

(1997) 10 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 1569 of 1984 with W.P. No. 2025 of 1991

Mirza Nazir Baig

APPELLANT

Vs

Education Officer, Z.P., Bhandara and another

RESPONDENT

Date of Decision : 09-10-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 16

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 12, 5

Citation : (1998) 4 BomCR 544 : (1998) 1 MhLj 885

Hon'ble Judges : M.B. Ghodeswar, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : P.C. Madkholkar, R.D. Najbille and A.Z. Jibhkate, for the Appellant; Government Pleader, G.Y. Gharote, A.P. Deshpande and A.Z. Jibhkate, for the Respondent

Judgement

B.H. Marlapalle, J.—Both the petitions are connected and the result of Writ Petition No. 2025 of 1991 is solely depended on the decision in Writ Petition No. 1569 of 1984. Both the petitions being between the same parties, are required to be decided by a common judgment.

2. The petitioner has passed his B.Com. Examination in 1961 and came to be appointed as a High School Teacher with effect from 23-7-1962 on a pay-scale of Rs. 100 + Dearness Allowances and he was taking Commerce classes for the High School students in the Higher Secondary School run by respondent No. 2, Municipal Council, whereas the Intervener Shri Parate was an under graduate (B.Sc. fail) when he came to be appointed as a Middle School Teacher with effect from 2-7-1962 by respondent No. 2 in the pay-scale of Rs. 65 + Dearness Allowances. He passed his B.Sc. Examination sometimes in the year 1963. In terms of Rule 7 of the M.P. School Code, both of them are deemed to be confirmed on completion of two years service from the date of joining.

Subsequently, the Intervener passed his B.Ed. Examination in 1965 whereas the petitioner passed the same examination in 1966 (Summer). The intervener, though appointed as a Middle School teacher, continue to teach High School classes in the subjects of Mathematics and Science.

3. Respondent No. 2 published the first Seniority List on 9-9-1973 with petitioner shown at Sr. No. 27 and the intervener at Sr. No. 26. This seniority was not challenged by any one and thus the seniority list remained undisputed. Another seniority list was published on 15-10-1977 and approved by the Standing Committee on 9-11-1977 in which the intervener was shown at Sr. No. 7 whereas the petitioner was shown at Sr. No. 8. Even this seniority list was not challenged by either of them and hence remained undisputed. A third seniority list came to be published by respondent No. 2 in the year 1981 and for the first time, the petitioner was shown at Sr. No. 5 whereas the intervener was shown at Sr. No. 6. The intervener, therefore, challenged the Seniority list before the Administrator of respondent No. 2 by filing applications dated 1-3-1982, 10-8-1982, 22-10-1982 and 7-12-1982. It appears that without deciding these applications, the Administrator of respondent No. 2 appointed the petitioner as a Supervisor vide order dated 8-10-1982. This appointment came to be approved by respondent No. 1, Education Officer vide order dated 28-12-1982 under Rule 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, (hereinafter referred to as the M.E.P.S. Rules, for short). It appears that the intervener filed a representation before respondent No. 1 and raised an objection to the appointment of the petitioner as Supervisor by respondent No. 2. Respondent No. 1 while considering the representations made by the intervener, passed order dated 5-9-1983 stating therein that the intervener was senior to the petitioner and the petitioner was promoted contrary to the inter se seniority and hence the promotion of the petitioner was cancelled. Respondent No. 1 further directed respondent No. 2 to appoint the intervener as Supervisor and submit the said order for approval under the M.E.P.S. Rules. Being aggrieved by the said order, the petitioner filed Writ Petition No. 1569 of 1984. It is pertinent to note that in the year 1983, a fourth seniority list was published wherein the name of the petitioner was shown at Sr. No. 5 and intervener's name was shown at Sr. No. 17. The intervener challenged the seniority list before the Regional Director, Municipal Administration, Nagpur (R.D.M.A. Nagpur) u/s 318 of the Maharashtra Municipalities Act, 1965 and vide his order dated 31-8-1984, the R.D.M.A. set aside the 1983 seniority list and advised the Municipal Council to consider the objection of the intervener and to prepare the fresh seniority list. It appears as Writ Petition No. 1569 of 1984 was filed on 11-7-1984 and interim order was passed on 6-8-1984, granting ad interim stay to the order dated 31-8-1983, the order passed subsequently on 31-8-1984 by the R.D.M.A. was not challenged by any of the parties. However, respondent No. 2 prepared a fresh seniority list and showed the intervener at Sr. No. 4 whereas the petitioner at Sr. No. 5 and this seniority list was challenged by the petitioner before the R.D.M.A. and the Revision was rejected by order dated 31-10-1984. From the

record, it appears that the petitioner filed another Revision Petition No. 19/84-85 before the R.D.M.A. Nagpur against the order dated 19-10-1984 in respect of issuance of corrigendum of seniority list. The R.D.M.A., Nagpur vide his order dated 16-3-1985 set aside the corrigendum aforesaid and ordered to maintain status quo, as per order of this Court in Writ Petition No. 1569 of 1984. In view of the stay granted by this Court to the impugned order dated 5-9-1983, the petitioner continued to function as a Supervisor in the School under respondent No. 2.

4. It appears that by Resolution dated 30-4-1991, respondent No. 2, Municipal Council appointed the intervener as the Head Master and the petitioner as Assistant Head Master. Respondent No. 1 by his letter dated 25-6-1991 addressed to the Chief Officer of respondent No. 2 Municipal Council objected to this Resolution and informed respondent No. 2 that as on 31-12-1965 the petitioner was senior to the intervener and in terms of the M.P. School Code, inter se seniority between the petitioner and the intervener as on 31-12-1965 could not be changed. Respondent No. 1, therefore, called upon respondent No. 2 to promote the petitioner as the Head Master and to delegate him with all the necessary powers. Respondent No. 2 by order dated 2-7-1991 appointed the petitioner as the Head Master of the Municipal School, Paoni in the pay-scale of Rs. 2000-60-2300-EB-75-3200-100-3500. This appointment of course was made subject to the result of the pending Writ Petition No. 1569 of 1984 before this Court. Surprisingly, by his order dated 29-7-1991, respondent No. 1 informed respondent No. 2 that in view of pendency of Writ Petition No. 1569 of 1984 before this Court, no official decision regarding the seniority of the petitioner could be arrived at and considering the interim stay granted by this Court, the petitioner could be appointed only as In-charge Head Master. Being aggrieved by the order dated 29-7-1991, the petitioner filed Writ Petition No. 2025 of 1991 and by order dated 9-8-1991, this Court was pleased to pass a status quo order which was subsequently continued. During the pendency of Writ Petition No. 2025 of 1991, the Deputy Director of Education, Nagpur Division at Nagpur, by his order dated 19-1-1993, approved the appointment of the petitioner as the Head Master with effect from 2-7-1991 in the special pay-scale applicable to the High Schools attached to the Junior College. The Original Intervener Shri Parate joined Writ Petition No. 2025 of 1991 as per the order of this Court passed on 12-9-1991.

5. In view of the status quo order in Writ Petition No. 2025 of 1991, the petitioner continued to work as the Head Master under respondent No. 2 and in spite of approval granted to his appointment as the Head Master by the Deputy Director of Education vide his order dated 19-1-1993, respondent No. 1 did not release the salary of the petitioner in the pay-scale applicable to the post of Head Master as per the rules. The petitioner retired on reaching the age of superannuation on 30-4-1995 and he continued to receive the salary as applicable to the post of Assistant Teacher till his retirement. It is pertinent to note at this stage that the salary for the post of Assistant Teacher and Supervisor

is the same except that the Supervisor is entitled for a monthly allowance of Rs. 40/- in addition to regular salary. On the retirement of the petitioner, the intervener has been promoted as the Head Master on 6-5-1995 by respondent No. 2, Municipal Council.

6. The factual matrix of the dispute does not end here itself. It appears that one Mr. Krishan Ganpat Nagardhane, Assistant Teacher working in the same School of respondent No. 2 had preferred Revision Application No. 2 of 1994 before the R.D.M.A. at Nagpur challenging the Resolution dated 30-8-1994 passed by the Standing Committee of respondent No. 2 and subsequent order of promotion dated 6-5-1995 appointing the intervener as the Head Master and by order dated 16-8-1997, the R.D.M.A. has allowed the Revision Application and held that the revision Applicant is senior to the present intervener. As a result of this order dated 16-8-1997, the intervener is removed from the post of Head Master and Mr. K.G. Nagardhane has been appointed as the Head Master. It is stated across the Bar that the present intervener has challenged the said order dated 16-8-1997 by filing Writ Petition No. 2525 of 1997 before this Court on 28-8-1997. However, for deciding the present writ petitions, we are not concerned with the order dated 16-8-1997 passed by the R.D.M.A. and presently under challenge in Writ Petition No. 2525 of 1997.

7. The following points are required to be adjudicated by us to decide Writ Petition No. 1569 of 1984 and, as stated hereinabove in the opening paragraph itself, the result of this petition will automatically decide the Writ Petition No. 2025 of 1991.

A. Whether the petitioner was senior to the intervener as on 31-12-1965.

B. What was the position of inter se seniority between the two as on 27-7-1966 when the State Government issued Circular regarding seniority of teachers of Non-Government Secondary Schools in the Vidarbha Region.

C. Whether the position of inter se seniority between the two got altered after the M.E.P.S. Rules came into force.

D. Whether the impugned order dated 3-9-1983 is arbitrary and in violation of principles of natural justice.

Before we adjudicate upon the above points, it is necessary to deal with the basic factual background prevailing in the Vidarbha Region till 31-12-1965 and thereafter so that the legal background pertaining to the seniority of Private Secondary Schools is brought on record. The Secondary School Education in Old Madhya Pradesh since 1951 was governed by the M.P. Secondary Education Act and Regulations made under sections 19 and 20 of the M.P. Secondary Education Act, 1951, Chapter XII of the Regulation No. 11 were known as the School Code (M.P. School Code). A Statement of Objects and Reasons of the M.P. Schools Code indicates that it applied to Non-Government Secondary Schools. Clause 7 deals with the service conditions of teachers while Clause 10(1) pertains to the

subject of seniority and reads thus :

"10(1) 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 dates of first appointment in the school, if there is no break of service during the period preceding the permanent appointment."

Under the M.P. Act of 1951 and the M.P. School Code, there existed three categories of teachers, viz. lectures, high school teachers and middle school teachers and the seniority in each category was counted depending on the length of service.

8. Even after first reorganisation of State, M.P. School Code continued to apply in Vidarbha Region upto 31-12-1965 when the M.P. Act was repealed and the Maharashtra Secondary School Code was brought into force. Clauses 61 and 63 of the said Code deal with the subject of appointment and the duties of the heads of Schools and appointment of supervisors. Annexure 45 deals with the subject of Seniority List of Teachers in the Non-Government Secondary Schools. Clause 5 of Annexure 45 reads as under:

"The seniority of Non-Government Secondary School Teachers in Nagpur Region (now Nagpur and Amravati Regions) who were permanent on 31- 12-1965 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."

On 27-7-1966, the Director of Education, Pune issued a Circular to Heads of all Recognised Non-Governmental Secondary Schools in the State on the subject of Secondary List of Teachers whereby category wise seniority in those secondary schools run under the same management was taken. On 2nd September, 1968, clarification in respect of the Circular dated 27th July, 1966 was issued to the Heads of all recognised Seniority Schools mentioning that "The Seniority of Teachers working in Secondary Schools in Vidarbha fixed prior to 31st December, 1965 was fixed in accordance with the statutory provisions contained in the M.P. Secondary Education Act, 1951 and the rules thereunder. Therefore, the Seniority fixed prior to 31st December, 1965 of teachers who were permanent as on that date should not be disturbed or refixed in accordance with the instructions issued in this office Circular dated 27th July, 1966 under reference." On 11th May, 1971, the Director of Education issued Circulars to all Heads of the recognised Secondary Schools, specifying various categories of teachers and reiterating once again that the Seniority of Secondary School Teachers who were permanent on 31st December, 1965 should not be disturbed, and their seniority should continue to be determined as per statutory provisions contained in the M.P. Secondary Education Act, 1951 (the M.P. Act) and the Rules made

thereunder. From the academic session 1975-76 two stage pattern of higher secondary education popularly known as 10 + 2+ 3 pattern was introduced. On 25th August, 1975, the Government Circular came to be issued, explaining the position of Seniority. In the said Circular, there is a reference also to the subject of promotions to the post of Head Master in the aided secondary schools and it is to the effect that a common seniority should be maintained of all the teachers in the scale of Rs. 165-400, Rs. 150-400, Rs. 154-275 or 220-470 or 300-650, on the basis of service in the trained graduate scale. By another communication dated 7th February, 1979 it was clarified that Circular dated 25th August, 1975 was meant not only for Zilla Parishad Secondary Schools but also for Non-Government Secondary Schools.

9. The State of Maharashtra passed the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 and in exercise of the powers conferred by sub-sections (1) and (2) of section 16, the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, were framed. The said Act was brought into force on 16-7-1981 along with the M.E.P.S. Rules. Rule 12 of 1981 Rules deals with the preparation of seniority list by every management in accordance with the guidelines laid down in Schedule F. Note 10 under Clause 2 of the said Schedule F which is the reproduction of Clause 5 of Annexure 45 of the Secondary School Code reads thus :

"Note 10 :- The seniority of Secondary School Teachers in Vidarbha Region who were permanent on 31st December, 1965 and whose seniority was determined as per the provisions contained in the Madhya Pradesh Secondary Education Act, 1951 and the rules made thereunder shall not be disturbed. If any teacher among such teachers, improves his qualifications and thereby switches over to higher category, these guidelines of seniority shall apply so far as the determination of this seniority in the higher category is concerned."

10. The learned Counsel for the petitioner submitted that the petitioner was a High School teacher when appointed as against the intervener who was a Middle School teacher and as per the Scheme of the M.P. Secondary Education Act, 1951 and the Rules thereunder, the petitioner was senior to the intervener (petitioner was appointed as High School teacher as against the intervener being appointed as Middle School teacher) and on their confirmation, after completing two years of service, both of them continued to be in the same different categories. As a result, as on 31-12-1965, the petitioner was senior to the intervener, asserts the learned Counsel. It is further submitted by him that in view of Clause 5 of Annexure 45 and in pursuance of the Secondary School Code being made applicable to Vidarbha Region from 27-7-1966, the seniority of the petitioner could not be disturbed vis-a-vis the intervener and as both of them were trained teachers on 27-7-1966, there was no question of the intervener being senior to the petitioner as the intervener had acquired his B.Ed. Degree in 1965 as against the petitioner in 1966. Even after the M.E.P.S. Rules came into force from 16-7-1981, the protection available to the petitioner under Clause 5 of

Annexure 45 of the Secondary School Code remained unaltered in terms of Note 10 under Clause 2 of Scheduled F, to the M.E.P.S. Rules, urged the learned Counsel. It has been further contended that even otherwise the impugned order dated 5-9-1983 has been passed in violation of the principles of natural justice inasmuch as the petitioner was earlier approved as the Head Master and on the representation being made by the intervener against the said appointment, respondent No. 1 ought to have heard the petitioner while adjudicating the representation of the intervener before passing the impugned order.

11. The learned Counsel for the intervener has opposed the contentions on behalf of the petitioner and he has placed reliance on Clauses 3 and 5 of Annexure 45 of the Secondary School Code. We have reproduced the provisions of Clause 5 and the provisions of Clause 3 of Annexure 45 read 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."

12. The learned Counsel urged before us that the intervener has passed his B.Ed. Examination earlier in point of time as compared to the petitioner and as on 1-1-1966, the intervener was a trained teacher whereas the petitioner became a trained teacher only in 1966 (Summer) and hence in view of this position, the intervener became senior to the petitioner as on 1-1-1966. He further contended that, even though the intervener was in lower pay-scale and was appointed as a middle school teacher as against the petitioner being a high school teacher, that did not come in the way of the intervener and with the Secondary School Code being made applicable to the Vidarbha Region after the M.P. Secondary Education Act, 1951 and the Code thereunder was repealed, the intervener is deemed to have become senior to the petitioner. He has also relied upon the seniority lists published by respondent No. 2 in 1973, 1977 and 1984. In support of these submissions, he has relied upon two judgments of this Court (Division Bench). In the case of Saramma Varghese v. Secretary President S.I.C.E.S. Society, reported in 1990 B.C.R. 185 :1989 M. L.J. 951, this Court had held, inter alia, that higher pay scale is not relevant in the case of fixation of seniority of teachers. Seniority of a teacher with B.A. + B.Ed. degree wherever he teaches will be counted according to the date of appointment and continuous officiation. It was further held that the inter se seniority of teachers falling in any single category has to be determined on the basis of continuous service in that category in a single school or schools of the same management, and the appointment in a higher scale of pay or possession of Post-Graduate Degree is not relevant.

13. In the case of Madhav Govindrao Budhe v. Education Officer, Zilla Parishad, Nagpur, reported in 1994 M. L.J. 42, this Court, inter alia, held that the seniority of teachers in the Vidarbha Region who were permanent on 31-12-1965 will have

to be determined as per the statutory provisions in the M.P. Secondary Education Act and Note 10 in Schedule F to the M.E.P.S. Rules was in par; materia with provisions of Clause 5 of Annexure 45 under the Higher Secondary School Code brought into force by the Maharashtra Government in 1966. On interpretation of the said provisions, this Court held that even in the case of teachers in Vidarbha Region, though their seniority was protected as on 31-12-1965, any teacher who has improved upon his qualifications, more particularly his training qualification, the new guidelines brought into force vide the M.E.P.S. Rules will be applicable and the inter se seniority would thus stand changed. It needs to be made clear that both the judgments relied upon by the learned Counsel for the intervener are not applicable to the facts of the present case.

14. Admittedly, under Clause 5 of Annexure 45 of the Higher Secondary School Code and Note 10 of Schedule F under the M.E.P.S. Rules, there is a clearcut mandate that the inter se seniority of teachers in the Vidarbha Region as on 31-12-1965 will remain unchanged and as per the proviso to the said clause/rule, this protection is not available, if any other teacher in that seniority list acquires higher qualification. The Higher Secondary School Code promulgated by the Government of Maharashtra was made applicable for the first time as per Circular issued by the Director of Education, Pune on 27-7-1966 and as on that date even the petitioner has become a trained teacher. Admittedly, the petitioner was a high school teacher right from his appointment as against the intervener being a middle school teacher on lower salary as compared to the petitioner. The petitioner was undoubtedly senior to the intervener as on 31-12-1965 and even after the Higher Secondary School Code was made applicable to the Non-Government Schools in Vidarbha Region, the petitioner remained senior to the Intervener in view of the fact that the petitioner also became a trained teacher in the Summer of 1966, that is, prior to the Notification issued by the Director of Education, Pune on 27-7-1966. Even after the M.E.P.S. Rules came into force, the position of inter se seniority between the petitioner and the intervener did not change and as a result the petitioner continued to be senior to the intervener.

15. Respondent No. 2 had rightly issued an appointment order dated 8-10-1982 in favour of the petitioner, appointing him to the post of Supervisor and the said appointment was approved by respondent No. 1 on satisfying himself that the petitioner was senior to the intervener. The petitioner continued to work as a Supervisor in pursuance of the appointment order dated 8-10-1982 and solely on the basis of representation made by the intervener, this appointment, though approved by respondent No. 1, was cancelled by order dated 5-9-1983 without hearing the petitioner, by respondent No. 1. The petitioner had already worked for about 11 months as Supervisor and thus a vested right in his favour was created specially when his appointment to the post of Supervisor was approved by respondent No. 1 and or representation of a third party, namely, the intervener, the respondent No. 1 acted illegally by passing the impugned order dated 5-9-1983. Once a civil right is created in favour of a party by an order duly approved under the rules, the said right cannot be withdrawn unilaterally and

without hearing the party in whose favour such a right was created. The rule of audi alteram partem will come into play in such cases and even if an appointment already approved is objected to by third party, such an appointment cannot be cancelled or withdrawn by the Competent Authority unless the appointee is heard. In the case of Saramma Verghese (supra) this Court has also held that the Education Officer while adjudicating dispute of seniority under Rule 12(3) of the M.E.P.S. Rules, 1981 acts as a Tribunal. In the instant case before us, the order dated 8-10-1982 was passed on the basis of seniority and the same came to be withdrawn solely on account of the directions given by the Education Officer after he entertained the representation of the intervener about alleged seniority above the petitioner. We, therefore, hold that the impugned order dated 5-9-1983 has been passed in violation of principles of natural justice and it is an order passed arbitrarily by respondent No. 1, thus violating Article 14 of the Constitution of India.

16. The learned Counsel appearing for the Intervener vehemently submitted before us that this Court should not invoke its jurisdiction of Certiorari under Article 226 of the Constitution of India to quash and set aside the impugned order if the original order was itself illegal. He submitted that the impugned order dated 5-9-1983 was a ministerial order in as much as it was only correction of records and hence the powers of Certiorari are not required to be exercised unless the impugned order had resulted into miscarriage of justice or failure of justice. In support of these contentions, the learned Counsel relied upon the Supreme Court judgments in the case of A.M. Allison Vs. B.L. Sen, and in the case of Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, as well as the judgment of the Full Bench of Rajasthan High Court in the case of Jagan Singh Vs. State Transport Appellate Tribunal, Rajasthan and Another, . We are afraid, we are not in agreement with the learned Counsel for the intervener inasmuch as the impugned order is not a ministerial order passed by respondent No. 1. The said order is in the nature of adjudicating a dispute of seniority between the petitioner and the intervener on a dispute raised by the intervener and it has been passed after the appointment of the petitioner was approved by respondent No. 1 himself. The petitioner in pursuance of the appointment order to the post of Supervisor had worked for about 11 months and the act of respondent No. 1 to cancel or withdraw his approval granted to the appointment of the petitioner without hearing the petitioner is not, by any stretch of imagination, a ministerial order. The order dated 5-9-1983 has certainly resulted into miscarriage of justice or failure of justice inasmuch as notwithstanding the fact that the petitioner was senior to the intervener and his appointment to the post of Supervisor was approved by respondent No. 1 himself based on the seniority of the petitioner, respondent No. 1 cancelled/disapproved the said appointment behind the back of the petitioner.

17. Our attention has also been invited by the learned Counsel for the petitioner to the representation dated 27-4-1983 submitted by the intervener. Vide this representation, the intervener has raised a grievance before respondent No. 2

that he should be promoted as a High School Teacher retrospectively from 4-1-1963, i.e., after he passed his B.Sc. Degree. This representation also makes it clear that the intervener admitted, in no uncertain words, that he continued to be a Middle School Teacher and was not appointed/promoted as High School Teacher at any time till the date of representation. Though the Scheme of M.E.P.S. Rules did not make a distinction as a High School Teacher and a Middle School Teacher in a Higher Secondary School and all the trained teachers are in the same category, that is category C, undoubtedly, the petitioner (Sic intervener) was a middle school teacher till the School of respondent No. 2 was governed by the M.P. Secondary Education Act, 1951 and the Rules thereunder and he, therefore, remained to be junior to the petitioner prior to 27-7-1966. This position did not change even after 27-7-1996 because both the petitioner and the intervener were trained teacher on this date.

18. In the case of Yeshwant v. Director of Education, Government of Maharashtra, Pane, reported in 1987 L. I.C. 1611, a Division Bench of this Court has in detail analysed the issue of seniority of the teachers working in Non-Government High School in the Vidarbha Region under the M.P. Secondary Education Act and the Rules thereunder, the Higher Secondary School Code brought into force by the Government of Maharashtra in 1966 and in M.E.P.S. Rules brought into force in 1981. In the instant case before us, both the petitioner as well as the intervener were appointed in 1962 and they were deemed to be confirmed on completing two years of service and to repeat, the petitioner was senior to the intervener as on 31-12-1965. It will be apt to refer to the following observations made by this Court in the case of Yeshwant (supra) :

"All the cases with which we are concerned with the teachers who were appointed when Vidarbha was part of old M.P. and who were made permanent on or before 31st December, 1965, Clause 5 of Annexure 45 of the Maharashtra Secondary School Code is relevant. It prohibits the disturbance of seniority of non-governmental secondary school teachers in the region who were made permanent on 31st December, 1965 and further lays down that their seniority should continue to be determined as per the statutory provisions contained in M.P. Act and the Rules made thereunder. This position received statutory recognition of 1981 Rules. It is plain that neither a Government Resolution nor Government Circular can override the Act or the Rules made there under."

19. This principle as enunciated in Yeshwant's case has been duly upheld by the Supreme Court in the case of M.G. Pandke and others Vs. Municipal Council, Hinganghat, Dist. Wardha and others, .

20. The Government of Maharashtra issued a Government Resolution dated 30-6-1981 regarding Seniority of Teachers in the Non-Government Secondary Schools and in para 4(ii) of the said Government Resolution, it stipulated as under:

"The seniority of teachers in Non-Government Secondary Schools throughout the State of Maharashtra in various scales of pay should be fixed strictly in accordance with the orders issued in Government Resolution, Education Department, No. H.S.C.-1375/X/XX-XXI dated 25-8-1975 and promotions to the post of Assistant Head Master in the Non-Government Secondary Schools as also posting of Supervisors should be regulated only on the basis of such seniority."

21. In the result, we allow the Petition No. 1569 of 1983 and quash and set aside the impugned order dated 5-9-1983. It is held that the petitioner was rightly appointed to the post of Supervisor in consideration of his seniority and respondent No. 1 passed the impugned order in breach of principles of natural justice and in violation of Article 14 of the Constitution.

22. Once it is held that the petitioner was rightly appointed to the post of Supervisor, his subsequent appointment to the post of Head Master, which is a subject for adjudication in Writ Petition No. 2025 of 1991, is required to be upheld. Rule 5 of the M.E.P.S. Rules prescribes the procedure for appointment to the post of Supervisor. As per Rule 5(3) of the M.E.P.S. Rules, every Secondary school with more than 10 classes shall have one or more Supervisors in accordance with the provisions of sub-Rule (4) and Rule 5(5) states that the post of Supervisor shall be filled in only from amongst the permanent staff strictly on the basis of Seniority-cum-Merit. Rule 3 of the M.E.P.S. Rules deals with the qualifications and appointment of the Head Master and it is clear that the post of Head Master in a Secondary School or a Junior College of Education is required to be filled in by appointing the senior most teacher. In the instant case, the petitioner was already holding the post of Supervisor and he was senior to the intervener, he was rightly appointed as Head Master by Resolution dated 2-7-1981 passed by respondent No. 2 in pursuance of the directions given by respondent No. 1 vide his letter dated 25-6-1991. The impugned order dated 29-7-1991 is, therefore, without application of mind to the dispute pending before this Court in Writ Petition No. 1569 of 1984 and the orders passed therein by this Court. If respondent No. 1 had issued notices to the petitioner and respondent No. 2. Municipal Council before passing this order, probably this subsequent litigation could have been avoided. The petitioner has been dragged to the Court more than once, solely due to the erroneous acts on the part of respondent No. 1 and in spite of the fact that the Deputy Director of Education vide his order dated 19-1-1993 had approved the appointment of the petitioner as Head Master, respondent No. 1 refused to make the payment of salary to the petitioner as applicable to the post of Head Master and though the petitioner retired on 30-4-1995, he continued to draw the salary as applicable to an Assistant Teacher. It is also possible that the pensionary benefits of the petitioner might have been fixed only on the basis of his salary to The post of Assistant teacher. To say the least, the petitioner has been forced to suffer for no fault of his. We allow Writ Petition No. 2025 of 1991 and quash and set aside the impugned order dated 29-7-1991. We further direct respondent No. 1 to release the arrears of pay applicable to the post of Head Master as per rules with effect

from 29-7-1991 and make the said payment within a period of two months from today. We further direct the respondents to take suitable steps within two months from today and fix the pensionary benefits of the petitioner in the pay scale applicable to the post of Head Master as per rules and settle the payment of pensionary benefits, if any, within the said period.

23. Rule made absolute in both the petitions with costs to be paid by respondent No. 1.

24. We clarify that this judgment will have no bearing on the merits of the pending W.P. No. 2525/97 which is regarding the dispute of inter se seniority between the intervener and Shri K.G. Nagardhane.

25. Order accordingly.