

(2002) 01 BOM CK 0107

In the Bombay High Court

Case No : Writ Petition No. 1974 of 1996 (New) and Writ Petition No. 2600 of 1990 (Old)

V.S. Joshi

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 14-01-2002

Acts Referred:

Citation : (2002) 3 ALLMR 882 : (2002) 104 BOMLR 262

Hon'ble Judges : N.H. Patil, J;B.H. Marlapalle, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—The petitioner is aggrieved by the communication dated 14.2.1990 issued by the Education Officer (Secondary), Zilla Parishad, Dhule informing that Mrs. Anuradha Shrikrishna Dautkhane, Assistant Teacher was required to be appointed as Head Mistress of the Girls" High School in the pay scale of Rs. 750-1150 w.e.f. 14.11.1983 and her appointment was approved in the said post accordingly.

2. The petitioner came to be appointed as Assistant Teacher w.e.f. 12th June, 1961 and he had completed his B.Ed. degree examination prior to his appointment. In the year, 1974, he came to be promoted to the post of Supervisor and thereafter, in the year 1978, he was promoted to the post of Assistant Head Master. Subsequently, the respondent No. 4 - management which was running the High School, decided to bifurcate it into two different schools, one for the boys and the other one for the girls. Accordingly, in 1978, the school was bifurcated in two different schools by name Dr. Kane's Girls" High School and Smt. Durgabai Raghuvanshi Boys" High School.

3. One Mrs. Modak, who was senior most teacher, came to be appointed as the Head Mistress of the Girls" High School while Shri G.V. Pimpalkhare was appointed as Head Master of the Boys" High School. Shri Pimpalkhare proceeded

on leave in January, 1981 and, therefore, the petitioner was given charge of the post of Head Master of the Boys' School on retirement of Shri Pimpalkhare in September, 1981. The management passed a resolution appointing Shri Bharati as Head Master of the Boys' High School w.e.f. 1.10.1981 and the claim of the petitioner for the said post was not considered. He, therefore, submitted representation to the Education Officer (Secondary), stating that the post of Head Master of the Boys' School was an isolated post and the rule of reservation was not applicable.

4. Smt. Modak, Head Mistress of the Girls' High School retired in the year, 1983 and the management, on bifurcation of the school, passed a resolution to maintain separate seniority lists for the two schools. It appears that the petitioner was senior most teacher in the seniority list and, therefore, on retirement of Smt. Modak, he was appointed as Head Master. The Education Officer granted approval only as an Incharge Head Master and the proposals submitted by the management from time to time for appointment of the petitioner as Head Master were not replied to and they remained pending. The petitioner retired on 30th June, 1989 but, without becoming a regular Head Master. On 19th March, 1990, the impugned communication was received and, therefore, the petitioner approached us.

5. The impugned communication does say that the post of Head Mistress of the Girls' High School was reserved and, therefore, Smt. Dautkhane was approved for the said post. Two issues have been raised by the petitioner, namely,-

(a) The post of Head Mistress of the Girls' High School is an isolated post and, therefore, the constitutional reservation is not applicable; and

(b) The petitioner being senior most Assistant Teacher, he was eligible to be appointed to the said post and he had, in fact, worked in that post from 1983 till he retired.

6. We shall take second ground first. The appointment to the post of Head of the School is governed by the provisions of Rule 3 of the Maharashtra Employees of Private Schools Rules, 1981 (M.E.P.S. Rules, for short) and Sub-rule (4) thereof provides that in the case of girls' secondary school or Junior College of Education for Women, the senior most lady teacher fulfilling the conditions laid down in Clause (b) of Sub-rule (1) and having satisfactory record of service, shall be appointed as the Head of that School irrespective of her seniority vis-a-vis the male teachers. To overcome this provision in the way of the petitioner, the learned Counsel for him submitted that Mrs. Dautkhane was not in the seniority list of the Girls' High School and she was shown in the seniority list of Boys' High School and, therefore, her claim for appointment as Head Mistress in Girls' High School could not be considered. Reliance has been placed in support of this contention, on Note No. 7 in Schedule F. Even, going by the petitioner's own contentions, Note No. 7 while giving a right to the management to maintain separate seniority lists on bifurcation of a High School, makes it obligatory for

the management to give a clear understanding to the teachers concerned to the effect that they shall not have any claim on the promotional posts in other school run by the same management in future. It is evident that Mrs. Dautkhane was aware of this provision and that's why she had submitted a representation against the seniority list showing her name in the seniority list framed for the Boys' High School. Her representation was turned down by the Education Officer and we have no doubt that the Education Officer fell in gross error in deciding against the said lady teacher. Seniority is a vital issue for future promotions and that's why, Note No. 7, considering this contingency, makes it obligatory for the management to fulfil such conditions when separate seniority lists are being framed for the Boys' and Girls' High Schools.

7. On the aspect of Constitutional reservation, it is clear that the respondent No. 4 is running two different schools and therefore, the post of Head Master in one of the schools cannot be said to be an isolated post. However, at the same time, the reservation cannot exceed beyond 50% as per the mandate of the Constitution and, therefore, one of the posts shall have to be treated in the reserved category while, the other post would be in the open category. The reserved post could be rotated amongst the teachers belonging to different reserved classes like Scheduled Castes, Scheduled Tribes and Other Backward Classes etc. The impugned communication, therefore, does not suffer from any legal infirmities and Mrs. Dautkhane ought to have been appointed to the post of Head Mistress as soon as Mrs. Modak had retired from the said post.

8. Be that as it may, so far as the claim of the petitioner is concerned, the same is devoid of merits and his challenge to the impugned communication is unsustainable.

9. In the result, the petition fails and is hereby dismissed. Rule is discharged. No costs. Interim orders stand vacated.

All the civil applications in this petition do not survive and are disposed of.