

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1817 OF 2003

Babaji s/o Vithal Chaher
Age : 40 years, Occ : Service,
R/o: Palsapur, Tq. Parner,
District : Ahmednagar. ... Petitioner

Versus

- 1] The State of Maharashtra,
Through : Director of
Education, Pune.

(Copy to be served on Government
Pleader of High Court of Mumbai,
Bench at Aurangabad)

- 2] The Director of Education,
Maharashtra State, Pune.

- 3] The Dy. Director of Education,
Pune Division, Pune,
M.P.S.C.

- 4] The Education Officer (Secondary)
Zilla Parishad Ahmednagar,
Ahmednagar.

- 5] Shri Bhausahab Maharaj
Shikshan Prasarak Mandal,
Vasunde, Tq. Parner,
Dist. Ahmednagar,
Through its President.

- 6] The Head Master,
Adarsha Vidyalaya Palasapur,
R/o : Palasapur, Tq. Parner,
Dist. Ahmednagar. ... Respondents

...
Advocate for Petitioner : Mr. A. S. Bajaj
A.G.P. for Respondent Nos. 1 to 4 : Mr. S. A. Ambad
Advocate for Respondent Nos. 5 & 6 : Mr. V. R. Dhorde

...
CORAM : A.V. NIRGUDE & V.K. JADHAV, JJ.

...

.....
DATE OF RESERVING THE ORDER : 11.03.2015
DATE OF PRONOUNCING THE ORDER : 13.03.2015
....

JUDGMENT :- (Per V.K.Jadhav, J.)

1. By this Writ Petition, the petitioner seeks to quash and set aside the order dated 30.10.2000, passed by the Respondent No.4, thereby rejecting the representation of the petitioner. The petitioner further seeks direction to respondents No. 1 to 4 to count his seniority with effect from 13.6.1985 till date and to pay the him salary and allowances due from time to time with all consequential benefits arising therefrom.

2. Brief facts giving rise to the present writ petition are as follows :-

The petitioner is qualified as M.A., B.Ed. His appointment was made against a clear, permanent and vacant post and by following the due procedure. The petitioner, as per the appointment order dated 5.5.1985, had joined duties on the post of Head Master. He had completed two years of his service without any break or interruption and in view of the provisions of Section 4(6) and Section 5(2) of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, has acquired the status of

permanent employee. The respondent No.5 - Institution runs a different school in Ahmednagar District. All the schools run by the Respondent Sanstha, by now, are getting 100% grants from the Government. By virtue of provisions of Rule 41 of the The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (herein after referred to as Rules of 1981), services of the petitioner are transferable in different schools, but run by the same Management. The petitioner was initially appointed in the year 1985 and thereafter he was transferred in newly opened schools which were not getting grant in aid from the Government at the relevant point of time. The transfer of the petitioner under different schools cannot be termed as fresh appointment and the petitioner is, therefore, entitled to count his seniority from the date of his initial appointment for the purpose of seniority, promotion and other consequential benefits. According to the petitioner, he was not paid salary as per the prescribed pay scale. Furthermore, the respondent has not prepared and maintained seniority list of the teachers working under the said Institution. The petitioner has addressed various representations to the respondent - Management. Even the petitioner has submitted his representations to respondent No.4 Education Officer, however, in spite of repeated

representations, the respondent No.4 did not pay any heed. The petitioner was therefore constrained to file Writ Petition No.832/1999 for redressal of his grievance and for giving appropriate directions to the respondents in respect of regulation of his claim towards salary, seniority, and maintenance of service book. This Court, by order dated 1.8.2000, directed the respondent No.4 therein (Education Officer) to decide the representation of the petitioner within a period of three months by giving personal hearing to the petitioner as well as the Management.

3. Thus, the respondent No.4 Education Officer, Zilla Parishad, Ahmednagar, in view of the directions given by this Court, was pleased to decide the representation of the petitioner on 30.10.2000. During the course of inquiry, it was admitted by the Management before the Education Officer that the petitioner has rendered continuous service with the respondent management since 13.6.1985. However, the respondent No.4 Education Officer has not considered the service rendered by the petitioner for the period from 1.7.1987 to 12.6.1989 and also the period from 12.6.1991 to 23.6.1991 and 11.1.1992 to 12.6.1992. The respondent No.4 Education Officer was further pleased to direct that the petitioner's services from 13.6.1992 onwards only should be

considered as continuous service and his seniority from 13.6.1992 be determined and provisional seniority list be placed before him for approval. In respect of the pay and allowance of the petitioner, the respondent No.4 Education Officer has directed to pay the salary as per pay scale at the relevant point of time, by deducting the actual payment made to the petitioner. The Management was also directed to pay the salary of certain period to the petitioner within three months. Petitioner accordingly filed the present writ petition challenging the impugned order passed by the respondent No.4 - Education Officer.

4. The learned counsel for the petitioner submits that the impugned order is passed in disregard of the Rules of the year 1981 and the guide lines laid down by the School Education Department vide its Government Resolution dated 8.11.1994. The Respondent No.4 - Education Officer has not gone into the legality and validity of frequent transfers of the petitioner, particularly from aided school to non aided school. This issue was not dealt with in the proper perspective and impugned order is therefore passed without application of mind. The learned counsel further submits that the petitioner is entitled to count whole of his service from 13.6.1985 till date. If the seniority of the petitioner is

counted from 1992 as per the impugned order, then the juniors of the petitioner, who are working on the post of Head Master at present, would be deemed to be seniors even though they joined the services much later than the petitioner.

5. The learned counsel for respondents No. 5 and 6 submits that, the transfer orders of the petitioner came to be passed time to time as per exigencies arose and further submits that the petitioner is in continuous service since 13.6.1985 till this date, though transferred to various schools run by the same Institution.

6. We have also heard the learned AGP who have supported the impugned order passed by the Respondent No.4 - Education Officer.

7. As per the provisions of Rule 41 of the Rules of 1981, the Management conducting more than one School may transfer any of its employees from one school to another on administrative grounds, promotion, or at the request of the employee concerned, if it is administratively convenient to do so. Sub Rule (3) of Rule 41 reads as under :-

“The Management shall see that the transfers do not adversely affect the pay or pay scale of the employees concerned and that such transfer do not result into loss in the pensionary benefits as admissible to them.”

8. It is thus clear that sub Rule (3) fixes an obligation on the Management that the proposed transfer should not adversely affect the pay and pay scale of the employee concerned and further it should not result in loss in the pensionary benefits as admissible to them. In other words, this rule permits the Management to transfer the employee even to unaided school with an obligation to take precaution that the pay or pay scale of such employee is not adversely affected because of such transfer and further that the employee is not put to any loss in so far as pensionary benefits are concerned. Following these two precautions, Rule 41 permits the Management to transfer the employee from aided to unaided school also.

9. Rule 12 of the Rules of 1981 directs 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'. Note No.5 to Schedule 'F' says that where a Management runs more than

one school, seniority list for a particular cadre shall be a combined seniority list of all persons in the cadre working in all schools. it further directs that total continuous service rendered by the person in a particular cadre in any school or junior college class shall be taken into consideration for the purpose of seniority and for the purpose of promotion. Note 5 of Schedule 'F' reads as under :-

“Where a management runs more than one school and where Junior college classes are or are not attached to any one or more of such schools, the seniority list for a particular cadre shall be a combined seniority list of all persons in that cadre working in all the schools (excluding night schools, if any), or Junior College classes attached to schools of the Management. The total continuous service rendered by the persons in a particular cadre in any school or Junior College class shall be taken into consideration for the purpose of seniority and for the purpose of promotion.”

10. The learned counsel for the petitioner has brought our attention to the contents of the Government circular dated 8.11.1994 which reiterates the provisions of Schedule 'F'. By this Government Circular dated 8.11.1994, the earlier circular dated 29.6.1981 issued by the Director of Education, Maharashtra State, Pune, was cancelled as inconsistent with the provisions of Schedule 'F' of the Rules of 1981.

11. On the backdrop of this, impugned order does not stand. Even though the petitioner was appointed in the year 1985, the respondent No.4 Education Officer with utter disregard to the aforesaid provisions, construed the appointment of the petitioner to be fresh appointment from 13.6.1992. The respondent No.4 Education Officer has also heard the Management before passing the impugned order. The representative of the Management has accepted during the course of inquiry that the petitioner has rendered his service continuously from the date of his appointment i.e. 13.6.1985 till date. The respondent no.4 Education Officer, on this backdrop, should have directed the Management to prepare combined seniority list of all persons in the cadre working in all schools. The Respondent no.4 should have considered the total continuous service rendered by the petitioner in a particular cadre in any school for the purpose of seniority, promotion and other consequential benefits. The impugned order is thus not proper, correct and legal and certainly calls for an interference.

12. In view of the above discussion, following order is passed.

ORDER

1. Writ petition is hereby allowed.
2. The impugned order dated 30.10.2000 passed by the respondent No.4 - Education Officer is hereby quashed and set aside.
3. The respondents Nos.1 to 5 are hereby directed to count seniority of the petitioner with effect from 13.6.1985 till date and to pay the petitioner salary and allowances due from time to time with all consequential benefits like regular annual increments, revision of pay scale etc. arising therefrom.
4. We make it clear that, in case of any impediment in the payment of the salary, or the difference in salary, as the case may be, to the petitioner, on account of his transfer to an unaided school, or any other reason, for which the Management is responsible, the Respondent-Management shall pay the same to the petitioner.
5. Writ Petition is disposed of. Rule is made absolute accordingly in above terms.
6. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.)

aaa/-

(A.V. NIRGUDE, J.)

...