
(2002) 12 BOM CK 0066
In the Bombay High Court
Case No : Writ Petition No. 406 of 1997

Sudhakar Sitaram Chikate

APPELLANT

Vs

Education Officer (Secondary), Zilla Parishad, Vidhya
Prasarak Sanstha, Sindewahi, State of Maharashtra,
Education Department, Deputy Director of Education and Shri
Ram Pawar

RESPONDENT

Date of Decision : 05-12-2002

Acts Referred:

Citation : (2002) 12 BOM CK 0066

Hon'ble Judges : R.S. Mohite, J

Bench : Single Bench

Advocate : P.N. Kendurkar and S.C. Sangamnerkar, for the Appellant; A.S. Joshi and T.R. Kankale, Assistant Government Pleader for respondent Nos. 4 and 5, for the Respondent

Judgement

R.S. Mohite, J.—Heard Shri Kendurkar, Advocate for the petitioner, Shri Joshi, Advocate for respondent No.2 and Shri Kankale, AGP for respondents No. 4 & 5.

2. The brief facts of the case given rise to the care are as follows :

(a)The petitioner was appointed as an Assistant Teacher by Respondent No. 2 on 4.8.1977. After completing more than 14 years of service, by an order dated 9.4.1992 the petitioner was promoted as Headmaster in Sarvodaya High School, Sindewahi, which was the school run by Respondent No. 2 - Trust.

(b)On 18.4.1992, Respondent No. 2 addressed a letter to the Education Officer seeking approval for appointment of the petitioner.

(c)On 2.7.1992, the Education Officer, Zilla Parishad, Chandrapur, addressed a letter to Respondent No. 3, who was then acting on the post of Assistant Head Master. In the said letter, by making a reference to an order dated 30.10.1991, the Education Officer purported to record that the said Respondent No. 3 had been given temporary charge of Assistant Head Master by the Assistant Charity

Commissioner.

(d)The matter was carried by the petitioner to the Deputy Director of Education, Nagpur Division, Nagpur, who gave a hearing on 21.9.1992 and after referring to a communication of the Assistant Charity Commissioner dated 1.6.1992 addressed to the Education Officer, Zilla Parishad, Chandrapur, came to the conclusion that the appointment of Respondent No. 3 as acting Head Master was proper.

(e)The petitioner then carried the matter to the High Court and challenged the order dated 29.9.1992, (which according to the advocate for the petitioner is wrongly mentioned as 21.9.1992 in the High Court order).

(f)The Division Bench of this Court decided Writ Petition No. 1981 of 1993 filed by the petitioner as aforesaid by its judgment and order dated 6.3.1993. The only direction given by the Division Bench was that the Education Officer (Secondary), Zilla Parishad, Nagpur, decide the eligibility of the petitioner to the post of Head Master in Sarvodaya High School, Sindewahi, within a period of two months.

(g)On 17.8.1996, the Education Officer, Secondary, Zilla Parishad, Chandrapur, addressed a letter to the President/ Secretary of Respondent No. 2 holding that even if the petitioner was entitled to the (S.T.) post of Principal as per 50 point roster, the promotion as Head Master could not be granted to him as there was an existing post of Assistant Head Master. The letter recommended that the appointment of the petitioner should be cancelled for the time being and Respondent No. 3, who was Assistant Head Master should be promoted as Head Master. It is admitted position that this letter was never acted upon and appointment of the petitioner - Shri Chikate was never cancelled and in fact on 1.8.2000, the petitioner was transferred to Sarvodaya High School, Gadboli, which was another school run by Respondent No.2 and continued till today. This position relating to transfer, pending this petition is as per the version given by counsel for respondent No.2. (h)On 24.12.1996, without there being any application for approval of Respondent No. 2 as Head Master, the Education Officer, Zilla Parishad, Chandrapur, purported to grant approval to Respondent No. 3 from 9.5.1992.

(i) On 24.1.1997, the present petition came to be filed seeking the quashing of the communication dated 17.8.1996 as well as grant of approval to Respondent No. 3 given by the Education Officer on 24.12.1996. In this petition, by way of amendment, a prayer was also added for a direction to Respondents No. 1 & 3 to reimburse all the monetary benefits which Respondent No. 3 received with the help of Respondent No. 1 given to respondent No. 2.

3. It is the contention of the petitioner that Respondent No. 3 has been unduly favoured by Respondent No. 1. It is contended that the order passed by the Education Officer on 2.7.1992 was passed on the basis of a purported order of the Assistant Charity Commissioner dated 30.10.1991. It was contended that a

glance at the order dated 30.10.1991 would indicate that the temporary charge of acting Head Master was never given to Respondent No. 3 by the Assistant Charity Commissioner.

4. I am taken through the order of the Assistant Charity Commissioner dated 30.10.1991, and it indeed appears that the temporary charge was given to Sonwane. It, therefore, appears that this contention is well founded. It appears that all times, Respondent No. 3 was only acting as Assistant Head Master and was, therefore, entitled to receive the pay of Assistant Head Master. It further appears that the approval granted to Respondent No. 3 was on 24.12.1996 with effect from 9.5.1992 was granted by the Education Officer (Secondary), Zilla Parishad, Chandrapur, on the basis of a letter dated 6.9.1996 to which a reference is made in the order dated 24.12.1996.

5. The advocate for respondent No. 2 makes a categorical assertion that Respondent No. 2 has never sent a letter dated 6.9.1996 to the Education Officer. It appears that this position may have arisen because there is a dispute in the management. Unfortunately, Respondent No. 3, who has retired, appears to be no longer interested in the dispute and, therefore, he has chosen to remain absent. The letter dated 6.9.1996 is also not placed on record by the Education Officer, therefore, this Court is in the dark about the contents of the letter dated 6.9.1996.

6. Respondent No. 3 has in the meanwhile retired and it appears that the Government has paid to Respondent No. 2 - institution the salary of a Head Master, which the institution in turn has paid to Respondent No. 3. It appears that Respondent No.3 has received the salary without being entitled to the same and in fact he was only entitled for the salary of Assistant Head Master. I am hampered because Respondent No. 3 has chosen to remain absent though served and the record which could have been in his possession has not been brought before this Court.

7. In the circumstances, I am inclined to make rule partly absolute. It is directed that the Education Officer, (Secondary), Zilla Parishad, Chandrapur, will now grant approval for the post of Head Master to the petitioner with effect from 9.5.1992 within a period of two months from today. The Government will not be liable to pay again double salary of Head Master if the same is already paid earlier to the institution.

8. I am informed that Respondent No.2 institution has withheld the terminal benefits of Respondent No. 3. The institution will pay such difference of salary to the petitioner as the petitioner would have been entitled to draw as a Head Master by deducting the amount from the terminal benefits of Respondent No. 3. If any additional amount is required to be paid to the petitioner after making such deduction, the same will be paid by the management from its own sources. If any amount of salary or terminal benefits of Respondent No.3 is pending with the Education Officer, he will be entitled to make required adjustment of the

same and pay the same to Respondent No. 2 institution for payment to the petitioner.

9. In the result, rule is made partly absolute accordingly with no order as to costs.