
(1993) 02 BOM CK 0029
In the Bombay High Court
Case No : Writ Petition No. 263 of 1993

Prabhakar Deshpande

APPELLANT

Vs

Zilla Parishad Akola and Others

RESPONDENT

Date of Decision : 04-02-1993

Acts Referred:

Citation : (1996) 5 BomCR 394

Hon'ble Judges : H.W. Dhabe, J;G.D. Patil, J

Bench : Division Bench

Advocate : B.P. Dharmadhikari, for the Appellant; H. Ahmed, A.G.P., for the Respondent

Judgement

H.W. Dhabe, J.—Parties by counsel. Rule heard forthwith.

2. The petitioner is working in Zilla Parishad School, Washim. He is sought to be retired at the age of 58 years which according to the Zilla Parishad, is the age of the retirement for its employees including the teachers working in its school. The petitioner claims that his age of retirement should be 60 years as per the Exception to Rule 82.1 of the Secondary Schools Code applicable in the State of Maharashtra because he was teacher working in the Vidarbha Region and was confirmed in service prior to 31.12.1965. It is by now well settled that the above exception to Rule 82.1 of the Secondary Schools Code, intends to protect the age of retirement of the teachers in the Vidharbha Region who were erstwhile governed by the M.P. Education Act, 1951 and the Secondary Schools Code framed thereunder wherein the age of retirement was 60 years. It is clear from the exception to Rule 82.1 that it is applicable to a teacher who was in service in a recognised non-Government Secondary School in Vidarbha region.

3. The question which arises for consideration in this writ petition is whether the petitioner was working in the recognised non-Governments Secondary School within the meaning of the said expression and was protected under the M.P. Education Act, 1951 and the Secondary Schools Code framed thereunder. The

petitioner was admittedly working in the School run by the erstwhile Janpath Sabha which became the Zilla Parishad after the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 came into force. The said School conducted the classes from 1st to 7th standard. The submission on behalf of the petitioner is that he was taking middle school classes i.e. 5th to 7th standards and, therefore, he is covered under the Secondary Schools Code framed under the M.P. Education Act, 1951.

4. Before we refer to the relevant provisions, we may state that the question what "Primary Education" means arose for consideration in Writ Petition No. 1591 of 1991 decided on 21.7.1989. This Court appointed Mr. Habibuddin Ahmed, Assistant Government Pleader, as amicus curiae to inquire into the exact position about the same. He informed this Court that primary education means education from Class 1st to VIIth standard. On the basis of the above statement, it was held by this Court in the said petition that the petitioner therein was not entitled to the benefit of the proviso to rule 17 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 framed under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. It was thus held that the petitioner was not entitled to the benefit of extended age of superannuation upto 60 years.

6. To enlighten us, we have taken assistance of Shri Ahmed, A.G.P. again and he had been kind enough to make available his services. He has drawn our attention to Regulation 14 of the Schools Code framed under the M.P. Education Act, 1951 to show that the only schools which are covered are Indian English Middle Schools and the Middle Schools attached to the High Schools. On the question what constitutes primary education, it would be useful to refer to the Government Resolution No. PTP 1070-F dated 22-10-1970 issued by the Education Sports and Social Welfare Department of the State Government Zilla Parishad where the primary schools have been considered as schools in which the classes are conducted from 1st to VIIth standards.

7. The learned Counsel for the petitioner has brought to our notice para 2 of Chapter I of the C.P. & Bearer Education Manual to show that there were three categories of schools recognised thereunder viz. (i) primary schools (ii) middle schools and (iii) High Schools. Further, according to him, the category of the middle schools was divided into two categories viz. (i) Indian Middle Schools and (2) Indian English Middle Schools. The question, however, is whether the Middle School as such is covered under the School Code framed under the M.P. Secondary Education Act, 1951.

8. It may be seen that the School Code applicable in the erstwhile State of M.P. contained in Chapter XII the Regulations of the Board of Secondary Education, Madhya Pradesh framed u/s 20 of the M.P. Secondary Education Act, 1951. The expression "Secondary Education" is defined in section 2(m) of the said Act, the material portion of which shows that it is a stage in between the stage of primary Education and the stage of University Education. The expression "School" or

"High School" is, however not defined under the said Act, but is defined in Chapter I of the Regulations framed under the said Act. The definition of the expression "School" or "High School" is contained in clause 6 of Chapter I of the aforesaid Regulations. Perusal of the definition of "School" or "High School" given therein shows that it means an educational institution preparing candidates for an examination of the Board and recognised by the Board for such a purpose. When there are classes only upto VIIth standard, it cannot be said that such a School is preparing candidates for the examination of the Board which was then held after XIth standard, apart from the fact that as shown hereinbefore the classes from 1st to VIIth standard constitute primary classes.

9. The learned Counsel for the petitioner has relied upon Regulation No. 10 of the Regulations framed for recognition of the School to show that middle Schools are covered thereunder. Perusal of Clauses (b) and (h) of the said Regulation 10 to which our attention is drawn shows that they contemplate a middle School attached to the High School. Similarly, Regulation 14 of the School Code would show that it contemplates middle School which is attached to the High School. The only independent middle School which is contemplated thereunder is Indian English Middle School. Court does not know for which reason an Indian English Middle School is included therein. Further, we do not know what classes are conducted in such a School and whether the students are prepared therein for any examination of the Board or its equivalent. However, it is clear that when only two exceptions are carved out viz. 1) Middle School attached to the High School and (2) Indian English Middle School, it clearly means that the other middle schools simpliciter are not covered by the M.P. Secondary School Code, much less those attached to the primary Schools.

10. What is important to be seen is that the School in which the petitioner alleges that he was confirmed, conducts classes from 1st to VIIth which are treated as classes imparting primary education. The said school does not prepare the candidates for examination of the Board as contemplated by the Regulation framed under the M.P. Education Act, 1951. If that is so, the petitioner cannot be said to be confirmed in a School which has the protection of the M.P. Education Act, 1951 and the Regulations framed thereunder. It is also not shown to us that the said School was recognised under the Regulations framed for recognition under the M.P. Education Act, 1951.

11. In these circumstances, the petitioner cannot claim the benefit of the extended age of 60 years under the Exception to Rule 82.1 of the Secondary Schools Code applicable in the State of Maharashtra.

12. The instant Writ Petition, therefore, deserves to be and is dismissed. No costs.