
(2010) 07 BOM CK 0143

In the Bombay High Court

Case No : Writ Petition No's. 4687 of 2008 and 103 of 2000

Sunil Gopalrao Khedikar

APPELLANT

Vs

Education Officer (Secondary) and Others

RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 12

Citation : (2011) 3 BomCR 431

Hon'ble Judges : Chandiwal K.U., J

Bench : Single Bench

Advocate : T. Udeshi, holding for . A.C. Dharmadhikari, in W.P. 103/2000 and H.D. Dangre, in W.P. No. 4687/2008, for the Appellant; T. Udeshi, h/f. A.C. Dharmadhikari, Respondent 4 in W.P. 4687/2008, H.D. Dangre, for Respondent 4 in W.P. 103/2000, N.S. Khubalkar, A.G.P. for Respondent No. 1 and S.M. Ghodeswar, for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Chandiwal K.U., J.—Heard. Petitioner Sunil in his petition challenged the order dated 22nd December 1999 passed by the Education Officer Bhandara concerning grant of approval to the Petitioner (in Writ Petition 103 of 2000) appointment as Supervisor/Assistant Teacher. While in Writ Petition 4687 of 2008 Shalikgram has urged to set aside the order dated 11th June 2007 issued by the Office of the Education Officer Zilla Parishad Gondia (Annexure "J") of the said petition. Parties are referred with their first names as Sunil and Shalikgram.

2. Sunil, and Shalikgram joined as Assistant Teacher in the Respondent No. 3 High School. Their initial appointment was on 30th June 1991, then Sunil hold educational qualification of B. Com. B. A. B. P. Ed. while Shalikgram was B.S.W. B. Ed. and also M.S.W. Both faced break. Thereafter on 30th June 1993 both were given appointment. They joined on 1st July 1992. Both again had the brunt of break. There after on 1st July 1993 order of appointment was issued in favour of Petitioner Sunil as well Shalikgram. Pay scale for Sunil was Rs. 1400-2600

while for Shalikgram was Rs. 1200-2040.

3. It is not in controversy that in 1994 Shalikgram had acquired additional qualification of Bachelor of Arts (B. A.). The controversy now revolves to fixing of seniority between Sunil and Shalikgram.

4. Learned Counsel for the Petitioner urged that even if the letter of appointment for Petitioner Sunil and Respondent No. 4 Shalikgram is of even date 1st July 1993 however by efflux of Petitioner joining the duties on 2nd July 1993 while the Respondent No. 4 Shalikgram joining duties on 5th July 1993, seniority by virtue of earlier joining to the post will be showering the Petitioner Sunil than upon Respondent Shalikgram. Second feather of submission was, Education Officer should have been guided in terms of Schedule "F" under Rule 12 of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, however Education Officer erroneously incorporated note No. 3 thereof giving weightage to age of Shalikgram.

5. It is not in dispute that in the service record date of birth of Sunil is recorded as 10th June 1966 while that of Shalikgram 24th April 1961. The date of continuous appointment is recorded as 2nd July 1993 and 5th July 1993, however, for such date, Shalikgram had raised objection when it was brought for his confirmation. He did not accept the dates incorporated by the Management in the respective service book.

6. The learned Counsel for the Petitioner submits, the order of appointment inter se does not give any right of seniority either to the Petitioner or to the Respondent No. 4 as it is the date on which the incumbent resumes the duty which is pivotal in its nature.

7. Submissions of the learned Counsel, incorporating that the date of letter of appointment has no significance is in contrast to the scheme under Rule 12 Schedule "F" and particularly Note 3 there of which ordains as under:

In the case of teachers whose date of continuous appointment in one and the same category is common, the teacher who is senior by age will be treated as senior.

8. Counsel repeatedly harp, the term continuous appointment would mean, to include the date of joining.

9. The language of Note 3 does not require any spices to be added. Term "appointment" by itself illustrate the intention of the legislature to give effect. A particular terminology being used as continuous appointment will have its significance to read the letter of appointment as paramount and it could not have changed the date of joining either on 2nd July 1993 or 5th July 1993 between Petitioner or Respondent No. 4. That apart, even if Petitioner joins on 2nd July 1993 by virtue of very Note 3, the teacher who is senior by age will be treated as senior assumes importance, and as stated earlier the Respondent Shalikgram being born on 24th April 1961 being elder in age to Petitioner Sunil, effect of

Note 3 will accelerate in favour of Respondent No. 4 which the Education Officer has rightly enshrined and espoused. The effect of Category C in Schedule F will also be not available, as qualification of B. S.W. held by Shalikgram and one of B. Com/B. A. held by the Petitioner being in the same bracket of Category C itself.

10. Taking survey of these facts analysing legal position, I do not find any error on the part of the learned Education Officer in fixing seniority of Respondent No. 4 Shalikgram than the seniority of Petitioner Sunil. Consequently, Writ Petition No. 103 of 2000 is dismissed.

11. Writ Petition No. 4687 of 2008 in the light of disposal of Writ Petition No. 103 of 2000 becomes academic and accordingly it is disposed of. Order dated 11th June 2007 (Annexure "J" in Writ Petition 4687 of 2008 is set aside. No costs.