
(1996) 03 BOM CK 0045
In the Bombay High Court
Case No : Writ Petition No. 360 of 1995

Smt. Noreen Nerenha	Vs	APPELLANT
State of Goa and Others		RESPONDENT

Date of Decision : 11-03-1996

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1996) 5 BomCR 233

Hon'ble Judges : R.K. Batta, J;P.S. Patankar, J

Bench : Division Bench

Advocate : S.S. Naik, for the Appellant; G.U. Bhobe, G.A., for respondent No. 1, J.E. Coelho Pereira, S.A. and J. Godinho for respondent No. 2, F. Rebello, S.A. and N.K. Swaikar, for the Respondent

Judgement

P.S. Patankar, J.—Heard both sides.

2. The petitioner herein has prayed for setting aside and quashing the Order dated 31st December, 1994 passed by respondent No. 1 herein. By the said order, the respondent No. 5 was held to be entitled to the seniority among the primary teachers from her original date of appointment i.e. 18-6-1984.

3. The respondent No. 5 came to be appointed in the primary section on 18-6-1984. Thereafter she was transferred to pre-primary section. The petitioner came to be appointed in the primary section on 25-6-1988.

4. The question arose before a Division Bench of this Court in Writ Petition No. 160 of 1992 and others reported in Maximiana Fernandes and Another Vs. The Director of Education and Others, , due to various representations made by Pre-Primary teachers to be brought back to the primary section in view of great disparity in the pay scales etc. and various orders passed by the Department under the policy decisions taken under Goa, Daman and Diu Education Act, 1984. The Division Bench laid down certain guidelines in that respect. The impugned order came to be passed relying upon Guideline No. 3 :

"(3) A teacher appointed to Primary section and continued to teach in that section until 1990-91 such teacher shall remain in the Primary section. Any teacher who had been teaching in Primary Section and transferred to Pre-primary section after 16th November, 1986 shall be entitled to be brought back to primary section and the seniority will be reckoned from the date of original appointment."

In fact, this judgment was challenged in the Apex Court by filing SLP No. 1706 of 1995 where the Apex Court passed the Order on 12th January, 1996. The said judgment was approved, except guideline No. 3. The Apex Court has observed :

"It appears that the appellant was posted in pre-primary section much before the crucial date i.e. 14-11-1986. Accordingly, in terms of the High Court guideline No. 3 the Government has decided that the appellant is not entitled to be brought back to the primary section and it appears that the appellant has now become junior to eight of the teachers who were appointed much after the appellant because of the said guideline at serial No. 3.

We, therefore, direct for modification of guideline No. 3 in the impugned judgment by indicating that any teacher appointed to primary section, but transferred to the pre-primary section irrespectively of the date of transfer to pre-primary section will be entitled to be brought back to the primary section like other teachers transferred after 14-11-1986 and seniority of such teacher will be reckoned from the date of his/her original appointment."

5. The learned Advocate appearing for the petitioner has raised two contentions. It is first contended that the respondent No. 5 has gone voluntarily to pre-primary section and therefore she is not entitled to be brought back and she cannot get seniority over the petitioner.

6. Reply has been filed on behalf of respondent No. 5 inter alia pointing out that she was not trained and therefore she requested for transfer to the pre-primary section to enable her to complete her training qualification. Accordingly she came to be transferred to the pre-primary section. The guideline at serial No. 6 deals with only the transfer from primary section to pre-primary section and obviously this would also be covered by the said guideline. Therefore, there is no substance in this contention.

7. The learned Advocate for the petitioner next contended that respondent No. 5 has also gone to the secondary section and therefore she has lost her right to be brought back to the primary section. It is not possible to accept this contention for the simple reason that she has gone to the secondary section for a temporary period and it does not mean that she has lost her right to be in the primary section.

8. In view of this, the contention is rejected.

9. The petition is summarily rejected.