
(1993) 11 BOM CK 0055
In the Bombay High Court
Case No : Writ Petition No. 2300 of 1990

Madhav Budhe

APPELLANT

Vs

Education Officer, Zilla Parishad, Nagpur and Others

RESPONDENT

Date of Decision : 04-11-1993

Acts Referred:

Maharashtra Municipalities Act, 1965 — Section 308, 318

Citation : (1994) MhLj 42

Hon'ble Judges : W.M. Sambre, J;V.S. Sirpurkar, J

Bench : Division Bench

Judgement

V.S. Sirpurkar, J.—Both these petitions can be conveniently disposed of by this common Judgment as they are filled at the instance of the same petitioner. In Writ Petition No. 2300 of 1990 the petitioner prays for a writ of Mandamus for quashing and setting aside the Order passed by the Education Officer dated 21.8.1990. The respondent No. 1 - Education Officer, Zilla Parishad, Nagpur, has, by the impugned order, held the respondent No. 3 - Mrs. Nirmala Barokar to be senior than the petitioner. Similarly, in Writ Petition No. 1762 of 1993, the same petitioner challenges the Order dated 30-3-1991 passed by the Additional Commissioner, Nagpur, in his capacity as the Regional Director of Municipal Administration, Nagpur. In that Order, the Regional Director of Municipal Administration has allowed the revision application filed by the respondent No. 3 - Mrs. Nirmala Barokar and held that she is senior to the petitioner. It is on this account that both the petitions were heard together and are being disposed of by this common judgment.

2. There is a chequered history to the litigation in these two petitions. It dates back to the appointment of the petitioner, who was appointed as an Assistant Teacher in the Secondary School on 31.7.1956 by an order dated 30.7.1956. He was thereafter continued upto dated 9.7.1957 without any break vide office order dated 9-7-1957. In 1962, the petitioner passed in Diploma in Teaching and on that basis he was confirmed on 5.7.1967. The petitioner further acquired the

qualification of graduation by passing B. A. in the year 1967 and ultimately he proceeded to acquire further qualification by passing B. Ed. examination in the year 1970. In this comparison, it will be better to give the educational qualifications and travel during the service on the part of the respondent No. 3, who joined in the school directly on 15.7.1968. She was then already a fully qualified teacher having passed B. A. examination in the year 1961 and B. Ed. examination in the year 1968. The admitted position, therefore, is that on 15.7.1968, the respondent No. 3 was a fully qualified teacher for teaching high school classes. There is some dispute as to whether she was appointed as a middle school teacher and continued to be a middle school teacher, but the perusal of her service book, which is produced during the hearing, clearly shows that she was throughout treated as a high school teacher. There came a question of the inter se seniority between the two for the first time when the question of appointing a supervisor in the school arose. The first seniority list was published and in the seniority list prepared by the Municipal Council, the petitioner was shown as senior to the respondent No. 3. Both of them had been shown in the same category of "C". The petitioner had been shown at serial number 1 while the respondent No. 3 had been shown at serial Number 3 with one Shri K. P. Chopkar in between.

3. This was questioned by the respondent No. 3 before the Education Officer, Zilla Parishad, Nagpur who passed an Order on 23.7.1986 holding the respondent No. 3 as senior to the petitioner. However, the Municipal Council thereafter took a typical stand and wrote back to the Education Officer that since the respondent No. 3 had signed the seniority list without any grudge, she was deemed to have accepted the said seniority list and, therefore, she could not be considered for the appointment as a supervisor. Thereafter, the Education Officer, it seems, heard both the parties, namely, the petitioner as well as the respondent No. 3 and held that the petitioner was senior to the respondent NO. 3.

4. After this, the respondent No. 3 again moved the Education Officer for review of the Order and this time the Education Officer reconsidered his earlier decision. There is no point in stating the further history which is too complicated. Ultimately in the writ petition filed before this Court, the Education Officer was directed to finally hear the parties and decide the question of inter se seniority of the petitioner and the respondent No. 3. This writ petition was filed by the respondent No. 3 which was Writ Petition No. 2057 of 1988. The Education Officer who was directed by this Court to hear both the sides, heard the petitioner as well as the respondent No. 3 accordingly, and he took the view by the impugned order that the petitioner though was appointed on 31.7.1956 had passed his graduation examination only in 1967 and acquired qualification of B. Ed. only in 1970 and therefore, previously he was a "C" category teacher and he had entered the "B" category only in the year 1970 when he passed his B. Ed. examination. In the contradistinction to this, it was observed by the Education Officer that since the respondent No. 3 was already a trained graduate teacher having passed B. A. examination in 1961 and B. Ed. examination in 1968 and

though she had entered into service on 15.7.1968 she was already in the "B" category and, therefore, she is senior to the petitioner. It is this Order which is under challenge in Writ Petition No. 2300 of 1990 filed by the Petitioner.

5. The cause of action arose for the writ petition No. 1762 of 1993 because the petitioner was promoted as Head Master somewhere in the year 1989-90 and this was challenged by the respondent No. 3 by filing an application u/s 308 of the Maharashtra Municipalities Act. The Collector dismissed that application on 27.10.1989. This Order was challenged by the respondent no. 3 in revision No. 13 of 1989-90 u/s 318 of the Maharashtra Municipalities Act and the Additional Commissioner who was acting as the Regional Director of Municipal Administration then allowed the revision on 13.3.1991. This order is under challenge in writ petition No. 1762 of 1993.

6. Shri V. C. Daga, learned counsel for the petitioner in his usual persuasive manner assailed the orders of the Education Officer as also the order passed by the Regional Director of Municipal Administration Particularly on the ground that there has been a total misinterpretation of the provisions. According to Shri V. C. Daga, the petitioner's seniority should have been counted right from the day he joined the service, i.e. from 31.7.1956 and now since both the petitioner and the respondent No. 3 possess the necessary qualifications for being appointed as the Head Master or the Supervisor, as the case may be, the petitioner was liable to be held senior in comparison to the respondent No. 3.

7. The second question that Shri V. C. Daga argued was as regards the jurisdiction of the Education Officer to decide the question of seniority inter se between the petitioner and the respondent No. 3. He drew our attention to the fact that previously, i.e. prior to 1987 the Municipal Schools were outside the mischief of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 (hereinafter called "the Act"), and the said Act applied to the Municipal Schools only in between 1.8.1987 to 2.6.1989 and, therefore the Education Officer could not have been the proper person having jurisdiction to decide the question of inter se seniority. Shri V. C. Daga, therefore, urged that the authorities below have erred in holding that the respondent No. 3 is senior to the petitioner.

8. Shri C. P. Sen, senior counsel appearing on behalf of the respondent No. 3 supported the Orders passed by the Education Officer, as well as the Regional Director of Municipal Administration and contended that both the parties have correctly arrived at the question of seniority. He also reiterated that the law as applicable to the controversy was also correctly interpreted by the authorities below. Shri D. N. Kukde, A. G. P. appearing on behalf of the Government also supported the action taken by the authorities below.

9. Shri A.M. Gorday, learned counsel on behalf of the Municipal Council, however, supported the contentions raised by Shri V. C. Daga and contended that it was the exclusive domain of the Municipal Council to prepare its seniority list, which it

had prepared and it was upto the Municipal Council alone to decide the question of the seniority and the consequential promotion to be bestowed upon the petitioner. In that view of the matter, he supported the arguments of Shri V. C. Daga.

10. It will now be necessary to see the provisions of law applicable to the present controversy. It is a matter of common knowledge that the present area of Vidarbha was a part and parcel of erstwhile State of Madhya Pradesh. At the time the petitioner entered the service, it was the M. P. Secondary Education Act, 1951, which was prevalent and it is an admitted position that the schools, including the present school, governed by the Municipal Council were being run according to the School Code framed under the M. P. Act of 1951. After the area of Vidarbha was annexed to the State of Maharashtra, it is the Secondary School Code which became applicable to the secondary schools run in this area.

11. Shri V. C. Daga has firstly relied on Rule 10(1) in Chapter XII of the M. P. Act of 1951. The said Rule provides :

"For all purposes, including application of time-scale, the period of service of a teacher shall, in the case of new entrants, be calculated from the date of first appointment in the school, if there is no break of service during the period preceding the permanent appointment :

Provided that, subject to the provisions of regulation 7, the salary and scale of a person already in employment, shall not be refixed by the School Committee at an amount lower than his salary or scale on the date of the enforcement of this Code".

Shri Daga very heavily relied upon the words "For all purposes" in Section 10(1) and submits that since there has been no break in the service of the petitioner right from the year 1956, he will have to be given the seniority from the year 1956 and, if that be so, then he is clearly senior to respondent No. 3, who had joined the service only in the year 1968, i.e., about 12 years later than the petitioner.

12. After the formation of the State of Maharashtra in the year 1960, it is the Secondary School Code which became applicable to the schools. Annexure 45 of the Rules which is in relation to Rules 61 and 63 provides guidelines for fixing the seniority list of teachers in the non-Government Secondary Schools. The school in which the petitioner and the respondent No. 3 are serving is admittedly a non-Government Secondary School and, therefore, Rules 61 to 63 of the Secondary School Code would apply thereto. Clause 5 of the Rules reads as under :

"The seniority of non-Government Secondary School Teachers in Nagpur Region (now Nagpur and Amravati Regions) who were permanent on 31st December, 1965 should not be disturbed. Their seniority should continue to be determined as per statutory provisions contained in the M. P. Secondary Education Act, 1951 and the rules made thereunder. If any of such teachers, however, improves his

qualifications and goes to the higher category, these revised guidelines of seniority will apply so far as the determination of his seniority in the higher category is concerned".

Shri V. C. Daga submits that Clause 5 gives a clear mandate that in so far as the petitioner's case is concerned, who had become permanent on 31.12.1965 (and there is no dispute about it), the petitioner would be governed by the Madhya Pradesh Secondary Education Act, 1951, a reference to which we have already made. His case, therefore, is that Clause 10(1) of School Code framed under XII above would on all fours apply to the case of the petitioner and his seniority will have to be counted right from the date he joined and further on the basis of the length of service he has put in, particularly because there was no break in the service of the petitioner.

13. Shri C. P. Sen, learned counsel for the respondent No. 3, answering the above contention invited our attention to Rule 3 of Annexure 45 of the Secondary School Code and contended that as per the mandate of Rule 3, the cases of the petitioner and respondent No. 3 were not comparable in the beginning till they came in the same category. Rule 3 reads as under :

"The categories mentioned above represent the ladder of seniority and have been mentioned in descending order. The inter se seniority of teachers falling in any single category should be determined on the basis of their length of continuous service in that category, in a single school or in schools run by the same management".

Shri C. P. Sen contends that the petitioner was in category "C" as mentioned in Annexure 45 since he was a graduate and was holding a Diploma in Education (one year's course). His contention is that the petitioner stepped into category "B" only after he passed his examination of B. Ed. in the year 1970, while the respondent No. 3 was already a graduate and had passed her B. Ed. examination in 1967 itself and had joined the school in the year 1968. Shri Sen, therefore, contends that in so far as category "B" is concerned it is the respondent No. 3 who always belonged to that category right from 1968, while the petitioner has stepped into that category only in the year 1970. Therefore, even if the petitioner has a better length of service in comparison with respondent No. 3 it will be of no consequence.

14. Let us test this contention. Clause 5 of the Secondary School Code is very clear. According to this clause, the seniority of the person like the petitioner who was permanent on 31.12.1965 will have to be determined as per the statutory provisions in M. P. Secondary Education Act and, therefore, there is no difficulty in holding that the petitioner's seniority will have to be determined on the basis of the length of service that he has put in. However, the Rule does not stop there. It proceeds further with a rider which is almost in the nature of a proviso to the effect that if any such teachers, like the petitioner, improves his qualifications and goes to the higher category, then it is not the provisions of the

M. P. Act and Code, but the revised guidelines of Secondary School Code (Annexure 45) which would apply to the case in determining the seniority. The proviso that has made all the difference. That it is a proviso is clear from the use of the words like "If" and "however". It is an admitted position that the petitioner was only a matriculate when he joined the service. He acquired diploma in teaching in the year 1962 and on 31.12.1965 he was an under graduate trained teacher. Thus he belonged to category D at the time when he was confirmed. Now after the advent of the Secondary School Code, the petitioner, for the first time in the year 1967, became a graduate and thus stepped into category "C". He stepped into this category because of the improvement of his qualifications. Category "C" is applicable to those who hold degree of B. A. /B. Sc. S. T. C. /Dip. Ed. (one year course) or its equivalent. Therefore, in the year 1967, the petitioner belonged to category "C" being a graduate and having a diploma in teaching. It is only in the year 1970 that he further improved upon his qualifications and acquired the degree of B. Ed. and, thus from category "C" he stepped into category "B". The case of the petitioner is, therefore on all fours covered by the ending words of clause 5 of the Secondary School Code (Annexure 45) and the revised guidelines would apply to the case of the petitioner.

15. Now let us see whether in what manner these revised guidelines would apply to the case of the petitioner and whether their application has made any difference. Rule 3, which we have already quoted earlier, specifically mandates that the inter se seniority of the teachers falling in any single category should be determined on the basis of their length of continuous service in that category in a single school or in schools run by the same management. Now it is an admitted position that the petitioner as well as the respondent No. 3 are serving in one and the same school. It is also an admitted position, on the basis of the facts stated before us, that the respondent No. 3 was a category "B" teacher on the date she entered the service, she being a graduate having the degree of B. Ed. While, in her comparison, the petitioner stepped into that category only in the year 1970. It is also an admitted position that the petitioner has improved upon his qualifications and, therefore, his case would be governed by clause 5. Under such circumstances, the argument of Shri V. C. Daga that in the matter of seniority the provisions of M. P. Secondary Education Act, 1951 and more particularly Rule 10(1) would still apply must necessarily fail. We, therefore, find that in fact it is not the provisions of that Act, but the provisions of the revised guidelines as provided by the Secondary School Code would apply to the cases of the petitioner as well as the respondent No. 3.

16. Shri V. C. Daga further urged that nothing would depend upon the subsequent acquisition of the qualifications as on the date of promotion the petitioner and the respondent No. 3 are equally placed. This argument is obviously incorrect. In the M. P. Act as well as in the Secondary School Code the appointment of a Head Master is differently treated. There are definite qualifications required for the appointment to the post of a Supervisor of the

Head Master as the case may be. We must add that the qualifications required for the appointment to the post of a supervisor or Head Master are identical under the Secondary School Code.

17. Admittedly, therefore, till 1970 the petitioner was totally out of zone of consideration for being appointed as a Head Master while the respondent No. 3 was qualified for being considered for being appointed as a Head Master right from the year 1968 when she was appointed. The respondent No. 3 after completing five years of service, i.e., in the year 1972, became for the first time entitled to be appointed as a Head Master as per the provisions of the Secondary School Code. Therefore, it is clear that till 1970 the petitioner was not even in the zone of consideration. He could have been appointed as a Head Master only after five years of his acquiring the necessary qualifications and that would come somewhere in the year 1975. Under such circumstances, when the question of appointment to the post of Head Master falls for consideration, it will have to be held by the necessary logic that the respondent No. 3 was more experienced for being appointed as Head Master, she being senior and having put in more service in category B, while the petitioner was sadly wanting in experience in comparison to respondent No. 3. Clause 3 of the revised guidelines more specifically mandates that the inter se seniority of teachers falling in any single category should be determined on the basis of their length of continuous service in that category. Therefore, it will have to be held that the respondent No. 3 is senior to petitioner in category "B".

18. Shri V. C. Daga relied upon the decision of this Court reported in 1990 Mh. L. J. 97 Sopan S/o. Bhagwan Kingage v. Director of Education, Pune & Ors. He contended that this Court in that case held that seniority of teachers who were permanent on 31-12-1965 would be determined on the basis of length of service as provided in M. P. Secondary Education Act, 1951. The question in that case was between two teachers, who are appointed on one and the same date, how the seniority should be fixed. The Court held that the person who was senior in age should be held as senior. In fact both the teachers there enjoyed the same degree or qualifications at the entry of their service and, therefore, the question fell for consideration as to who amongst them was senior. The Court found that since one of them was senior in age he should be declared as senior. We are afraid that the ratio of that case has no application at all in the present case.

19. The second case relied upon by Shri V. C. Daga is the decision reported in 1987 LIC 1611 Yeshwant v. Director of Education, Government of Maharashtra, Pune & Ors. Shri Daga particularly relied upon the observations of the Court in paragraph 8 and wanted us to hold that the question of seniority would depend upon only the length of service and on no other considerations. The facts of that case are entirely different. There the Court was considering as to whether a person who did not have the adequate qualifications and was appointed as a lecturer should be allowed to be held as senior in comparison to a person who were trained graduate teachers for the purposes of promotion to the post of

Head Master or Assistant Head Master. In fact, the following observations of the Court are more telling :-

"The seniority depend upon length of service after acquiring qualification and no untrained teacher even if he was a lecturer could be promoted merely on the basis of seniority in that so-called higher category".

These observations would clinch the issue and would obviously put the petitioner out of the Court in so far as the facts of the present petitioner are concerned.

20. The second limb of argument of Shri V. C. Daga in writ petition No. 2300 of 1990 is that in fact the Education Officer has no authority to decide this question as the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 are not applicable to the schools run by the Municipal Council. This argument must be rejected on the face of it. The Education Officer was under the orders of this court in pursuance of a writ directed by this Court that the Education Officer was duty bound to decide the question of inter se seniority in between the petitioner and the respondent. Apart from this there is another writ petition in which the Regional Director of Municipal Administration, Nagpur has also endorsed the view expressed by the Education Officer. This argument of Shri V. C. Daga that the Education Officer had no jurisdiction to decide the issue has, therefore, to be rejected.

21. These are all the points raised by the learned counsel at the bar. It will have to be held, therefore, that both the writ petitions bearing Nos. 2300 of 1990 and 1762 of 1993 are devoid of any substance and they will have to be dismissed as such. In the result both the petitions stand dismissed. In the circumstances of the case, there shall be no order as to costs.