
(2005) 10 BOM CK 0025
In the Bombay High Court
Case No : Writ Petition No. 5421 of 2004

Pratibha

APPELLANT

Vs

Presiding Officer, School Tribunal and Others

RESPONDENT

Date of Decision : 24-10-2005

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 12, 9
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 12

Citation : (2006) 2 ALLMR 141 : (2006) 3 BomCR 927 : (2006) 1 MhLj 697

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : S.A. Gordey, for the Appellant; Sandeep Marathe, for respondent No. 2, V.M. Deshpande and S.Y. Deopujari, Asstt. Government Pleader, for the Respondent

Judgement

A.H. Joshi, J.—Rule. Rule is made returnable forthwith by consent of parties.

2. Learned Advocates appearing for the respondents waive respective service.

3. Heard finally.

4. This petition can be decided by addressing a very limited question.

5. The petitioner and respondent No. 2, both, were appointed in the employment on the same date. Admittedly, petitioner was holding the qualification of B.A., as well as B.Ed., on the date of joining, while the respondent No. 2 completed her B.Ed., course in September, 1987.

6. The petitioner herein is senior amongst the two, based on the qualification on the date of entry in the employment. However, in the Seniority List prepared by the Management, the respondent No. 2 was shown senior. It is alleged that the petitioner did not raise any dispute as to the Seniority List. When the Management promoted the respondent No. 2, treating her as senior-most, the

petitioner filed an appeal before the School Tribunal and challenged respondent No. 2's appointment and her consequent supersession.

7. The School Tribunal has dismissed the appeal holding that:-

This Tribunal has no jurisdiction to decide inter se seniority of the Assistant Teachers.

The Tribunal held so in view of a reported judgment in case of Madhav Govind Budhe v. Education Officer, Zilla Parishad, Nagpur 1994(1) Mh.L.J. 42.

8. Thereafter, Tribunal examined respective merits and found that the respondent No. 2 did comply with eligibility criteria and as her seniority had gone beyond compass of enquiry, seniority status of the respondent No. 2 was liable to be accepted and, hence, Issue No. 1 about seniority being answered in negative - against the Appellant, dismissed the appeal.

9. In the present petition, learned Advocate for petitioner Shri Gordey placed reliance on a reported Judgment of this Court in the case of Umesh Balkrishna Vispute v. State of Maharashtra and Ors. 2001(1) Mh.LJ. 486.

This Court has considered, after examining entire scheme of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules, that while powers to settle the disputes about seniority do vest with Education Officer, the jurisdiction of School Tribunal to decide that issue in an appeal u/s 9 of the Act by an affected teacher, continues with the Tribunal.

10. Mr. V.M. Deshpande, learned Advocate for respondent No. 3, placed reliance on a reported judgment of this Court in the case of Saramma Varghese Vs. Secretary/President, S.I.C.E.S. Society and Others, . It is seen from reading this judgment that this Court did not, in any manner, hold that the jurisdiction of the School Tribunal is ousted for deciding the question of seniority, when it arises in an appeal by a teacher where the legality or correctness of the seniority is brought in dispute at the behest of either parties.

11. It is also seen from the scheme of Rule 12 of the M.E.P.S. Rules that it creates an administrative forum, however, does not attribute finality to the decision of Education Officer on the lines as has been laid down in Section 12 of M.E.P.S., Act, where the judgment of the Tribunal has been given a finality. Moreover, the School Tribunal is a Quasi-Judicial Tribunal, equipped with judicial powers, while Education Officer remains an administrative agency or office and has to decide questions referable to him, but no judicial finality is accredited to his judgment, nor a failure to take recourse to this forum precludes any issue for which he has been empowered to attach finality to seniority etc. The jurisdiction of the Tribunal cannot be held to be ousted by necessary implication, much less by express provisions.

12. The criteria fixing seniority are laid down by statutory rules. There cannot be an estoppel against statutory rules. The rules of eligibility and seniority,

therefore, need to be followed. The challenging the procedure laid down by Rule 12 also does not extinguish right of an employee who may be actually senior in view of the Rules.

13. It is in this background, judgment of the Tribunal is based on conclusions which are ill-conceived and deserves to be quashed.

14. It is declared that it is within the jurisdiction of the School Tribunal to address and decide upon the dispute and controversy relating to seniority inter se the parties to the proceedings and adjudicate upon as one of the issues falling for consideration in the appeal and based thereupon, decide all other issues involved in the appeal afresh.

15. In the result, Rule is made absolute. Judgment and Order of School Tribunal is set aside.

16. Parties are directed to appear before the School Tribunal on 22nd November, 2005 and co-operate with the Tribunal in hearing and early disposal, for which the Tribunal shall make an effort and decide the appeal within one month from the date of appearance of the parties, as aforesaid.