

(2005) 06 BOM CK 0130
In the Bombay High Court
Case No : Writ Petition No. 78 of 1992

N.A. Khan

APPELLANT

Vs

Municipal Council and Others

RESPONDENT

Date of Decision : 08-06-2005

Acts Referred:

Citation : (2005) 4 ALLMR 379 : (2005) 4 MhLj 625

Hon'ble Judges : D.D. Sinha, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : Z.A. Haq, for the Appellant; S.C. Mehadia, for respondent Nos. 1 and 2 and B.H. Dangre, Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

D.D. Sinha, J.—Heard Shri Haq, learned Counsel for the petitioner, Shri Mehadia, learned Counsel for the respondent Nos. 1 and 2 and Mrs. Dangre, learned Assistant Government Pleader for the respondent No. 3.

2. Shri Haq, learned Counsel for the petitioner, states that on 28-7-1959 the petitioner was appointed as Assistant Teacher in the Primary School run by the respondent No. 1 Municipal Council. The petitioner served in the said School till 3-8-1960. On 4-8-1960, the petitioner was appointed as an Assistant Teacher in the Municipal Mahatma Gandhi Vidyalaya run by the respondent No. 1 Municipal Council. The petitioner was given a technical break from 1-5-1961 to 30-6-1961 (vacation period) and for the period from 1-5-1962 to 1-7-1962 (vacation and transfer period). It is submitted that Chief Officer of respondent No. 1 Municipal Council condoned the technical breaks in the service of the petitioner. Thus, the petitioner was in the continuous service of respondent No. 1 Municipal Council since 28-7-1959. The date of birth of the petitioner is 12-5-1934. It is contended that petitioner acquired B.A. qualification in the year 1975, post-graduate degree (M.A.) in 1977 and degree of Bachelor of Education, in 1979. It is further contended that the respondent No. 4 was appointed as Assistant Teacher on 2-7-1962. The date of birth of the respondent No. 4 is 3-11-1940. The

respondent No. 4 acquired degree of Bachelor of Arts in 1961 and degree of Bachelor of Education in 1967. It is contended that respondent No. 1 Municipal Council promoted respondent No. 4 to the post of Head Master giving go-bye to the claim of the petitioner to the said post of Head Master.

3. It is alternatively contended by learned Counsel Shri Haq that even if it is presumed that breaks in service of the petitioner were not condoned by the competent Authority, even then petitioner and respondent No. 4 came to be appointed as Assistant Teacher on 2-7-1962 and since petitioner was elder to the respondent No. 4 in age, petitioner's claim for the post of Head Master ought to have been considered by the respondent No. 1 Municipal Council. In order to substantiate this contention, reliance is placed by the learned Counsel on the judgment of this Court in *Sopan s/o Bhagwan Kinage v. Director of Education, Pune* and Ors.1990 Mh.L.J. 97.

4. Learned Counsel Shri Haq submits that action of respondent No. 1 in promoting respondent No. 4 to the post of Head Master is misconceived and unsustainable in law and, therefore, resolution passed by the respondent No. 1 Municipal Council by which respondent No. 4 was promoted may be quashed and set aside and respondent No. 1 Municipal Council may be directed to promote petitioner to the post of Head Master notionally in the School in question with effect from 1-7-1991.

5. Shri Mehadia, learned Counsel for respondent Nos. 1 and 2, has denied that petitioner was given the technical breaks for the above referred period. He has also denied that alleged technical breaks in service were condoned by the Chief Officer of the Municipal Council. It is submitted by the learned Counsel that petitioner was initially appointed in the Primary School and later on he was appointed in Municipal High School. The services of the petitioner were actually discontinued during the period from 1-5-1961 to 30-6-1961 and from 1-5-1962 to 1-7-1962. The petitioner was in continuous service in the Middle School since 2-7-1962. It is submitted that even as per service book of the petitioner, which was prepared in July, 1962, the petitioner has been shown to be working in the School since 2-7-1962.

6. Learned Counsel Shri Mehadia submits that so far as respondent No. 4 is concerned, he was appointed as Assistant Teacher on 2-7-1962 and he obtained degree of Bachelor of Arts in the year 1961 and degree of Bachelor of Education in the 1967, i.e. much prior to the said degrees obtained by the petitioner. It is further submitted that in view of Note 3 and Clause 5 of Annexure 45 of the Secondary Schools Code, the claim of the respondent No. 4 for the promotional post was considered by the Municipal Council. Consequently, respondent No. 4 was made Head Master of the School. In order to substantiate the contentions, reliance is placed by the learned Counsel on the judgment of this Court in *Devlal Chauhan and Another Vs. Municipal Council Gondia and Others*, .

7. We have considered the contentions canvassed by the learned Counsel for the

parties. On the backdrop of the above referred facts, it is more or less evident that petitioner as well as respondent No. 4 were appointed as Assistant Teachers in the concerned School at the same time, i.e. on 2-7-1962. It is not in dispute that petitioner at the time of appointment was elder to the respondent No. 4. However, so far as qualifications are concerned the respondent No. 4 obtained degree of B.A. in 1961 and B.Ed. in 1967 whereas petitioner acquired qualification of B.A. in 1975 and B.Ed in 1979.

8. On the backdrop of the above undisputed facts, it will be appropriate to consider controversy in issue in the light of the provisions of Note 3 as well as Clause 5 of Annexure 45 of the Secondary Schools Code. This issue, in our view, is no more *res integra* and is covered by the decision of this Court in the case of Devlal Jagatram Chauhan (cited *supra*). The relevant observations of the Division Bench of this Court made in para (14) of the judgment in the said case read thus :

"The conclusion thus emerges is that in view of clause 5 of Annexure 45 upto 31-12-1965 the parties will be governed by the provisions of the Act and the Code framed thereunder and thereafter the parties will be governed by the provisions of the Secondary School Code as framed by the State of Maharashtra for the purposes of seniority. The teachers who were having requisite qualifications as on 31-12-1965 will have to be given seniority on the basis of length of service in appropriate category and the teachers who have acquired the requisite qualification after 1965 will have to be given seniority as per the provisions contained in Annexure 45 of the Secondary School Code. In the present case, prior to 31-12-1965 the petitioners and the respondents Nos. 3 to 8 only were possessing qualifications of graduation and training course. The petitioners acquired B.Ed, qualifications on 11-5-1963, while the respondent No. 3 acquired training qualification on 5-5-1964 and the respondent No. 8 acquired training qualification in the year 1964. On 31-12-1965, the respondents Nos. 4, 5, 6, 7 and 9 were not possessing the B.Ed, training qualification and this qualification was acquired by the respondent No. 4 on 10-5-1970, by the respondent No. 5 on 17-5-1967, by the respondent No. 6 on 8-5-1971, by the respondent No. 7 on 21-12-1971 and by the respondent No. 9 on 8-5-1971. Thus, as far as the petitioners, the respondent No. 3 and the respondent No. 8 are concerned, they were possessing the requisite qualifications on 31-12-1965 and by application of Annexure 45 of the Secondary School Code after 1965 they will be placed in one category depending upon their length of service in the high school. The respondent Nos. 4, 5, 6, 7 and 9 were not possessing the training qualification on 31-12-1965, hence these respondents will have to be placed in lower category than the petitioners and the respondents Nos. 3 and 8 and from the date of their qualifications these respondents will be placed in the higher category as per the guidelines contained in Annexure 45 of the Secondary School Code for the purposes of seniority. Thus, the seniority of the petitioners and the respondents Nos. 3 and 8, as on 31-12-1965 will be on the basis of their length of service while the seniority of the respondents Nos. 4, 5, 6, 7 and 9 will be on

the basis of date of their acquiring B.Ed, qualification. In view of Annexure 45 of the Secondary School Code, the respondents Nos. 4,5,6,7 and 9 will have to be treated as juniors to the petitioners. The ultimate result will be that the seniority of the petitioners and the respondent Nos. 3 and 8 will depend on their length of service as they were possessing the requisite qualifications on 31-12-1965. After 1965 seniority between the petitioners and the respondents Nos. 3 and 8 cannot be disturbed."

9. Taking into consideration the above referred observations of the Division Bench of this Court, it is evident that respondent No. 4 acquired requisite qualification of B.Ed, prior to the petitioner and as per scheme of Clause 5 of Annexure 45 of the Secondary Schools Code, he will have to be placed in the higher category than petitioner, who obviously did not possess the requisite qualification on 31-12-1965. The law laid down by the Division Bench of this Court in the case of Devlal Jagatram Chauhan (cited supra) is clearly applicable to the facts of the present case. For the reasons stated hereinabove, respondent No. 4 will have to be placed in the higher category than the petitioner and his length of service in the said category will have to be counted from the date on which he has acquired requisite qualifications for the post, i.e. B.A., B.Ed. The respondent No. 4 obtained these qualifications much prior to the petitioner and, therefore, had a better claim for the higher post. The Municipal Council was, therefore, justified in considering the claim of the respondent No. 4 and promoting him to the post of Head Master.

10. So far as judgment of the Division Bench in the case of Sopan s/o Bhagwan Kinage (cited supra) relied by the learned Counsel for the petitioner is concerned, the same is considered by the Division Bench of this Court in Devlal Jagatram Chauhan's case (cited supra). In the said case of Devlal Jagatram Chauhan, the Division Bench has already observed that in view of Clause 5 of Annexure 45, after 31-12-1965, the parties will be governed by the provisions of the Act and Rules. The present case needs to be considered under the provisions of the Secondary Schools Code as framed by the State of Maharashtra for the purpose of seniority. Keeping this aspect in mind as well as scheme enumerated in Clause 5 of Annexure 45 of the Secondary Schools Code, there is no scope to assess inter se seniority of the employees of the Secondary School on the basis of age and in absence thereof, it is necessary to give proper meaning to Clause 5 of Annexure 45 in construing inter se seniority between the employees and, therefore, we are afraid that the law laid down by the Division Bench of this Court in Sopan s/o Bhagwan Kinage's case is not of any help to the petitioner in respect of controversy in issue.

11. For the reasons stated hereinabove, the petition suffers from lack of merit. Hence, same is dismissed. The rule is discharged. No order as to costs.