
(2018) 12 BOM CK 0060
In the Bombay High Court
Case No : Writ Petition No. 636 Of 2013

Shri. Vasant Ramchandra Potdar	Vs	APPELLANT
State Of Maharashtra And Ors		RESPONDENT

Date of Decision : 22-12-2018

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Services) Regulations Act, 1981 — Rule 12, 129A, 129B, 130

Citation : (2018) 12 BOM CK 0060

Hon'ble Judges : S. C. Dharmadhikari, J; Bharati H. Dangre, J

Bench : Division Bench

Advocate : Shilendra S. Kanetkar, R.M. Shinde, Anant Vadgaonkar

Final Decision : Allowed

Judgement

Bharati H. Dangre, J

1. Rule. Rule made returnable forthwith.

2. The writ jurisdiction of this Court has been invoked by the petitioner through the present Writ Petition seeking a writ in the nature of mandamus for quashing and setting aside the impugned order dated 09.11.2012 passed by the Education Officer. The petitioner has also sought direction to the respondents-authorities to forward his pension case as Headmaster of the school to the Accountant General within a stipulated period and further direction is also sought to the Accountant General to ensure that the petitioner's terminal benefits are disbursed forthwith, in the backdrop of his superannuation with effect from 01.12.2013.

A brief narration of facts for effective adjudication of the matter in hand is necessary.

3. The petitioner has approached this Court by filing the present Writ Petition on 06.12.2012. It is the case of the petitioner that with his qualification of B.A., M.A., B.Ed., he came to be appointed as Trained Graduate Teacher after regular

selection with the school run by the Respondent No.3 with effect from 01.07.1980. The petitioner states that he is the senior most teacher in Category-C amongst the teaching staff and it is reflected so in the common seniority list prepared for the year 2007-2008. The petitioner has placed on record the copy of the seniority list prepared by the Nutan Vidyalaya, Mangrul (Pan), Taluka-Akalkot, District-Solapur for the year 2007-2008.

The seniority position of the petitioner came to be assailed by one Mr.Shetre and Smt.Kulkarni who were admittedly junior to the petitioner in the said list and Mr.Shetre approached this Court by filing Writ Petition No.4901 of 2008. The Division Bench of this Court directed the Education Officer to decide the inter-se seniority in terms of Rule-12 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulations Act, 1977 and the Rules, 1981 (for short 'MEPS Act') between the petitioner and Mr.Shetre. In compliance of the directions issued by this Court, the Education Officer by an order dated 05.09.2008 was pleased to determine the said seniority and held that the petitioner is senior to Mr.Shetre as well as Smt.Kulkarni. He concluded by observing that the petitioner came to be appointed from 01.07.1980 as a Trained Graduate Teacher and therefore, he was included in Category-C from the very same date. However, in case of Shri.Shetre, though he was appointed on 16.06.1973 his appointment was in the D.Ed. scale and he acquired the qualification of B.A. in 1979 and B.Ed. in 1988. Resultantly, he is placed in B.Ed. scale from 01.12.1988. By applying the directives contained in circular dated 23.11.1983, Mr.Shetre was held to be eligible for being placed in Category-C from 16.06.1983 i.e. after 10 years of his appointment. In any contingency, we are not called upon to decide the issue of seniority of the petitioner as that has been put to rest by the orders passed by the Education Officer which were confirmed by this Court. However, we have mentioned said fact in order to maintain the chronology of events.

3. The decision of the Education Officer dated 05.09.2008 came to be assailed by Mr.Shetre by instituting a Writ Petition before this Court which came to be numbered as Writ Petition No.248 of 2009. It is to be noted that the petitioner was issued an order of promotion to the post of Headmaster in terms of his position in the seniority list and the order dated 15/24.05.2008 promoting the petitioner to the post of Headmaster is placed on record at Annexure-C. The said order stipulates that as the petitioner is promoted as Headmaster in the pay-scale of Rs.7500- 25-12000 with effect from 01.06.2008. When this order was brought to the notice of the Division Bench of this Court, which was dealing with Writ Petition No.248 of 2009, the petition came to be disposed of with direction to Mr.Shetre, the petitioner therein to file an appeal before the School Tribunal, Solapur challenging his supercession. Mr.Shetre filed an appeal before the School Tribunal and the School Tribunal by a detailed judgment dated 18.04.2011 was pleased to dismiss the Appeal No.30 of 2010 which was filed by him. The issue of seniority of the petitioner, has thus been put to rest.

4. It is the case of the petitioner that in view of the dispute in the Management,

which was not interested in giving promotion to the petitioner notwithstanding that he was already issued an order of promotion to the post of Headmaster, the Education Officer was persuaded to hand over the charge of Headmaster to Smt.Kulkarni by assigning her rights to sign the pay bills. However, when the appeal of Mr.Shetre came to be dismissed by the School Tribunal, the Education Officer by order dated 03.08.2010 cancelled the right conferred on Smt.Kulkarni to sign the pay bills. The order dated 03.08.2010 which is placed on record at Annexure-F, discloses that the petitioner was promoted to the post of Headmaster with effect from 01.06.2008 and he is discharging his duty in the said capacity since then. However, in the meantime Smt.Kulkarni was given the authority to sign the pay bills and by the said communication the Secretary of the Society in which the petitioner was working admitted that Shri.Potdar i.e. the petitioner is a regular Headmaster and a request was made to confer approval to his appointment on permanent basis.

This however, did not dissuade the Management from creating hurdles in the smooth functioning of the petitioner as Headmaster and the Education Officer was again persuaded to withdraw the approval and the proceedings were initiated by the Education Officer to take steps for withdrawal of the said approval. This was done on the basis of one criminal complaint filed in Criminal Miscellaneous Application No.45 of 2010 in the Judicial Magistrate First Class at Akkalkot and this prompted the Education Officer to withdraw the approval given to the petitioner and one Shri.R.D. Surdikar, Assistant Teacher was given authority to carry out day to day working of the school. The petitioner approached this Court being aggrieved by the order passed by the Education Officer thereby restraining the petitioner from discharging the duties of the Headmaster in the backdrop of the proceedings and conferring the rights of signing the pay bills on Mr.Surdikar. The said order came to be assailed on the ground that the Management had adopted techniques to keep the petitioner out of the post of the Headmaster and reference was made to a criminal complaint filed by the Management against the petitioner in the Court of Judicial Magistrate First Class at Akalkot as a private complaint and the petitioner claims that no summons were issued to the petitioner till the date of the filing of the Writ Petition and this was sought to be projected as an excuse for depriving the petitioner of his charge of Headmaster.

5. During the pendency of the Writ Petition certain subsequent events occurred and the petitioner sought to amend the petition and leave was granted to do so by order dated 25.08.2016. The petitioner brought on record subsequent developments and informed the Court of the fact that on attaining the age of superannuation he has retired on 01.02.2013. The petitioner thereafter makes a grievance about non-release of his pensionary benefits and he concedes to the extent that let the said benefits at least be worked out as Assistant Teacher, in view of the pendency of the present Writ Petition. The petitioner categorically stated before this Court that the respondent-Management failed to forward his pension case to the appropriate authority namely the Accountant General of the

State of Maharashtra. Resultantly, in spite of lapse of 3 years he was deprived of any post retiral benefits and even he was deprived of the provisional pension. The petitioner also sought recourse to Rule 129A, 129B and 130 wherein a provision has been made for levying interest on non-release of the pensionary benefits, after expiry of period of six months. The petitioner therefore, sought direction to forward his pension case as Headmaster or on provisional basis as an Assistant Teacher so as to ensure that he is paid his terminal benefits and he has also prayed for grant of interest at the rate of 10% on the said amount since there is a delay on the part of the authorities to release his pensionary benefits.

6. In support of the petition we have heard Advocate Shri.Kanetkar. He has taken us through the petition and the grievance raised therein and he makes a submission that despite of the petitioner being superannuated on 01.02.2013, and five years have of lapses, he has not received his post retiral benefits which he is entitled by way of a right conferred on him for rendering long service to the respondent-Management. Shri.Kanetkar also invited our attention to the grievance raised by the petitioner with all the possible authorities which he thought would redress it namely the Commissioner of Education, Director of Education (Secondary/Higher Secondary), Maharashtra State, Pune as well as the Education Officer (Secondary) Zilla Parishad, Solapur. He would invite our attention to the letter addressed by the Deputy Director of the Education, Pune Division, directing the Education Authorities to process the pension case of the petitioner at the earliest and submit a compliance report. However, according to Shri.Kanetkar, the said instructions have been totally overlooked and the net result is that the petitioner is not conferred with any benefits, post retirement to which he is legally entitled.

7. In response to the Writ Petition the respondent Nos.1 and 2 have placed an affidavit on record which is signed by the Deputy Education Officer (Secondary) Zilla Parishad, Solapur. In the said affidavit the factual narration as stated in the petition is not disputed. The deponent of the said affidavit proceeds to state that from the record it is seen that the petitioner has submitted a letter dated 19.05.2011 to grant him permanent approval as Headmaster and on perusal of the said documents the Education Officer has granted approval to the petitioner as permanent Headmaster by order dated 23.08.2011. The copy of the said approval has been placed on record along with the said affidavit. Surprisingly, the affidavit proceeds to state that there was a clause mentioned in the said order that to the effect "if any objection to the approval arose, it will be cancelled" and then promptly the affidavit says that one objection is received by the Management on 07.12.2011, in respect of which an inquiry was conducted and the approval that was granted came to be cancelled on 26.03.2012. The petitioner challenged the said order before the Deputy Director of Education through a Union and after affording an opportunity of hearing the order of the Education Officer was kept intact by mentioning that there are serious allegations against the petitioner of fabricating false documents and the crime is registered and therefore no interference was called for in the order of the Education Officer.

The affidavit then proceeds to state that the approval granted to the petitioner was cancelled and the petitioner has superannuated with effect from 31.01.2013. It is then stated in the affidavit that the petition is liable to be dismissed since no approval to his promotion to the post of the Headmaster was granted.

The affidavit-in-reply is also filed by the President of the Shikshan Prasarak Mandal and the management harps on the rejection of the approval of the petitioner at the instance of the petitioner by his order dated 09.11.2012 and handing over the charge to senior teacher Mr.R.D. Surdikar. The Management proceeds to state that the petitioner has taken custody of his own service book when he was Headmaster and he has failed to deposit the service book either with the Management or with the Headmaster and in spite of repeated request to deposit the same, there was a failure on the part of the petitioner to handover the service book. It is then stated that it was only on 04.10.2013 the petitioner deposited original service book with the Headmaster and the management has completed entries in the service book and petitioner was asked to sign the same. A serious allegation is made to the effect that though the petitioner was asked to remain present to complete the pensionary proposal he failed to do so and then a reference is made to a hearing which took place in the office of the Deputy Director of Education, Pune where it was pointed out that the petitioner has not signed original papers and therefore the pension proposed could not be put up for approval. It is then stated in the affidavit that the Deputy Director was pleased to hold that the petitioner was not entitled for the pension as a Headmaster but directed to forward the pension papers at the earliest. This is how that the Management has sought to justify the non-release of the pensionary benefits in favour of the petitioner and it is prayed that the petition is liable to be dismissed.

8. We have also heard the learned AGP appearing for the State and advocate Shri.Anant Vadgaonkar representing the respondent-authorities.

9. The present case is a classic example of the mal- administration on the part of the Management running the educational institutions and we are aghast when our attention was invited to the approach of the Management and also the Education Authorities acting as puppet in the hands of such Management. The petitioner who was a senior most qualified teacher in the school, who came to be regularly promoted to the post of Headmaster with effect from 01.06.2008 and whose appointment was duly approved by the Education Authorities but he was restrained from functioning in the said capacity and was interrupted by various orders issued, from time to time depriving him of powers and transferring the power to some senior most teachers on adhoc basis. Though approval was granted by an order dated 23.08.2011 with effect from 01.06.2008 but on some frivolous complaint, the Education Officer deprived him of the charge and temporary authority was given to Shri.R.D. Surdikar for signing the bills. The Education Officer, by order dated 05.09.2012 however, again restored the charge of the petitioners as Headmaster and granted approval for his re- functioning as

a Headmaster in view of his date of superannuation scheduled on 31.01.2013. The Education Officer issued clear directions to the Management by his communication dated 05.09.2012 that the charge of Headmaster should be restored to the petitioner or else the Management will have to face the consequences. However, the very same Education Officer within a short span of two months reverses his own decision by referring to a Criminal Miscellaneous Application filed in Taluka Court at Akalkot against the petitioner and in view of its pendency the orders earlier passed came to be withdrawn.

The Criminal Miscellaneous Application which has been referred to are the proceedings instituted by the Management against the petitioner and even no summons are issued to the petitioner or cognizance taken and the Education Officer without application of mind, merely because one fraction of the Management wants it to take an action recalls his order granting approval to the appointment of the petitioner and confers the power of Headmaster on the senior most teacher. The entire approach of the Management and the Education Officer is merely depictive of the manner in which the heads of the Education Department are functioning. The petitioner though senior most and qualified and came to be appointed as Headmaster but he was not permitted to discharge his function and after a long drawn battle about his seniority, though his seniority was established, he was not made to taste the fruits of the same and all possible obstacles were created by the Management to keep him out of the post of the Headmaster. In this scenario the petitioner attained the age of the superannuation on 01.12.2013 and then began his battle for securing his pensionary benefits.

10. We are astonished by the affidavit filed by the Management where the Management has solely blamed the petitioner and stated that till the year 2014 the petitioner did not hand over the service book that had kept with him. This statement is bereft of any merit since the service book are maintained in duplicate and one copy of the service book is retained by an employee and in any contingency the said justification given in the affidavit filed by the Management is unconvincing and when we specifically asked the learned counsel for respondent No.3 that even if according to their own version if the service book was deposited by the petitioner on 04.10.2014 why the pensionary benefits are still not released, no answer is forthcoming except stating that it is in progress. We are convinced that the explanation offered by the respondent No.3 in its affidavit is nothing but an attempt to harass the petitioner and nothing stopped the Management from fixing his last pay drawn and forward his pension papers to the Competent Authority. The Management however sat on the said file in spite of the directives issued by the Deputy Director of Education and when we perused the order passed by the Deputy Director of Education which cites only one reason for not releasing his pensionary benefits namely that against the petitioner a criminal case is pending in Akalkot Court and therefore his pensionary benefits flowing from the post of the Headmaster cannot be released. The direction is issued to the effect that the provisional pension be released in

favour of the petitioner presuming that he has retired from the post of the Assistant Teacher and the case should be forwarded to the Accountant General by immediately granting him provisional pension. However, there is no compliance of the said order and the petitioner in spite of rendering service from 01.07.1980 has been deprived of his pensionary benefits though a period of almost five years has expired since his retirement. The approach of the respondent-authorities can only be described as callous and since we have already rejected the stand of the respondent that the petitioner had contributed to the delay in not forwarding his service book to the authority, we find no sustainable justification being otherwise afforded for delaying the payment of pension to the petitioner.

In such circumstances we are inclined to allow the Writ Petition by directing the respondent-Management to forthwith forward the pension case of the petitioner as 'Headmaster' on completing his service book to the Accountant General, if it is not already forwarded within a period of 15 days from the date of passing of this order and the Accountant General is directed to process the pension case of the petitioner within a period of one month. Since the petitioner has been deprived of the amount of the retiral benefit in form of pension and gratuity, and the cause for delay being not attributable to the petitioner, we direct payment of interest at the rate of 10% to be paid to the petitioner on expiry of period of six months from the date of his retirement with effect from 01.02.2013 and the amount due to the petitioner towards the retiral benefits should be paid to the petitioner within a period of one month from the date of which pension case is finalized by the Accountant General. Any further delay in realizing the amount of pension and gratuity as well as other post retiral dues of the petitioner would carry further interest @12%. With the aforesaid direction the Writ Petition is allowed. Rule made absolute.