualifications for the post of the Principal and other posts are specifically laid down and they were bound to follow the same provisions under the Act. He further submitted that as far as merits of the petitioner and the selected candidates are concerned, the petitioner has not challenged the selection and the selection process. The respondent No. 5 has been in the post of Principal since last 18 years. He was selected by an independent body and he was fully qualified and eligible to be appointed as the Principal of the institute. As against this, the petitioner was not selected by the Selection Committee and he stood third in the selection list. He further submitted that it was the Director of Education, who was the party to the Selection and this selection cannot be challenged before his subordinate officer namely the Education Officer, as contemplated under Rules. Shri Bhangade, therefore, submitted that the institute was well within its right to resort to the selection process to fill up the post of Principal and it was not mandatory for the institute to promote the petitioner. The learned counsel submitted that the management has not committed any illegality and has not violated the Rule 3 on which whole petition is based. He also submitted that it will not be just, proper and equitable for this Court under Article 226 of Constitution of India to disturb the respondent No. 5, who has been working since last 18 years to the satisfaction of the management and who was duly selected by independent selection body and when the petitioner has only two years left for retirement. He also submitted that no mala fides are alleged against the management by the petitioner. The learned counsel, therefore, stressed that this Court should not exercise its extraordinary jurisdiction to grant any relief to the petitioner whereby the respondent No. 5 would be required to be thrown out of the employment for no fault of his.

5. Shri Panpaliya, who appeared for respondent No. 5 supported the submissions of Shri Bhangade. He also further added that his client is more meritorious in comparison with the petitioner.

6. Since the entire matter revolves around the Rule 3, we have carefully gone through the same with the assistance of both the learned counsel. It would be convenient to reproduce the entire Rule 3, explanation and the proviso as follows :--

"Qualifications and appointment of Head. -- (1) A person to be appointed as the Head --

(a)(i) of a primary school having an enrolment of students above 200 or having Standards I to VII shall be the seniormost trained teacher who has put in not less than five years" service; and

(ii) of any other primary school shall be the seniormost teacher in the school;

(b) of a secondary school including night school or a Junior College of Education shall be a graduate possessing Bachelor's degree in teaching or education of a statutory University or any other qualification recognised by Government as equivalent thereto and possessing not less than five years, total full-time teaching experience after graduation in a secondary school or a Junior College of Education out of which at least two years" experience shall be after acquiring Bachelor's degree in teaching or education:

Provided that, in the case of a person to be appointed as the Head of a night secondary school --

(i) he shall not be the one who is holding the post of the Head or Assistant Head of a day school, and

(ii) the experience laid down in Clause (b) of Sub-rule (1) may be as a part-time teacher.

(2) In the case of appointment to the post of Head of a secondary school including night school or a Junior College of Education if there is no person with the teaching experience mentioned in Clause (b) of sub-rule (1) available on the staff of the school or if the qualified persons though available and eligible, relinquish their claims for the post of Head and if a Management desires to appoint a person, from the teaching staff of the school who does not possess the requisite teaching experience mentioned in Clause (b) of Sub-rule (1), it shall apply to the Deputy Director for relaxing the requirement. The Deputy Director may, after recording reasons in writing, grant or refuse such relation. In such cases, the appointment shall not be made without obtaining the previous approval of the Deputy Director.

Note - In the case of a graduate teacher already in service in a secondary school or Junior College of Education for more than fifteen years on the 1st June 1963, the Deputy Director shall relax the requisite qualifications for appointment of such teacher as a Head.

(3) The Management of a school including a night school shall fill up the post of the Head by appointment the seniormost member of the teaching staff (in

accordance with the guidelines laid down in Schedule "F" from amongst those employed in a school (if it is the only school run by the Management) or schools [if there are more than one school (excluding night school) conducted by it] who fulfils the conditions laid down in Sub-rule (1) and who has a satisfactory record of service.

Explanation -- For the purpose of the rule, the Management shall communicate the occurrence of vacancy of the Head to the senior-most qualified teacher having satisfactory record of service and ask him to submit his willingness for appointment to the post within a period of fifteen days from the date of receipt of the communication. The claim of the senior-most qualified teacher having satisfactory record of service, for appointment to the post of Head, may be disregarded only if he, of his own free will, gives a statement in writing to the Education Officer that he has voluntarily relinquished his claim to the post. This shall not debar him being considered for subsequent vacancies as and when they occur. Such a teacher shall record his statement in his own handwriting before the Education Officer within a period of fifteen days from the date of receipt of the communication as aforesaid and the Education Officer shall endorse it as having been recorded in his presence. A statement once duly made by such teacher before the Education Officer shall not be allowed to be withdrawn. In the event of the teacher failing to submit his willingness for appointment to the post or to give a statement to the Education Officer within a period of fifteen days, it shall be assumed that he has relinquished his claim on the said post:

Provided that, where an unforeseen vacancy of Head occurs owing to reasons like resignation without giving due notice, death, termination of services, reduction in rank or otherwise, the senior-most teacher desirous of relinquishing his claim for appointment to the post shall, within seven days from the date of receipt of a communication by him of occurrence of such vacancy from the Management, communicate to the management in writing about the same so as to enable the Management to finalise the appointment. Such a teacher shall thereafter as soon as possible and in any case within a period of fifteen days from the date of receipt of the communication as aforesaid record his final statement before the Education Officer to enable him to prove the appointment, or as the case may be, to disapprove the appointment if such teacher states in his statement before the Education Officer that the communication sent by him in writing to the Management was obtained from him by the Management under duress. In the event of the teacher failing to record a final statement within a period of fifteen days as aforesaid it shall be assumed that he has relinquished his claim on the said post."

7. From a bare reading of the Rule, it is clear to us that the Rule cannot be made applicable to the Polytechnic Institutes, which are governed by the Pharmacy Act. Under the said Act, specific or requisite qualifications are prescribed for various posts including the post of the Principal. The Polytechnic Institutes do not properly fit in the scheme of the Rule. In the present case, the selection for the

post of the Principal was made by a Committee headed by the Director of the Education. Rule 3(2) requires permission from the Education Officer, who is obviously subordinate to the Director or the Deputy Director of Education. Secondly, Rule 3(3) refers to the guidelines in Schedule "F" for qualifications. If we peruse the prescribed qualifications, we find that the said qualifications are meant for primary school, secondary school, night school, or Junior College. There is absolutely no indication that the Polytechnics are covered by Rule 3 of Schedule "F" though there is no dispute that the Act is applicable to the institute. According to us, Rule 3 framed under the Act is not attracted in the present case of the Polytechnic. We therefore, agree with the submission of Shri Bhangade that the Rule 3 has no application to the Polytechnic Institutes or Colleges and, therefore, according to us, there is no violation of Rule 3 in the case of the appointment on selection of the respondent No. 5. Since the Rule 3, which prescribes promotion of senior-most Lecturer or Teacher to the post of Principal is not applicable, the management has rightly followed a transparent process of selection of a suitable candidate by inviting applications from the open market. The Selection Committee, which was headed by the Director of Education has selected the respondent No. 5 on the basis of the qualifications and eligibility criteria prescribed under the Pharmacy Act. The management has not acted do hors any Rules and has followed transparent method of appointment of the respondent No. 5 as the Principal of the institute. There is no violation of any Rule as alleged by the petitioner and there is no miscarriage of justice in the facts and circumstances, which have emerged before us to warrant interference under which extraordinary jurisdiction of Article 226 of Constitution of India. There is no merit in the petition and hence we dismiss the same. Rule is discharged with no orders as to costs.