

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4808 OF 2014

Anil Sudam Patil,
Age 54 years, Occ. Service,
R/o Shri Saikrupa,
Daigambarao Pawade
Housing Society, Navapur,
Tq. Navapur, Dist. Nandurbar.

..Petitioner

Versus

1. The State of Maharashtra
Through Principal Secretary,
Education Department,
Mantralaya, Mumbai 32.

2. The Dy. Director of Education,
Nashik Division, Nashik.

3. The Education Officer (S),
Zilla Parishad, Nandurbar.

4. Navapur Taluka Shikshan
Prasarak Mandal, Navapur,
Tq. Navapur, Dist. Nandurbar
through its President.

5. The Headmaster,
Shivaji High School and Junior
College, Navapur, Tq. Navapur,
District Nandurbar.

6. Shri Gorakh Sakharam Patil,
Age major, Occ. Service as
Assistant Teacher,
Shivaji High School and
Junior College, Navapur,
R/o Navapur, Dist. Nandurbar.

7. Shri Ranveer Vilyatchandsing
Patil, age major, Occ. Service
as Assistant Teacher,
Shivaji High School and Jr. College,
Navapur, Dist. Nandurbar.

..Respondents

Advocate for Petitioner : Shri Sapkal V.D.
AGP for Respondents 1 to 3 : Shri Korde D.R.
Advocate for Respondents 6 & 7 : Shri Patil Prakashsing B.
Respondents 4 & 5 : Served

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CORAM : RAVINDRA V. GHUGE, J.

Dated: September 01, 2015

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. After this matter was heard *in extenso*, learned Advocate Shri Patil, appearing on behalf of respondents 6 & 7 submits on instructions from the said respondents who are present in the Court that the order dated 30.5.2014, delivered by respondent No.2 and the order dated 20.6.2014, delivered by respondent No.3 be set aside by consent, provided the matter is remanded back to the third respondent for a decision in the light of the Government Resolution dated 19.3.2013, expeditiously and within a time frame.

5. Shri Sapkal and Shri Patil, learned Advocates have further submitted that this Court may however, decide the conflict created by the letter

dated 3.9.2013, issued by the Director of Education vis-a-vis the Government Resolution dated 19.3.2013, prior to remitting the matter to the third respondent for a decision under Rule 12 in deciding the seniority of the petitioner and respondent Nos.6 and 7 inter se, on the basis of the said Government Resolution, the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 ("the MEPS Act" for short) and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("MEPS Rules" for short).

6. In the light of the above, I am adverting to the submissions of the learned Advocates only to the extent of deciding the controversy in between the G.R. dated 19.3.2013 and the letter of the Director of Education dated 3.9.2013.

7. Shri Sapkal submits that the Government Resolution dated 19.3.2013 was introduced with a purpose in the light of the demand made by the Teachers' Association seeking an acceptance of Diploma in Higher Education (DHE) as an educational qualification. He points out from paragraph Nos.2 and 3 of the Government Resolution which highlight the problems suffered by untrained teachers in view of DHE having not been accepted as an educational qualification for appointments as trained Teachers and further promotional avenues.

8. He has, therefore, drawn my attention to the Government Resolution, especially in the last paragraph wherein, the pending petitions

before this Court at its Principal Seat were taken into account and finally the Government decided that the Diploma in Higher Education would be considered as an educational qualification only from 19.3.2013, prospectively.

9. He then draws my attention to the letter dated 3.9.2013 issued by the Director of Education and addressed to all Deputy Directors, Divisional Education Department and the Education Officers (Secondary) of Zilla Parishads. He submits that the Director of Education has altered the very import and meaning of the Government Resolution by directing the education authorities to implement the Government Resolution dated 19.3.2013 with retrospective effect and reconstitute the seniority list of all teachers and consider the seniority of such teachers who possess DHE, for the promotional posts like Headmasters, Supervisors and Assistant Headmasters.

10. Shri Sapkal, therefore, submits that the Director of Education could not have issued such directions which are on collision course with the Government Resolution dated 19.3.2013. He further submits that by propagating retrospective effect of the said GR, the Director of Education has in fact caused prejudice to all such teachers who had valid qualifications while being appointed as trained teachers and who fell in category "C" under Schedule F to the Rules of 1981.

11. Shri Patil has strenuously supported the communication of the

Director of Education, dated 3.9.2013. He submits that the said directions are intended at furthering the cause of such untrained teachers, who have DHE qualification and hence the Director of Education intended to give all the benefits to such untrained teachers and ensure that they are made available, all promotional avenues.

12. He further submits that though the Government Resolution indicates that the DHE would be accepted as an educational qualification only prospectively, there is no harm if the effect is given retrospectively since that was the demand of the Teachers' Association. He further submits that the Director of Education can issue such directions to his subordinates.

13. I am not in agreement with the submissions of Shri Patil for the reason that the Government Resolution dated 19.3.2013 reflects a decision taken by the Government. It reflects the intent and object behind introducing the said policy. The intent and object of the Government cannot be submerged by the views of the Education Department, much less the Director of Education. The letter of the Director of Education cannot run counter to the specific decision taken by the Government and it cannot tantamount to nullifying the effect of the decision introduced through the Government Resolution.

14. In my view, therefore, the letter of the Director of Education dated 3.9.2013 is inconsequential and it cannot change the course prescribed by the Government Resolution dated 19.3.2013.

15. I, therefore, hold that the Government Resolution dated 19.3.2013 shall apply prospectively and the letter dated 3.9.2013, issued by the Director of Education ought not to be followed.

16. In the light of the above and in view of the consent of the parties, the impugned decision of respondent No.2, dated 30.5.2014 and the order dated 20.6.2014, delivered by respondent No.3 are quashed and set aside. The petitioner and respondent Nos. 6 and 7 are relegated to respondent No.3 for a rehearing on their dispute as regards their *inter se* seniority. Respondent No.3 shall decide the said dispute of seniority, strictly in accordance with the qualifications of the litigating sides, the Government Resolution dated 19.3.2013 and the said Rules read with the said Act.

17. Respondent Nos. 6 and 7 have requested for a time bound frame for deciding the dispute since respondent No.6 has retired and respondent No.7 is likely to retire in the coming 24 months. Considering the request, respondent No.3 Education Officer shall decide the dispute of seniority between these parties, as expeditiously as possible and preferably on/or before the 31.12.2015.

18. Respondent No.3 shall accordingly issue notices to the petitioner, respondent Nos. 6 and 7 and all such parties as may be interested. Respondent No.3 shall hear all sides before passing an order. The litigating sides are permitted to enter their written notes of submissions so as to

assist the said authority.

19. In the light of the above, this petition is partly allowed and RULE is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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