

(2003) 03 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No's. 1042, 1043 and 1049

Narsing Hippargekar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-03-2003

Acts Referred:

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

Citation : (2004) 101 FLR 601 : (2004) 1 MhLj 947

Hon'ble Judges : B.H. Marlapalle, J;A.S. Bagga, J

Bench : Division Bench

Advocate : Ashok Bhagure, holding for A.S. Golegaonkar, in Writ Petition Nos. 1042 and 1043 and R.N. Dhorde, holding for A.M. Gaikwad, in Writ Petition Nos. 1049, for the Appellant; K.B. Choudhari, A.G.P. for respondent Nos. 1 and 2, R.R. Suryawanshi and V.D. Gunale, in Writ Petition Nos. 1042 and 1043 and K.B. Choudhari, A.G.P. for Respondent Nos. 1 and 3, R.R. Suryawanshi, for respondent No. 4, V.D. Gunale, for Respondent No. 5, A.H. Kapadia for Respondent No. 6-absent and Ashok Bhagure, holding for A.S. Golegaonkar, for the Respondent

Judgement

B.H. Marlapalle, J.—Writ Petition No. 976 of 1985 was decided by us on 21st October, 1999. The petitioner was Shri Rajaram Narharrao Gajbhare, who had raised the grievance regarding his promotion to the post of Head Master in a secondary school run by Shri Sant Gadge Baba Shikshan Prasarak Mandal, Degloor which was impleaded as respondent No. 3 and his inter-se seniority in the post of Assistant Head Master. The present petitioners were impleaded as respondent Nos. 4, 5 and 6 respectively, in the said Petition. While allowing the said petition, we had directed the respondent No. 1 Education Officer (Secondary), Zilla Parishad, Nanded to redraw the seniority list of Assistant Teachers working under the respondent No. 3 as on 8th July, 1982 in different secondary schools run by it and decide the petitioner's claim for promotion, in any of those schools, within a period of three months. Pursuant to the said directions, the Education Officer (Secondary), Zilla Parishad, Nanded heard the

respective parties on 8th December, 1999 and 1st January, 2000 at Degloor and passed the order dated 20th January, 2000 redrawing the seniority list of Assistant Teachers under respondent No. 3 and held that the original petitioner i.e. Rajaram Narharrao Gajbhare was senior to these three petitioners and, therefore, entitled for promotion to the post of Head Master with effect from 22nd May, 1974. As he had attained the age of superannuation on 31st August, 1999, the Education Officer directed the management to pay the difference in salary for the period from 22nd May, 1974 to 31st August, 1999. In addition, he directed the recovery from the present petitioners i.e. the difference in the salary payable to the post of Head Master and Assistant Teachers. Hence, these fresh petitions.

2. We are required to consider two issues viz. (i) the seniority for the post of Assistant Teacher as on 8th July, 1982 and (ii) recovery of difference of pay to the post of Head Master and Assistant Teacher from the present petitioners, who are all similarly placed.

3. Coming to the issue of seniority, we have noted that under Rule 12 of the Maharashtra Employees of Private Schools Rules, 1981 (the Rules, for short) the Education Officer is required to adjudicate upon the said claim by taking into consideration the qualifications, date of joining and age etc. of the trained Assistant Teachers. The seniority of Gajbhare, who is shown to be above the present petitioners, is not seriously disputed. He passed his B.Sc. examination in 1965 and was appointed as an Assistant Teacher under respondent No. 3 on 21st June, 1966. He belongs to the scheduled caste category and obtained his B. Ed. degree on 22nd May, 1972. His date of birth is 10th August, 1941, Petitioner in Writ Petition No. 1042 of 2000 completed his B. A. in 1970 and joined in the post of Assistant Teacher on 1st April, 1972. He is born on 15th December, 1945, and he obtained his B.Ed. degree on 22nd May, 1972. Shri Gajbhare is senior to Shri Narsing s/o Nagorao Hippargekar in all respect i.e. age as well as date of joining and acquiring the graduate degree and as both of them have obtained the B.Ed. qualifications at the same time Shri Gajbhare was rightly shown as senior to him. The second petitioner i.e. Shri A. M. Udgire, passed his B. A. in 1972 and was, in fact, appointed as Assistant Teacher on 16th June, 1967. He has obtained his B.Ed. qualifications on 10th September, 1974. He has been rightly shown at serial No. 9 in the fresh seniority list. Similarly, the third petitioner Shri V. G. Jadhav passed his B. A. in the year 1969 and obtained his B.Ed. degree on 10th September, 1974. He was appointed in the post of Assistant Teacher immediately on passing of his B. A. degree and had continuously worked as Assistant Teacher till he obtained his B.Ed. degree and joined under respondent No. 3 on 1st June, 1976. His date of appointment has been rightly shown as 1st June, 1976. There is nothing on record to show that he had worked as an Assistant Teacher from 1969 to 31st May, 1976 without any break somewhere else.

4. All the petitioners did not seriously dispute the issue of seniority as decided by the Education Officer (Secondary) as on 8th July, 1982. In this regard we may

usefully refer to the provisions of the Secondary Schools Code (the Code, for short) which were applicable at the time when all these petitioners were appointed to the post of Assistant Teachers. So far as graduate teachers were concerned, there were two categories viz. untrained and trained graduate teachers and under Clause 59 of the Code an untrained teacher was required to obtain training qualifications within the period of five years from the date of his appointment. Clause 58.1 stated that management of the school shall depute untrained teachers who were in service of the school on or before 15-7-1969 with salary and allowances for training courses of various types in accordance with the requirements of the schools and strictly in order of seniority of teachers in the school; provided the teacher deputed for training undertook to work as a secondary school teacher in any recognised school in the State for a period of five years. Appointment of all these teachers, including Shri Gajbhare, were made on the basis of the qualifications prescribed under the Code and the qualifications prescribed under the Rules were not applicable when they were appointed. Clause 64 and 65 of the Code prescribed the qualifications for untrained as well as trained teachers in secondary schools. All the three petitioners obtained the qualifications for a trained teacher between 1972 and 1974 and, therefore, as on 8th July, 1982 all of them were trained teachers fulfilling the qualifications as set out in clause 65 of the Code. We are therefore, satisfied that the issue regarding the inter-se seniority as decided by the Education Officer, does not call for any interference in these petitions.

5. These three petitioners have also raised an additional ground to challenge the seniority redrawn by the Education Officer. They contend that the first petitioner was appointed as Head Master directly with effect from 1st April, 1972 at Netaji Subhash Vidyalaya, Tamlur, the second petitioner was appointed in similar manner to the post of Head Master with effect from 30th July, 1974 and the third petitioner came to be appointed to the said post with effect from 21st June, 1976. The post of Head Master being in a separate category, the occupants of the said post could not be equated to the Assistant Teachers and while redrawing the seniority of these three petitioners, who were appointed in the post of Head Master ought to have been treated senior to all other Assistant Teachers, moreso when the said appointment on the post of Head Master was approved by the Education Officer. Undoubtedly, all these petitioners were appointed to the post of Head Master prior to the Maharashtra Employees of Private Schools Act, 1977 was brought into force i.e. before 15th September, 1981 and, therefore, we will have to examine whether they were qualified to be appointed to the post of Head Master under the Secondary Schools Code. Clause 61.1 of the said Code reads as under:

61.1 (a) The person to be appointed as the Head of a school shall be a graduate possessing prescribed training qualifications (B.T./B.Ed. or its equivalent), with at least five years of total teaching experience, after graduation, in a recognised secondary school or schools, out of which experience of at least two years should be post-training experience.

(b) If a Management desires to appoint a person who does not possess the prescribed teaching experience as mentioned in Clause (a) above, it may approach the Deputy Director of the Region, for relaxing this requirement. The Deputy Director may, after recording his reasons in writing, grant the relaxation at his discretion. The appointment of such person as Head of the school may be made by the Management only if such relaxation is granted by the Deputy Director. When such relaxation is granted, the person so appointed will not be held eligible for the Head Master's scale till he satisfies the conditions laid down in Clause (a) above. He will be eligible for the scale of a teacher only.

Note.-- In the case of graduate teachers already in service for more than 15 years on 1st June, 1963, the condition regarding qualification may also be relaxed by the Deputy Director. The graduate teacher in whose favour such relaxation is granted shall be entitled to the Head Master's scale."

It is evident from the above provisions that a graduate teacher is required to have five years teaching experience and two years out of the said experience ought to be after completion of the B.Ed. degree. The first petitioner claims to have been appointed on 1st April, 1972 whereas he has obtained the B.Ed. qualification only on 22nd May, 1972 and he did not possess the post B.Ed. experience of two years. Similarly, the second petitioner claims to have been appointed to the post of Head Master with effect from 30th July, 1974 whereas he obtained the B.Ed. qualifications on 10th September, 1974 and he also did not possess the post B.Ed. experience of two years. The third petitioner, though had completed his B.Ed. in 1974, was temporarily appointed in the post of Assistant Head Master in October, 1975 and remained unemployed thereafter for some time. When he was appointed to the post of Head Master on 21st June, 1976 by the respondent No. 1. He also did not hold the post B.Ed. experience of two years. When all of them did not meet the requirements of clause 61.1. of the Secondary School Code, their appointment to the post of Head Master was per-se illegal and void ab initio. The approval purported granted by the Education Officer to these appointments cannot be a foundation for their contentions that they were holding the post of Head Master legally and we had considered these issues in the earlier round i.e. while deciding Writ Petition No. 9676 of 1985 and in spite of notice these petitioners chose not to appear in the said petition. The seniority thus drawn by the Education Officer in the impugned order cannot be, therefore, disturbed on the basis of these contentions i.e. appointment to the post of Head Master and confirmation in the said post.

6. The Education Officer, in the impugned order, has directed for recovery of difference in payment from the petitioners. They were holding the post of Head Master and in view of the impugned seniority list it is clear that Shri Gajbhare was wrongly denied the post of Head Master. However, that does not automatically lead to a conclusion that the present petitioners are required to refund the difference in salary. There is no dispute that they have performed the duties of Head Master from the date they were so promoted and their

appointments were duly approved by the Education Officer. We do not find any merit in the directions given by the Education Officer for the said recovery, though the Management i.e. Shri Sant Gadge Baba Shikshan Prasarak Mandal is required to pay the difference in salary to Shri Gajbhare for the period stated in the impugned order passed by the Education-Officer and it shall not claim the said amount from the Government as per the directions given by us in Writ Petition No. 976 of 1985.

7. In the result, we allow these petitions partly and direct that the recovery, as directed by the Education Officer, in the impugned order, shall not be made from the salary of each of the petitioners. Rule is made absolute accordingly with no order as to costs.