

(1999) 07 BOM CK 0117

In the Bombay High Court

Case No : Writ Petition No. 4604 of 1998

Shripad Shikshan Mandal and others

APPELLANT

Vs

Rajaram Bhandari Chavan and others

RESPONDENT

Date of Decision : 02-07-1999

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5

Citation : (1999) 07 BOM CK 0117

Hon'ble Judges : D.K. Deshmukh, J

Bench : Single Bench

Advocate : A.M. Joshi, for the Appellant; Subhash Langote for Respondent No. 1 and Nitin Jamdar, for the Respondent

Judgement

D.K. Deshmukh, J.—The petition is not for final hearing on board. However, with the consent of the parties, the petition is heard finally. The facts that are material and relevant for deciding this petition are one that the post of the Head Master to which the controversy in this petition relates is admittedly in a primary school. Therefore, the conditions of service are governed by Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules framed thereunder. According to the provisions of the Act, promotion to the post of Head Master of the primary school is to be according to the seniority. Rule 3 of the Rule framed, lays down that a person to be appointed as Head insofar as primary school is concerned shall be the senior most trained teacher who has put in not less than five years service. The controversy in the present petition is whether it is the petitioner No. 2 - Shri Nagnath Bhimrao More or Respondent No. 1- Shri Rajaram Bhanudas Chavan is the senior most trained teacher. Particulars that are relevant for considering these aspects are that the petitioner No. 2- Shri Nagnath Bhimrao More was appointed as a teacher on 6th December, 1966. At that time he was a matriculate. He acquired training qualification D.Ed, in 1992. So far as Respondent No. 1 is concerned his date of appointment is 1st July, 1976 and on his date of appointment itself he was not only a matriculate

but also he was holding the training qualification D.Ed. The question is whether for working out seniority amongst the petitioner No. 2 and Respondent No. 1 the date of the acquisition of training qualification is material.

2. Rule 12 of the Rules lays down that every management shall prepare and maintain seniority list of the teaching staff including Head Master and Assistant Head Master and non-teaching staff in the School in accordance with the guidelines laid down in Schedule "F". Perusal of Schedule-F of the Rule shows that insofar as the seniority of primary school teacher is concerned, it is to be based on the date of joining of service and continuous officiation. The Rule read as follows :-

12. Seniority List. - Every Management shall prepare and maintain seniority list of the teaching staff including Head Master and Assistant Head Master and non teaching staff in the School in accordance with the guidelines laid down in Schedule "F". The seniority list so prepared shall be circulated amongst the members of the staff concerned and their signatures for having received a copy of the list shall be obtained. Any subsequent change made in the seniority list from time to time shall also be brought to the notice of the members of the staff concerned and their signatures for having noted the change shall be obtained.

(2) Objections, if any, to the seniority list or to the changes therein shall be duly taken into consideration by the Management.

(3) Disputes, if any, in the matter of inter se seniority shall be referred to the Education Officer for his decision.

3. Therefore, the seniority in Primary School shall be based on the joining of service and continues officiation.

4. It is, thus, clear that so far as teacher in primary schools are concerned, it is their date of joining service which is relevant and therefore, according to this Rule it will be the petitioner No. 2, who will be senior to respondent No. 1.

5. The learned Counsel appearing for Respondent No. 1, however, submits that because section 5 of the Act, lays down that the management shall fill in the manner prescribed every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy and as qualification for being appointed as teacher in a primary school is matriculate with training qualification. According to the Learned Counsel the date of the acquisition of the training qualification is material for deciding seniority amongst teachers in primary school, in my opinion, the submission made by the Learned counsel is not well founded. Perusal of the provision of Schedule-"F" itself shows that while framing the Rules the Rule Making Authority has alive to the possibility of persons not qualified being appointed as teachers in the school. Perusal of Rule "2" of Schedule-"F" which lays down guidelines for seniority of teachers in secondary school brings out this position more clearly. A comparison of the provisions of Rules 1 and 2 in Schedule-"F" clearly bring out the situation that in

so far as for working out of seniority of teachers working in secondary school, acquisition of training qualification has been given importance whereas while working out seniority of teachers in primary schools acquisition of training qualification has not been considered. The only requirement of the Rule is that at the time of appointment as Head Master or promotion of the Head Master, the teacher must be a trained teacher. It is further to be seen here that the Act and the Rule framed thereunder have come into force in 1981. The petitioner No. 2 was appointed in 1966 i.e. before the commencement of the Act and Rules. Therefore, so far as qualification for appointment of teachers before commencement of the Act is concerned, the Rules in existence of that date would be relevant. Schedule-"B" of the Rules deals with the qualification of primary teachers. It lays down that for being eligible for appointment of a teacher in primary school, the person concerned must have obtained Diploma in Education. Perusal of Schedule-"B" further shows that persons who were appointed as primary teachers before coming into force of these Rules in accordance with the Rules then in force and who were thereafter discharged for want of vacancies shall be eligible for reappointment. It is thus clear that insofar as the question of working out seniority of teachers in primary school is concerned, the date of acquisition of training qualification is not relevant. Promotion to the post of Head Master is on the basis of seniority and thus the petitioner No. 2 is senior to Respondent No. 1 and as on the date of his appointment he was also a trained teacher. Petitioner No. 2 would be entitled to the promotion. It is this clear that the Order of the School Tribunal setting aside promotion of petitioner No. 2 to the post of Head Master and directing promotion of Respondent No. 1 is clearly illegal and therefore liable to be set aside.

6. In the result the petition has substance.

7. Rule made absolute in terms of prayer clause (b) i.e.

(b) The Hon"ble Court be pleased to issue Writ of certiorari or any other appropriate Writ, directions and order quashing/setting aside the Judgment and order passed by the School Tribunal, Pune Region Pune having its bench at Sholapur in Appeal No. 243/1994 delivered on 15-7-1998.

No Order as to costs.