
(2009) 12 BOM CK 0055
In the Bombay High Court
Case No : Writ Petition No. 1380 of 1999

Pandurang Mahadeorao Ghongde

APPELLANT

Vs

The Education Officer (Secondary) and Others

RESPONDENT

Date of Decision : 22-12-2009

Acts Referred:

Citation : (2010) 3 BomCR 221

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : H.A. Deshpande, for the Appellant; T.R. Kankale, AGP for Respondent No. 1 and M.V. Raut, for the Respondent

Final Decision : Allowed

Judgement

C.L. Pangarkar, J.—This writ petition is filed by the teacher serving with respondent No. 2 and challenges the order passed by the Education Officer on 16/3/1999.

2. The facts giving rise to this writ petition are as follows:

Respondent No. 2 is a Public Trust and a Society registered under the Societies Registration Act and administers and manages three secondary schools. All three schools are recognized school and are, therefore, governed by the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977. The petitioner holds qualification H.S.C., D.Ed. and Dip.Ed. The petitioner joined the service with respondent No. 2 on 1/8/1975 as a Middle School teacher and as an Assistant Teacher. Subsequent to the joining the petitioner improved his educational qualification and obtained a Degree in Arts i.e. B.A. in 1984 and B.Ed. in 1989. Respondent No. 3 was also appointed as an Assistant Teacher (subject teacher) on 1/7/1985. At the time of initial appointment, he was holding qualification M.A. H.D.Ed. The petitioner submits that since beginning he was shown senior to respondent Nos. 3 to 6. Respondent Nos. 4 to 6, however, never raised any dispute with regard to the seniority of the petitioner. Ignoring this

seniority, it is alleged that respondent No. 2 granted higher scale of pay to respondent No. 3 by placing him in 25% quota of the Middle School teacher. Respondent No. 3 was, therefore, upgraded as High School teacher. Feeling aggrieved by the said action of respondent No. 2, the petitioner raised a dispute before the Education Officer with regard to his seniority vis a vis respondent No. 3. The Education Officer, after hearing the petitioner and respondent No. 3 and the Headmaster, held the petitioner senior to respondent No. 3 and directed petitioner's upgradation and also directed respondent No. 3 to be reduced in rank. Pursuant to the decision of the Education Officer, dated 7/9/1994, the petitioner was put above respondent No. 3 in seniority list and was promoted as Upper Division Teacher. The petitioner submits that after such seniority was fixed, the petitioner was even promoted as a Supervisor on 1/7/1997. Respondent No. 3 moved the Education Officer challenging the seniority granted to the petitioner by making a representation. Respondent No. 1 - the Education Officer without issuing notice to the petitioner held that respondent No. 3 was senior and directed respondent No. 2 to re-fix the seniority granted by letter dated 16/3/1999. It is this direction, which is under challenge.

3. It is the contention of the petitioner that the Education Officer had no right to review the order passed by the Education Officer on 7/9/1994 whereby the seniority of petitioner vis a vis respondent No. 3 was also fixed. Further, according to the petitioner, respondent No. 3 did not hold requisite qualification for appointment as an Assistant Teacher in Middle School. According to the petitioner, he was entitled to be put in "C" category upon completion of ten years of service and this has been ignored by the Education Officer.

4. Respondent No. 3 filed submissions and contended that he had completed postgraduation in Marathi in 1984. He had obtained a diploma in Education in 1983 and he was appointed on 15/7/1985 as an Assistant Teacher in Middle School. He also states that next year he was absorbed in 25% quota in secondary school. According to the respondent, he fell in higher category on the day he was appointed as Assistant Teacher and therefore, his seniority was rightly fixed by the Education Officer. The respondent relies on the Government Resolution dated 14/5/1987, which says that the services of Physical Education Teachers would be regularized as secondary teachers. Pursuant to that G.R., he submits that he was given status of a subject teacher and his pay was increased. The respondent, therefore, contended that the petition is liable to be dismissed.

5. The Education Officer supports the case of respondent No. 3.

6. I have heard the learned Counsel for the petitioner as well as the respondents.

7. Following few are the undisputed facts The petitioner came to be appointed as an Assistant Teacher in the Middle School on 1/8/1975. On the day he was appointed, he held qualification HSC D.Ed. and Dip.Ed. He acquired degree in 1984 and B.Ed. in 1989. Respondent No. 3 was appointed as Assistant Teacher on 1/7/1985 as subject teacher. His qualification on the date of appointment was

M.A.H. D.Ed. Respondent No. 2 - Management placed respondent No. 3 in 25% quota of Middle School and he was upgraded as Higher High School Teacher treating him to be a senior. The petitioner, feeling aggrieved by this, made representation to the Education Officer under Rule 12. The Education Officer, after hearing the parties, passed an order on 7/9/1994 and directed the upgradation of the petitioner as Upper Division Teacher and the Upper Division Teacher status as given to respondent was withdrawn. Respondent No. 3 seems to have sent representation to the Education Officer in 1997 about seniority. The Education Officer without hearing the petitioner and ignoring the order dated 7/9/1994 restored the position prior to the order of 1994 and put the petitioner below.

8. Learned Counsel for the petitioner raises three grounds to challenge the order of petitioner being put below. (1) Once the Education Officer has determined seniority by order dated 7/9/1994, he had no authority to ignore the earlier decision and pass fresh order and thus review the earlier order. (2) Respondent No. 3 was not eligible for being appointed to middle school since he did not possess necessary qualification, as H.D.Ed. qualification is not qualification for the purpose of appointment in the Middle School and (3) the G.R. of 1987 is against rules and is therefore of no use.

9. Shri H.A. Deshpande, learned Counsel for the petitioner, submits that since the Education Officer has determined the seniority in 1994 he could not have ignored the said position of 1994 in 1999 and could not have refixed the seniority. The petitioner places on record the copy of the decision dated 7/9/1994. The order at Annexure I shows that the petitioner, respondent No. 3 and the Headmaster of the school were present at the time of hearing and all were heard. It is after hearing the concerned that the Education Officer had fixed the seniority in 1994 and held the petitioner to be senior. Annexure II is the copy of the order cum letter of Education Officer dated 16/3/1999 which is under challenge. It does not disclose that the petitioner was heard at all. It is precisely the defence of the petitioner that he was not given copy of the representation of respondent No. 3 nor was he heard by the Education Officer before passing the second order. For this reason, I think second order of 1999, in fact, needs to be set aside. The strange part of the second order is that it does not make a reference to the first order and does not say why the first order needs to be recalled. The Education Officer has certainly no right to overrule the seniority fixed by his predecessor. Only course open to the parties would be to challenge the same in the court of law. If the Education Officer is allowed to change the seniority every now and then, there would be no end to it. Therefore, where once such seniority is fixed, the party feeling aggrieved is left with no alternative to approach the court of law. For these reasons, the order passed on 16/3/1999 cannot stand.

10. This takes me to consider the legality of the second order irrespective of the above reasons. The petitioner was H.S.C. D.Ed., Dip.Ed. on the day he was

appointed. He fell in category "E" of Schedule "F". On the date of his appointment on 1/8/1975 he was a trained graduate teacher. He obtained B.A. degree in 1984 and therefore, rose to category "D" in 1984. Later, in 1989, he obtained B.Ed. degree but it appears to me that he entered category "C" on 1/8/1985 itself. A teacher with a B.A. Degree and Dip.Ed. can enter category "C" upon completion of ten years service irrespective of fact whether he is B.Ed. or B.T. Therefore, the petitioner certainly entered category "C" on 1/8/1985 and not in 1989, as is contended by the respondents.

11. Respondent No. 3 was holding a postgraduate Degree in Arts i.e. M.A. He was holding qualification of H.D.Ed on the date of appointment. The question that needs consideration is whether respondent No. 3 could be said to be a trained teacher on the date he was appointed in the Middle School. Annexure R3 with the petition is a letter written by respondent No. 3 to the Education Officer on 28/9/1998. In this letter, the petitioner himself writes that he was appointed as ordinary teacher i.e. the subject teacher in the Middle School on 15/7/1985. Shri Deshpande, learned Counsel for the petitioner, submits that respondent No. 3 was not eligible for being appointed as Assistant Teacher itself in the Middle School and could not be absorbed in 25% quota in 1986. Shri Deshpande submits that respondent No. 3 was brought in quota of 25% a year after appointment, treating him as a trained graduate in secondary Section. There is no dispute that qualification H.D.Ed. is treated at par with B.Ed. Thus, he is treated as a trained graduate teacher. He was, in fact, so on the day he was appointed. Thus, respondent No. 3 was holding the same qualification in 1996 as he held at the time of appointment. Since respondent No. 3 was appointed in a Middle School Section in 1985, he could not be treated to be a trained teacher in 1985. It is only a person holding a qualification of D.Ed. or Dip.Ed. that could be treated as person qualified for being appointed as a trained teacher in the Middle School Section. The question is, therefore, whether one year's period i.e. from 1985 to 1986 which respondent No. 3 spent as Assistant Teacher in Middle School could be taken into consideration to treat him as Senior; that is whether his appointment as a secondary school teacher could relate back to the date of his initial appointment on 15/7/1985. My attention is invited to G.R. dated 14/5/1987 by Shri Deshpande to which the reference is made by respondent No. 3 in his submissions. Para No. 3 of the said G.R. reads as follows:

3.3 The appointments of the Teachers having qualification H.D.Ed./B.P.Ed./B.Ed./Physical Education/ Training made till the end of year 1985/86 as General Teachers instead of Physical Education teachers should be regularized as physical Education Teachers during this period as per the formulae prescribed above at Sr. Nos. 1 and 2 and their appointments should be treated as regular from the dates of their first appointment.

12. The G.R. says that the appointment of such physical training teacher would relate back to the initial date of appointment. The G.R. seems to be against the Rules framed under M.E.P.S. Act. Schedule B to the said rules gives out

qualification as required by Rule 6. Respondent No. 3 was indisputably appointed in secondary Section in 1985. For the secondary Section, the qualification should be S.S.C. D.Ed. Dip.Ed. Respondent No. 3 was holding H.D.Ed. which is considered equivalent to B.Ed. physical. This Court in a decision reported in Smt. Jayashree Sunil Chavan Vs. The State of Maharashtra and Others, has held that the D.Ed. is the requisite qualification for the primary teacher and B.Ed. is not. Respondent No. 3 was not, therefore, eligible for being appointed as primary teacher at the time of his initial appointment. In any case, therefore, the services of respondent No. 3 cannot relate back to the initial date of appointment. Further, if the G.R. referred to above is read, it directs the concerned to take steps to amend the concerned Acts and the Rules. I reproduce here the relevant portion of the G.R.

3.3 The appointments of the Teachers having qualification H.DEd./B.P.Ed./B.Ed./Physical Education / Training made till the end of year 1985/86 as General Teachers instead of Physical Education teachers should be regularized as physical Education Teachers during this period as per the formulae prescribed above at Sr. Nos. 1 and 2 and their appointments should be treated as regular from the dates of their first appointment.

3.4. ...

The necessary proposal be submitted to the Director of Education, Maharashtra State, Pune for inclusion of the above order in secondary School Grant-in-aid Code, Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules 1981 for issuing necessary corrigendum at the proper place.

13. The Government has not as yet amended the rule and the Schedule B and F. Such rules cannot be overridden by issuing a G.R. The Rule actually needs to be amended. The amendment not having been carried in the Act and the Rules, the G.R. cannot take effect. Respondent No. 3, therefore, cannot be held to be senior to the petitioner. The petitioner had in fact entered category "C" on 1/8/1985. The petitioner's appointment in 1985 was invalid as he was not qualified for being appointed in the secondary school category. Therefore, the Education Officer was right in holding the petitioner to be senior by order dated 1994. The subsequent order passed by the Education Officer of 1999 which is under challenge is, therefore, certainly an illegal order. In the circumstances writ petition is allowed. The order passed by the Education Officer on 16/3/1999 is set aside and quashed. The petitioner shall be entitled to the seniority as fixed by order dated 7/9/1994 and shall also be entitled to relief's consequential thereto. No order as to costs.