

(2008) 02 BOM CK 0179

In the Bombay High Court

Case No : Writ Petition No. 3401 of 1998

Maharashtra Mandal, The Head Master, Maharashtra Mandal
Marathi Medium School, Shridhar K. Chandekar and Sulbha
R. Badwe

APPELLANT

Vs

Mrs. Anjali Ramesh Shah (since deceased through LR.
Ramesh Mohanlal Shah and Smt. Sujata Sham Mote)

RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 9

Citation : (2008) 3 ALLMR 408 : (2009) 1 BomCR 456 : (2008) 5 MhLj 59

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : P.S. Dani, for the Appellant; A.M. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—This petition arises from the judgment and order dated 29/1/1998 rendered by the School Tribunal at Pune thereby allowing Appeal No. 43 of 1996 filed by the original respondent-appellant. By the said order the appointment of petitioner No. 3 on promotion as Supervisor with effect from 3/6/1992 and as Head Master with effect from 1/2/1997 and the appointment of petitioner No. 4 on promotion as Supervisor on 1/3/1997 have been set aside and the petitioner Nos. 1 and 2 have been directed to appoint the appellant on promotion as Supervisor with effect from 3/6/1992 and as Head Master with effect from 1/2/1997 with arrears of backwages. During the pendency of this petition, the appellant died and, therefore, the only issue that remains to be considered is regarding arrears of wages on the basis of the promotions directed by the School Tribunal.

2. The appellant was possessing qualification of M.A. B.Ed. and came to be appointed with effect from 12/8/1974 but in the D.Ed. scale, whereas the

petitioner No. 3 who possesses the qualification of B.Sc. B.Ed. came to be appointed as a trained graduate teacher with effect from 9/6/1975 and the petitioner No. 4 with the same qualification came to be appointed as a trained graduate teacher with effect from 24/6/1976. As per the petitioners though the appellant was making representations for being appointed as a trained graduate teacher, there was no vacancy for secondary school teacher's post except in Science subject and the appellant did not possess the said qualifications. Therefore, on the first available vacancy of Assistant Teacher to teach English, she was appointed as a trained graduate teacher with effect from 1/1/1977. The petitioners, therefore, claimed that the appellant was junior to petitioner Nos. 3 and 4. The seniority list was drawn by the petitioner Nos. 1 and 2 and the same was approved by the Education Officer vide his letter dated 26/5/1988. The appellant had submitted representations against the seniority and the said representations were decided by the Management vide its reply dated 21/8/1987. As per the petitioners, petitioner No. 3 was rightly appointed by promotion to the post of Supervisor with effect from 3/6/1992 and to the post of Head Master during the pendency of the Appeal and with effect from 1/2/1997. The petitioner No. 4 being senior to the appellant he was appointed by promotion to the post of Supervisor with effect from 1/3/1997 as the petitioner No. 3 had vacated the said post on his promotion. The School Tribunal by the impugned order has held that the appellant was the senior most teacher irrespective of her appointment in the D.Ed. scale initially and, therefore, allowed the appeal by following the judgment of this Court (DB) in the case of Saramma Varghese v. Secretary/President, S.I.C.E.S. Society 1989 Mh.L.J. 951.

3. Mr. Dani, in support of this petition, has raised mainly two issues i.e.

(a) the appeal filed by the appellant suffered from delay and laches and the School Tribunal was not justified in condoning the delay caused, and

(b) the appellant's seniority as a trained graduate teacher ought to have been counted only from 1/1/1977 and not from initial date of appointment i.e. 12/8/1974. It was also submitted by Mr. Dani that in any case the seniority list published by the management was approved by the Education Officer and the promotions were effected strictly by following the said seniority list, the promotion orders were also approved by the Education Officer and, therefore, even if the appellant was required to be promoted, it was not legal and proper on the part of the School Tribunal to order the payment of arrears more so when petitioner Nos. 3 and 4 had actually worked in the post of Supervisor and Head Master, as the case may be and the management was not guilty of any act of victimisation or mala fides.

4. Along with the appeal filed before the School Tribunal, the appellant filed an application for condonation of delay. There is no doubt that the representation against the seniority list drawn by the management was rejected on 21/8/1987 and the Education Officer had also approved the said seniority list on 10/5/1988. The first promotion to the post of Supervisor was given on 3/6/1992, whereas

the appeal was filed on or about 1/11/1996 i.e. after about four years from the date of appellant's supersession. The appellant did not challenge the order passed by the Education Officer on 10/5/1988 or the seniority list by initiating appropriate proceeding. The School Tribunal has considered all these facts and has noted the submission of the appellant that she was making oral representations to the Head Master from time to time and there was continuous cause of action. As per the School Tribunal though the judgment of this Court in Saramma Varghese's case was rendered in the year 1989, the appellant came to know the same much later and once the law was laid down by this Court mere delay in approaching the School Tribunal could not be a reason to dismiss the appeal. This reasoning set out by the Tribunal cannot be termed as perverse or erroneous. However, the Tribunal was not right in observing that the judgment of this Court in the case of Saramma Varghese came to the knowledge of the appellant for the first time in the year 1996 as these observations are contrary to the record. The issue of seniority is the foundation for career growth of the employees in the private schools and more particularly those who are covered by the M.E.P.S. Act, 1977 and M.E.P.S. Rules, 1981. The view taken by the School Tribunal in condoning the delay is a possible view and the same need not be interfered with under the supervisory powers of this Court, notwithstanding the issue as to whether u/s 9 of the M.E.P.S. Act any limitation is provided to file an appeal against supersession.

5. In Saramma Varghese's case a Division Bench of this Court ruled in para 24 as under:

24 The Act, the Rules and the Code have made the Petitioner and the Respondent No. 5 equal in all respects for the purpose of fixation of seniority for the simple reason that they fall in the same category - graduate teachers with B.Ed. There is a clear statutory rejection of the Respondents' contention that the Respondent No. 5 is senior to the Petitioner because she draws a higher pay. Similarly, the Act, Rules and the Code do not admit of any distinction based on the division in which the Petitioner or the Respondent No. 5 teaches. This immediately negatives the claim of the Respondents that the Respondent No. 5 is senior to the Petitioner because the former teaches in what the Respondents call the Higher Division. Such distinction is alien to the Rules and the Act. Once a person is a graduate teacher with B.Ed. degree, she ranks in seniority according to the date of continuous officiation. The Legislature and the authors of the Code have so strongly asserted the equality of the petitioner and the Respondent No. 5 that they thought it necessary to declare that the appointment in a higher scale of pay or possession of post-graduate degree is not relevant. We have no doubt that the petitioner is senior to the Respondent No. 5.

6. There is no doubt that the M.E.P.S. Act came into force on 15/7/1981 and the M.E.P.S. Rules with effect from 16/7/1981. It is not the case of the management that prior to the year 1981 any seniority list was drawn and published by it and even in the petition it has been admitted that such a seniority list was published

in the year 1985-86 and 1986-87. Obviously, the said seniority lists were published by following the M.E.P.S. Rules, 1981 and, therefore, the management contended that the petitioner Nos. 3 and 4 were in category "C" much prior to 1/1/1977 on which date the appellant was appointed in the said category "C" in Schedule - F to the M.E.P.S. Rules. These arguments have no force in law. Prior to the enactment of the Act, the seniority of the Assistant Teachers was required to be drawn as per the guide-lines set out in Annexure 45 to the Secondary Schools Code.

7. As noted by the Division Bench of this Court in the case of Saramma Varghese (Supra) the different categories set out in Annexure 45 do not relate to the payscale and they are based mainly on qualifications and prior to the Act and the Rules were brought into force, the seniority of the petitioner Nos. 3, 4 and the original appellant was required to be drawn on the basis of the guide-lines set out in Annexure 45 as all of them were trained graduate teachers on the respective dates of their appointments and if so considered, all of them would be in category "B". All the three of them would have been confirmed in normal course within two years from the date of joining and petitioner No. 4 ought to have been confirmed in June 1978. Thus in the academic year 1978-79 the petitioner Nos. 1 and 2 were required to draw the seniority list of all the teachers, including petitioner Nos. 3, 4 and the original appellant and if this was so done, obviously, the appellant would stand senior to the petitioner Nos. 3 and 4 as her date of joining was 12/8/1974 and it would not matter whether she was appointed in the B.Ed. scale or D.Ed. scale, more so when the petitioner No. 2-school is a secondary school from 5th to 10th standards and the appointment order issued to the appellant did not indicate that she was required to teach to the primary section or she was appointed as Assistant Teacher in the primary section. Hence, the contentions that the appellant was required to be treated as a trained graduate teacher only from 1/1/1977 cannot be accepted and the School Tribunal rightly relied upon the judgment of this Court in the case of Saramma Varghese. Just because the appellant was appointed in the payscale of Rs. 120-220 and the petitioner Nos. 3 and 4 were appointed in the payscale of Rs. 265-500 does not support the contentions of the management that the appellant entered Category "C" only from 1/1/1977. In fact, Category "C" did not exist as on 1/1/1977 and as on that date the seniority was required to be considered on the basis of the guide-lines set out in Annexure 45 and thus all the three of them would be in Category "B" therein. As is clear from the guide-lines set out in Schedule "F" of the M.E.P.S. Rules, 1981, Category "B" and Category "C" in Annexure 45 to the Secondary School Code have been clubbed in Category "C" under Schedule "F", but these Rules have been brought into force from 16/7/1981 and it would not be permissible for the management to consider the issue of seniority of petitioner Nos. 3, 4 and the appellant on the basis of the said Rules. The management was required to draw the seniority list on year to year basis and if the seniority list was drawn in the academic year 1978-79 or in the earlier academic year, obviously, the appellant would stand senior to petitioner

Nos. 3 and 4. Appointment in D.Ed. scale or B.Ed. scale has no relevance to decide the issue of seniority or the categorisation of the Assistant Teachers. As has been held by the Division Bench in Saramma Varghese's case all the trained graduate teachers have to be treated on par irrespective of their higher qualifications or higher pay.

8. At the same time, petitioner Nos. 3 and 4 had discharged their duties in the respective posts on promotion and the said promotion orders were issued by the management on the basis of the seniority list approved by the Education Officer. Therefore, it would not be proper that any recovery is made from their salary consequent to the impugned order of the School Tribunal. During the pendency of the petition, the appellant died and she could not be appointed in the post of Headmistress because of the interim order passed by this Court. The petitioner No. 2-school is fully aided. It would be, therefore, just and proper that while confirming the impugned order, the petitioner Nos. 1 and 2 are not required to share the burden of backwages.

9. In the premises, there is no case made out to hold that the impugned judgment suffers on any count and hence it does not call for any interference under the supervisory jurisdiction of this Court under Article 227 of the Constitution.

10. Hence, the petition fails and the same is hereby dismissed. Rule is discharged but without any order as to costs. Interim order stands vacated. It is directed that pursuant to the impugned order the pay fixation and arrears bill shall be prepared by the petitioner Nos. 1 and 2 in respect of the appellant within a period of four weeks from today and the same shall be submitted to the Education Officer, Secondary, Zilla Parishad, Pune and it be cleared as expeditiously as possible. The family pension benefits, if any, shall be re-fixed on the basis of the revised pay.