

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6819 OF 1999

Mrs. Usha Arun Nikam	..	Petitioner
vs.		
Deccan Education Society & Ors.	..	Respondents

WITH
WRIT PETITION NO. 5709 OF 1999
WITH
CIVIL APPLICATION NO. 1557 OF 2005

Namdeo B. Pandule	..	Petitioner
vs.		
Mrs. Charushila V. Vanjiri & Ors.	..	Respondents

Mr. Subhash Langote for Petitioner in WP 6819 of 1999.
Mr. S. B. Deshmukh for Petitioner in WP 5709 of 1999 and for Respondent No. 4 in WP 6819 of 1999.
Mr. N. V. Bandiwadekar for Respondent No.3 in WP 6819 of 1999 and for Respondent No. 1 in WP 5709 of 1999.
Mr. S. D. Rayrikar – AGP for Respondent No. 7 in both petitions.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 07 January 2015

Date of Pronouncing the Judgment : 12 January 2015

JUDGMENT :-

1] Both these petitions challenge the common judgment and order dated 29 July 1999 made by the School Tribunal Pune in the following appeals preferred by the respective parties :

(a) Appeal no. 59 of 1994 was preferred by Mrs. Charushila

Vanjiri who has been impleaded as respondent no.3 in writ petition no. 6189 of 1999 and respondent no. 1 in writ petition no. 5709 of 1999. The petitioner in writ petition no. 6189 of 1999 is Mrs. Usha Nikam, who had been impleaded as respondent no. 3 in appeal no. 59 of 1994;

(b) Appeal no. 239 of 1994 was preferred by Mr. Vijay Urade, who has been impleaded as respondent no. 2 in writ petition no. 6819 of 1999 and respondent no. 5 in writ petition no. 5709 of 1999. Although the appeal filed by Mr. Vijay Urade came to be dismissed by the common judgment and order, Mr. Vijay Urade has not preferred any petition to impugn the same;

(c) Appeal no. 15 of 1996 came to be preferred by Mr. Namdeo Pandule, who is the petitioner in writ petition no. 5709 of 1999. Therein, Mrs. Charushila Vanjiri has been impleaded as respondent no. 1 and Mrs. Usha Nikam and Mr. Vijay Urade came to be impleaded as respondent nos. 4 and 5. By order dated 30 September 2002 made by the Additional Registrar, writ petition no. 5709 of 1999 stands dismissed as against Mrs. Usha Nikam.

2] In terms of the common judgment and order dated 29 July 1999, which is impugned in these petitions, the promotions granted to Mr. Vijay Urade and Mrs. Usha Nikam to the post of Assistant Head Mistress w.e.f. 12 April 1994 and 21 November 1994 came to

be set aside and directions were issued to promote Mrs. Charushila Vanjiri to the said post w.e.f. 12 April 1994 along with difference in emoluments. Simultaneously, it was held that the super-session of Mr. Namdeo Pandule, in the matter of promotion to the post of Assistant Head Master by Mr. Vijay Urade and Mrs. Usha Nikam was improper, since Mr. Namdeo Pandule was senior to the said employees in the cadre of trained teachers (Category 'C'). However, no consequential directions came to be issued in the matter of promotion of Mr. Namdeo Pandule to the post of Assistant Head Master.

3] Although interim relief was specifically declined in both the petitions, it appears that the directions issued by the School Tribunal were not complied with by the school management. As a result, Mrs. Usha Nikam, not only continued to hold the post of Assistant Head Mistress, but was further promoted to the post of Head Mistress, from which post she voluntarily retired w.e.f. 30 July 2012. Mr. Vijay Urade, thereupon secured promotion as Head Master and held the said post upto 30 June 2013, on which date he retired upon attaining the age of superannuation.

4] In so far as writ petition no. 6819 of 1999 preferred by Mrs. Usha Nikam is concerned, perusal of the record would indicate that

Mrs. Charushila Vanjiri and Mr. Namdeo Pandule acquired requisite qualifications for appointment in the cadre of Category 'C' employees in the months of June 1982 and July 1982 respectively. Mrs. Charushila Vanjiri came to be appointed in July 1982, whereas Mr. Namdeo Pandule, who was already in service was deemed to be inducted in Category 'C', consequent upon attaining of requisite qualifications in June 1982. In contrast, Mrs. Usha Nikam and Mr. Vijay Urade came to be appointed in the cadre of Category 'C' employees on 10 June 1984 and 5 July 1984 respectively. As such, the School Tribunal was right in its conclusion that Mrs. Charushila Vanjiri and Mr. Namdeo Pandule were senior to Mrs. Usha Nikam and Mr. Vijay Urade in the cadre of Category 'C' employees. In such circumstances, no interference is warranted with the common and judgment order 29 July 1999 at the behest of Mrs. Usha Nikam. Writ petition no. 6819 of 1999 is therefore liable to be dismissed and is accordingly dismissed.

5] As noted earlier, during the pendency of this petition, Mrs. Usha Nikam not only continued in the post of Assistant Head Mistress but was further promoted to the post of Head Mistress and has voluntarily retired from service w.e.f. 30 July 2012. There is no dispute that Mrs. Usha Nikam has worked in these posts and drawn salary and benefits due against the said posts. Therefore,

although the writ petition filed by Mrs. Usha Nikam i.e. writ petition no. 6819 of 1999 is being dismissed, it would be harsh and inequitable to call upon Mrs. Usha Nikam to refund monetary and other benefits availed by her in the posts of Assistant Head Mistress and Head Mistress. It however needs to be recorded that the school management ought to have acted with greater responsibility, in the matter of compliance with the directions made by the School Tribunal in its common judgment and order dated 29 July 1999, particularly in a situation where interim reliefs staying the implementation of the same, were denied by this Court. Resultantly, though reluctantly directions are liable to be issued to the school management to refrain from initiating any recovery proceedings against Mrs. Usha Nikam or for that matter Mr. Vijay Urade. Such directions are issued accordingly.

6] In so far as writ petition no. 5709 of 1999 preferred by Mr. Namdeo Pandule is concerned, Mr. Deshmukh, the learned counsel for the petitioner submitted that the common judgment and order dated 29 July 1999 itself records that Mr. Namdeo Pandule came to be included in the cadre of Category 'C' employees on 14 June 1982 and that his seniority is required to be counted from the said date. The learned counsel further submitted that there is ample material on record that Mrs. Charushila Vanjiri came to be included

in the cadre of Category 'C' employees only in July 1982. Therefore, Mr. Namdeo Pandule was required to be regarded as senior to Mrs. Charushila Vanjiri and appropriate directions ought to have been issued by the School Tribunal for promotion of Mr. Namdeo Pandule w.e.f. 12 April 1994, rather than the directions for promotion of Mrs. Charushila Vanjiri.

7] Mr. Bandiwadekar, the learned counsel appearing for Mrs. Charushila Vanjiri submitted that the issue of *inter se* seniority between Mr. Namdeo Pandule and Mrs. Charushila Vanjiri was not at all involved in appeal no. 15 of 1996 preferred by Mr. Namdeo Pandule. As such, the School Tribunal had no occasion to decide this issue. In any case Mr. Bandiwadekar pointed out that the direction for promotion of Mrs. Charushila Vanjiri was issued in appeal no. 59 of 1994, in which Mr. Namdeo Pandule was not even a party – respondent. Further, Mr. Namdeo Pandule has not filed any petition specifically challenging the judgment and order in appeal no. 59 of 1994. Mr. Bandiwadekar, by reference to paragraph 16 of the common judgment and order pointed out that Mrs. Charushila Vanjiri belong to the Bhoi Community, which came under the N.T. category, where N.T. category is right from the year 1982, whereas Mr. Namdeo Pandule belong to Dhargar Community, which was declared as N.T. only in the year 1990.

Further, as per G.R. of 1994, reservations in favour of Dhangar Community were available only at the stage of direct recruitment and not at the stage of promotions. For all these reasons, Mr. Bandiwadekar submitted that no useful purpose would be served in entertaining the petition preferred by Mr. Namdeo Pandule, particularly because Mr. Pandule has also retired from the post of Head Master w.e.f. 30 June 2014 after having attained the age of superannuation.

8] The rival contentions now fall for my determination.

9] The contention of Mr. Bandiwadekar that Mr. Namdeo Pandule has not preferred any petition specifically impugning the order made in appeal no. 59 of 1994 cannot be accepted for the simple reason that appeal no. 59 of 1994 preferred by Mrs. Charushila Vanjiri and appeal no. 15 of 1996 preferred by Mr. Namdeo Pandule came to be disposed of by common judgment and order. The findings recorded in the common judgment and order do suggest that the petitioner came to be included in the cadre of Category 'C' employees on 14 June 1982, whereas Mrs. Charushila Vanjiri came to be included in the said category in July 1982. As such, there is no difficulty to hold that Mr. Namdeo Pandule was senior to Mrs. Charushila Vanjiri in the cadre of

Category 'C' employees. However, that by itself would not be sufficient to entitle Mr. Namdeo Pandule to any reliefs in writ petition no. 5709 of 1999.

10] Admittedly, Mr. Namdeo Pandule belong to the Dhangar community, which came to be classified as N.T. only in the year 1990. By yet another G.R issued in the year 1994, it was clarified that members of Dhangar community would be entitled to the benefit of reservations at the stage of direct recruitment and not promotion. There is no clear material on record to suggest that the vacancy in the post of Head Master arose in the year 1990. In any case, the School Tribunal has directed promotions to Mrs. Charushila Vanjiri only w.e.f. 12 April 1994, which was perhaps the date on which Mr. Vijay Urade came to be promoted to the post of Assistant Head Master in super-session of the claims of Mr. Namdeo Pandule and Mrs. Charushila Vanjiri. In the year 1994, by virtue of the Government Resolution, Mr. Namdeo Pandule, though senior was not entitled to benefit of reservation in the matter of promotion to the post of Assistant Head Master. The School Tribunal therefore cannot be faulted for having not made any direction for the promotion of Mr. Namdeo Pandule to the post of Assistant Head Master with effect from 12 April 1994. No effective relief therefore can be granted to Mr. Namdeo Pandule in writ

petition no. 5709 of 1999, which petition, consequently, is required to be dismissed.

11] As noted earlier, although there was no interim relief granted in either of these petitions, the parties proceeded on the basis that there was interim relief granted. Accordingly, Mrs. Usha Nikam and Mr. Vijay Urade enjoyed the positions of Assistant Head Master and Head Master, during the pendency of this petition. Mrs. Charushila Vanjiri, in whose favour the Tribunal had ruled continues till date to function as a trained graduate teacher in the cadre of Category 'C' employees. Now that the two petitions are being dismissed, there is no reason as to why the direction issued by the School Tribunal in its common judgment and order dated 29 July 1999 cannot be implemented, at least to the extent of award of promotion to Mrs. Charushila Vanjiri w.e.f. the date of this judgment. Though the School Tribunal has directed the promotion of Mrs. Charushila Vanjiri w.e.f. 12 April 1994 and for payment of difference in emoluments, in my judgment, there is no question of grant of any such retrospective promotion and difference in emoluments. This is because, Mrs. Charushila Vanjiri has not worked in the position of Assistant Head Mistress. Nevertheless looking to the circumstances it would be just and proper if the period 12 April 1994 and the date of this judgment is taken into consideration for the purposes of

notionally computing pensionary benefits which Mrs. Charushila Vanjiri may be entitled to, consequent upon her retirement. It is necessary to balance such equities because Mrs. Charushila Vanjiri, despite having a favourable order of the School Tribunal was deprived of the benefits of the same, for such a lengthy period.

12] In the result, these petitions can be disposed of with the following order :

(A) Writ petition no. 6819 of 1999 is dismissed.

However, the dismissal of the writ petition shall not entitle any of the respondents to recover any monetary benefits which the petitioner shall have availed in the posts of Assistant Head Mistress and Head Mistress; Similarly, no recoveries shall be made from Mr. Vijay Urade as well;

(B) Writ petition no. 5709 of 1999 is dismissed;

(C) The Deccan Education Society is directed to promote Mrs. Charushila Vanjiri to the post of Assistant Head Mistress with effect from the date of this judgment and order;

(D) For the period between 12 April 1994 and the date of this judgment and order, Mrs. Charushila Vanjiri shall be deemed to have been appointed as Assistant Head Mistress and this period shall be notionally taken into

consideration for the purposes of determination of pensionary benefits consequent upon retirement of Mrs. Charushila Vanjiri. Apart from such notional consideration for pensionary benefits, Mrs. Charushila Vanjiri shall not be entitled to either salary or any other benefit attached to the post of Assistant Head Mistress during the said period.

13] With the aforesaid directions, both the writ petitions are disposed of. In view of disposal of writ petitions, civil application no. 1557 of 2005 in writ petition no. 5709 of 1999 does not survive and is disposed of accordingly.

(M. S. SONAK, J.)

Chandka