

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7487 OF 2015

Pawba Damu Dhangar,
Age 55 years, Occ. Service,
R/o Chimthana, Tq. Sindhkhed,
District Dhule.

..Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Department of School Education,
Mantralaya, Mumbai -32.

2. The Education Officer (Secondary),
Zilla Parishad, Dhule.

3. The Secretary,
Janata High School, Jimthana,
Tq. Sindhkhed, Dist. Dhule.

4. Shri Indarrao Narhar Zendu,
Age 51 years, Occ. Acting Head
Master, R/o Jimthana,
Tq. Sindhkhed, Dist. Dhule.

..Respondents

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Advocates appearing for:-

Petitioner : Smt. Surekha Mahajan

Respondents 1 & 2 : Shri D.V.Tele, AGP and

Respondents 3 & 4 : Shri M.S.Deshmukh

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CORAM : RAVINDRA V. GHUGE, J.

Reserved on : March 2, 2016

Pronounced on : March 8, 2016

JUDGMENT :-

1. Heard.

2. Rule.

3. Rule made returnable forthwith and heard finally by the consent of the parties.

4. The petitioner has challenged the order dated 20.4.2015 passed by the Education Officer (Respondent No.2 herein), by which, the objections to the seniority list raised by the petitioner have been dealt with and respondent No.4 herein has been declared to be senior to the petitioner. So also, the petitioner has challenged the letter dated 19.6.2015.

5. With regard to the tenability of this petition, Smt. Mahajan had stated that the grievance of the petitioner was decided under Rule 12 and the impugned order is delivered under Rule 12(3) of the MEPS Rules, 1981. She stated that the management had not taken any decision of superseding the petitioner pursuant to the passing of the impugned order. Hence, the petition is maintainable.

6. In this backdrop, this Court had issued notice to the respondents.

7. On 21.10.2015, Smt. Mahajan made a statement that respondent No.3 has appointed respondent No.4 as an in-charge Headmaster, pursuant to the impugned order. Shri Deshmukh, learned Advocate for the respondent No.3 / management submits that no substantive appointment has been made to the vacant post of Headmaster and respondent No.4 is purely appointed as an in-charge Headmaster to avoid hampering the day-to-day functioning of the educational institution.

8. The petitioner contends that he is senior to respondent No.4. Smt. Mahajan points out that the petitioner was a B.A. graduate of 1984 and acquired M.A. qualification in 1989. He was a B.Ed. graduate of 1986. He was appointed on 13.11.1989.

9. It is further submitted that respondent No.2 was H.S.C. with D.Ed. when he was appointed on 13.11.1983. He acquired B.A. qualification in 1987 and B.Ed. qualification in 1996. As such, for considering the seniority of the petitioner qua respondent No.4, the B.A., B.Ed. qualification is significant. The petitioner though appointed on 13.11.1989 will be senior to respondent No.4 as he acquired the B.Ed. qualification in 1996.

10. Smt. Mahajan submits that the dispute raised by the petitioner under Rule 12 with regard to the seniority of the petitioner over respondent No.4 has been rejected by the impugned order dated 20.4.2015 on the ground that respondent No.4 was held senior to the petitioner w.e.f. 1.6.1989 by making the salary scale of the trained graduate teacher available to him and that the petitioner had never challenged the said seniority list for 26 years.

11. Further grievance is that the petitioner was given the scale of trained graduate teacher on 1.6.1990 after he was appointed on 13.11.1989. The petitioner was, therefore, held junior to respondent No.4 only because the salary scale of a trained graduate teacher was made available to him. The

petitioner, therefore, places reliance upon the judgment of the learned Division Bench of this Court in the matter Saramma Warghese Vs. Secretary / President, SICES Society and others [1989 Mah.L.J. 951], to support her contention that the learned Division Bench has ruled that higher pay scale is not relevant for the purpose of fixation of seniority of Teachers. She also relies upon the said judgment in the light of the observations of the learned Division Bench that the order passed by the Education Officer deciding the question of seniority, is amenable to the jurisdiction of this Court under Article 227 of the Constitution of India.

12. Shri Deshmukh, learned Advocate contends that the claim of the petitioner has rightly been dismissed by the Education Officer on the ground of delay as well as on the ground of the status acquired by respondent No.4 as a trained graduate teacher on 1.6.1989, before the appointment of the petitioner for the first time as a teacher on 13.11.1989.

13. Shri Deshmukh relies upon the affidavit-in-reply filed by respondent No.4, wherein it has been contended on oath that respondent No.4 was appointed as against the 25% quota available for up-gradation in the pay scale as trained graduate teacher, after he was first appointed on 13.11.1983 in the D.Ed. scale. He was then upgraded w.e.f. 5.6.1989 vide order dated 5.9.1990. Thus, he was placed in category "C" as per Schedule "F" under MEPS Rules, 1981. He, therefore, prays for the dismissal of this petition.

14. I have considered the submissions of the learned Advocates for the respective sides.

15. The record reveals that respondent No.4 was placed in the pay scale of trained graduate teacher from 1.6.1989. The petitioner was placed in the trained graduate teacher category from 1.6.1990.

16. Record further reveals that the seniority list whenever declared / published after 1.6.1990, when the petitioner was placed in the trained graduate teacher category, respondent No.4 was shown senior to the petitioner. Every such seniority list was signed by the petitioner in token of his acceptance. There was no objection raised by the petitioner to such seniority list for practically 26 years. It was only after respondent No.4 became eligible for appointment as a Headmaster, that the petitioner woke up from his deep slumber and questioned the seniority of respondent No.4.

17. So also, the petitioner was placed in category "C" on 1.6.1990. Respondent No.4 was placed in the said category w.e.f. 1.6.1989. This was also not objected to by the petitioner for 26 years.

18. In the light of the above and besides the fact that respondent No.4 was placed in category "C" in Schedule "F" prior to the placement of the petitioner, I am not entertaining this petition since the petitioner has not questioned the seniority list and especially the seniority of respondent No.4 for the past 26 years. I, therefore, do not find that the impugned order

passed by the Education Officer could be termed as being perverse or erroneous.

19. This petition is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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