

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1554 OF 2014

Shivaji M. Kshirsagar	...Petitioner
V/s.	
The State of Maharashtra & Ors.	...Respondents

Mr.Narendra V. Bandiwadekar for the Petitioner.

Ms.Vaishali Nimbalkar, A.G.P. for the State – Respondent Nos.1 and 2.

Mr.Girish S. Godbole i/b Mr.Devdatta Sakhalkar for the Respondent No.4.

CORAM : R.D. DHANUKA, J.
DATE : 25TH APRIL, 2016.

P.C. :-

1. By this petition filed under Articles 226 and 227 of the Constitution of India the petitioner has impugned the order dated 3rd January, 2014 passed by the learned Education Officer holding that the respondent no.4 is senior to the petitioner in the cadre of the assistant teacher working in the school run by the respondent no.3. Rule returnable forthwith. The respondents waive service.

2. The petitioner was born on 1st June, 1969. He belongs to Hindu Kaach Mali (O.B.C.). The petitioner is B.Sc. B.Ed. In the year

1995-1996, the management decided to make appointments in the vacant post of teachers and started recruitment process. It is the case of the petitioner that the management committee of the respondent no.3 passed a resolution in the meeting held on 30th May, 1995 and decided to appoint the petitioner as well as the respondent no.4 as assistant teachers from 6th June, 1995 for the years 1995 to 1997 in the permanent posts. It is the case of the petitioner that the management accordingly issued the appointment order to the petitioner on probation period of two years as assistant teacher on 6th June, 1995. Similar letter of appointment was also issued to the respondent no.4 for appointing him as the assistant teacher with effect from 6th June, 1995. The petitioner has placed reliance on the certificate dated 30th March, 1998 issued by the Headmaster of the respondent no.3 certifying that the petitioner was working in the school since 6th June, 1995.

3. On or about 30th March, 1998, the services of the petitioner were terminated by the management. The petitioner impugned the said letter of termination by filing an appeal before the School Tribunal. By an order dated 28th August, 2000, the School Tribunal allowed the said appeal filed by the petitioner and directed the management to reinstate the petitioner to his original post with full back wages from the date of his termination till his reinstatement with

incidental benefits such as continuity of services, increments, difference in pay etc. The said order came to be implemented by the management.

4. The management thereafter applied for approval of the appointment of the petitioner to the learned Education Officer. Certain queries were raised by the learned Education Officer for the said approval.

5. The management thereafter prepared a seniority list for 2013-2014. In the said seniority list, the name of the respondent no.4 was shown at serial no.1, whereas the name of the petitioner was shown at serial no.2. The petitioner accordingly made a representation to the management. The management thereafter sent the proposal of the petitioner for giving him authority to sign on the premise that the petitioner was senior most in the school. The management also passed a resolution on 28th February, 2013 proposing to promote the petitioner as the Headmaster. The learned Education Officer sought a clarification vide his letter dated 21st October, 2013 about the date of appointment of the respondent no.4. By an order passed by the learned Education Officer, the petitioner was permitted to sign as Headmaster with effect from 1st June, 2013.

6. Hearing took place before the learned Education Officer on 3rd January, 2014. On 15th January, 2014, the learned Education

Officer conveyed his order to the parties holding that when the petitioner was appointed to the post of assistant teacher, the said post was not sanctioned post. In the said order, it is recorded that in the academic year 1994-1995, there was only one post of Headmaster and one post of Assistant Teacher. In the academic year 1995-1996, there was one post of Headmaster and two posts of Assistant Teachers.

7. This order of the learned Education Officer holding that the respondent no.4 was senior to the petitioner on this ground is impugned by the petitioner in this petition filed under Articles 226 and 227 of the Constitution of India.

8. Mr.Bandiwadekar, learned counsel appearing for the petitioner invited my attention to the above referred documents which are forming part of the petition and would submit that there was no dispute at any point of time that the petitioner was appointed in the school run by the respondent no.3 on 6th June, 1995. He submits that the respondent no.4 was also appointed on the same date. It is submitted that however since the petitioner was born earlier i.e. on 1st June, 1969, whereas the respondent no.4 was born on 26th June, 1970, the petitioner has to be considered as a senior to the respondent no.4. He submits that the learned Education Officer did not consider the relevant facts and has refused to consider the case

of the petitioner as senior than the respondent no.4 on the ground that there was no sanctioned post. He submits that the date of appointment of the petitioner has been considered all through out by the learned Education Officer as well as by the management as 6th June, 1995. He submits that even in the order passed by the School Tribunal, the date of the appointment of the petitioner has been accepted as 6th June, 1995.

9. Mr.Godbole, learned counsel appearing for the respondent no.4 on the other hand would submit that the then management of the respondent no.3 had produced back dated documents. Learned counsel invited my attention to the letter dated 24th June, 2013 addressed by the learned Education Officer to the then management raising an issue that though in the said letter, the date of the appointment of the petitioner was mentioned as 21st July, 1995 in the seniority list prepared by the management, the date of appointment of the petitioner was mentioned as 6th June, 1995. He also invited my attention to the letter dated 17th July, 1995 from the petitioner to the management requesting for appointing him as the assistant teacher. He submits that the said letter was received by the management on 17th July, 1995.

10. My attention is also invited to the muster roll annexed as Exhibit-E to the affidavit in reply. He submits that even according to

the said muster roll, the respondent no.4 had signed the muster roll with effect from 6th June, 1995, whereas the petitioner had signed the muster roll from 21st July, 1995. He submits that it is thus clear that the petitioner was appointed not on the date the respondent no.4 was appointed but was appointed much later. He submitted that there were specific averments made by the respondent no.4 in detail in the affidavit in reply before this Court and the said documents were annexed in the affidavit in reply. The petitioner has not denied in the affidavit in re-joinder that the petitioner was appointed on 21st July, 1995 but was appointed on 6th June, 1995. He submits that the learned Education Officer has rejected the representation of the petitioner and has held that the respondent no.4 is senior to the petitioner on the ground that the petitioner was appointed as assistant teacher there was no sanctioned post. He submits that this Court can consider the documents annexed to the affidavit in reply by the respondent no.4 and the petitioner not having controverted the said fact, this Court cannot interfere with the order passed by the learned Education Officer.

11. In re-joinder, Mr.Bandiwadekar submits that since the alleged documents annexed to the affidavit in reply were not produced by the management before the learned Education Officer and since were not considered by the learned Education Officer, the

petitioner is not required to controvert such documents for the first time in the present proceedings. He submits that since the reliance is placed on the documents for the first time before this Court by the respondent no.4, this Court cannot consider the same for the first time. He submits that if the matter is remanded back to the learned Education Officer, the petitioner will have an opportunity to deal with such alleged documents.

12. A perusal of the record *prima-facie* indicates that the management as well as the School Tribunal have accepted the case of the petitioner all thought out that the petitioner was appointed on 6th June, 1995 when the respondent no.4 was also appointed to the post of assistant teacher. Even the order of the School Tribunal indicates that the said order is passed on the premise that the petitioner was appointed on the said post on 6th June, 1995. A perusal of the order passed by the learned Education Officer however, indicates that he has held that the respondent no.4 is senior to the petitioner merely on the ground that when the petitioner was appointed to the said post, the said post was not sanctioned post. A perusal of the record *prima-facie* indicates that the services of the petitioner was not terminated by the management on the ground that there was no sanctioned post. Be that as it may, I am of the view that the petitioner has to be given an opportunity to produce relevant record before the learned

Education Officer to show that the post on which the petitioner was appointed was a clear and sanctioned post.

13. In view of the subsequent alleged record produced by the respondent no.4 in the affidavit in reply before this Court, in my view it would be in the interest of justice that the impugned order passed by the learned Education Officer is set aside and the matter is remanded back to the learned Education Officer by rendering the petitioner and the respondent no.4 an opportunity to produce the relevant record pertaining to their respective appointments and also to show whether the post on which the petitioner was appointed was a sanctioned post on the date of his appointment or not. This Court cannot consider the alleged documents which are produced on record in the present proceedings for the first time which were not produced before the learned Education Officer when the impugned order was passed.

14. I therefore, pass the following order :-

a). The impugned order dated 3rd January, 2014 passed by the learned Education Officer is set-aside. The matter is remanded back to the learned Education Officer for deciding the matter afresh on the issue as to whether who is senior amongst the petitioner and the respondent no.4 in the school run by the respondent no.3. The learned Education Officer shall give an opportunity to the petitioner as well as to the respondent no.4 to demonstrate about their respective

seniority and also to prove whether the post on which the petitioner was appointed in the school run by the respondent no.3 was sanctioned post on the date of his appointment. The learned Education Officer is at liberty to peruse the papers of the Education Department before rendering any decision whether the said post was sanctioned or not.

b). It is made clear that the learned Education Officer shall decide the matter afresh without being influenced by the observations made by the learned Education Officer in the order dated 3rd January, 2014 and shall decide the issue in accordance with law after giving an opportunity to both the parties.

c). The petitioner as well as the respondent no.4 are at liberty to file their say along with the documents before the learned Education Officer within four weeks from today. A copy of such say along with documents shall also be served upon by the parties on each other simultaneously.

d). The learned Education Officer shall make an endeavor to pass a fresh order within eight weeks from the date of submission of the say as well as the documents by the parties.

e). Rule is made absolute in aforesaid terms. No order as to costs.

15. The parties as well as the learned Education Officer to act

on the authenticated copy of this order.

(R.D. DHANUKA, J.)