

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 10261 of 2011

Anil Bhimrao Bhosale. .. Petitioner
Vs.
Education officer (Secondary)
Pune & ors. .. Respondents

***Along with
WRIT PETITION NO. 8122 of 2011***

Ankush Kondiba Kalel. .. Petitioner
Vs.
Education officer (Secondary)
Pune & ors. .. Respondents

Mr.PB.Shah, for the Petitioner in both the petitions.
Ms.M.S.Bane 'B' Panel-Assistant Government Pleader, for
Respondent Nos.1 & 4 in both the petitions.
Mr.S.P.Kadam a/w Mr.Ramdas Hakepatil, for Respondent Nos.2 &
3, in both the petitions.

***CORAM: N.M. JAMDAR, J.
Friday, 12 February 2016.***

Oral Order :

By order dated 25 July 2012, the Writ Petitions were to be heard for final disposal. Accordingly, taken up for final disposal.
Rule. Rule returnable forthwith by consent

2. The Petitioners, teachers, in both these petitions have challenged the order passed by the Education Officer (Secondary), Zilla Parishad Pune, dated 21 / 22 June, 2011 rejecting the

representations made by the Petitioners in respect of their claim to B.Ed. scale.

3. The Petitioners had initially filed Writ Petition No.4473 of 2010 and Writ Petition No.4474 of 2010, making a grievance that the Respondent- Management was not giving B.Ed. scale to them and the consequential difference in salary from 1996 and had sought seniority over the candidates who had superceded them. The Writ petitions were disposed of by Division bench of this Court on 25 March 2011, directing the Education Officer to decide the representations made by the Petitioners, on their own merits according to law. Thereafter the Education Officer has passed the impugned order rejecting the representations of the Petitioners.

4. Mr.PB.Shah, the learned counsel for the Petitioners made a grievance that the Education officer had closed the inquiry on 31 April 2011, and thereafter, based upon the documents submitted by Respondent-Management, without giving any opportunity to the Petitioners, the Education Officer proceeded to pass the impugned order. He submitted that the conclusion reached by the Education Officer that the appointments of the Petitioners were themselves incorrect, was totally unwarranted. He submitted that the impugned order passed by the Education Officer gives no particulars as to how the Petitioners are not senior in the 25 per cent of the teachers possessing D.Ed. qualification. Mr.S.P.Kadam, the learned counsel for the Respondent-Management supported the impugned order.

5. As regards the contention that the inquiry was closed on 30 April 2011, the date mentioned in the impugned order only refers to one of the dates of the enquiry. That contention that the inquiry was concluded on 30 April 2011 and further proceedings could not have taken place is not pleaded in the petition. This is a factual assertion and ought to have been pleaded. Therefore, on this count I am not inclined to examine this submission of Mr.Shah.

6. As regards the grievance made that the observation regarding the initial appointment of the Petitioners being incorrect, Mr.Shah is justified in making this grievance as it was not necessary for the Education Officer to hold so. Education Officer has reiterated this position even in the operative portion of the order though he himself has stated that it will not be proper to cancel the appointments.

7. The Education Officer has recorded the conclusion that the Petitioners are not senior-most in the 25 per cent category of D.Ed. teachers for the purpose of qualifying to get B.Ed. scale. Once this factual issue was referred to the Education Officer for adjudication, by the Division bench it was incumbent upon the Education Officer to specify in the order as to why the Petitioners were not the senior-most. In this petition a reply has been filed by the Respondent-Management giving names of those teachers, eight in number, who are senior to the Petitioners. In the rejoinder filed by the Petitioners this position is disputed and it is asserted

that in the latest seniority list, these teachers have been shown below the Petitioners. Had the Education Officer analysed the seniority list and specified the names of those teachers, who were allegedly senior to the Petitioners much of the debate in this petition would have been eliminated. The Education Officer, in one line has stated that, Petitioners are not senior most. It is not possible to carry out this exercise for the first time in writ jurisdiction. It is for this very purpose that the Division bench had directed the Education officer to decide the representations.

8. In affidavit in-reply the Management has placed on record the names of the teachers who according to the Management are senior to the Petitioners. They are Smt.Sarjerao A.A., Shri Hubale S.B., Shri Bhujbal D.J., Shri Jadhav S.S., Shri Sutar S.G., Shri Chavan M.M., Shri Bhosale A.B., Shri Jagdale M.N., Shri Jagtap R.J. and Shri Nalavade R.N. If any order is to be passed in favour of the Petitioners the claim of these teachers, if they are senior, would be affected. Instead of directing the Petitioners to amend the petition and join these teachers as party and carry out the exercise of determining the seniority in this petition, it will be appropriate if the Education Officer hears the concerned teachers and determines the claim of the Petitioners as to the B.Ed. scale. It is clarified that the inquiry will only be regarding the claim of the Petitioners based on seniority and not on correctness of their appointment.

9. In the circumstances, the impugned order passed by the Education Officer dated 21 / 22 June, 2011 is quashed and set

aside. The representations made by the Petitioners to the Education Officer, (Secondary) Pune, Zilla Parishad Pune, are restored to the file. The Education Officer will give opportunity to all concerned including the teachers whose names are mentioned above and pass an order as per law.

10. The Education Officer will fix a date on which all parties will appear and submit all necessary documents on which they wish to rely upon. The documents which are submitted by a party will be accessible to all others. Education Officer, thereafter, after giving opportunity to the parties to explain their stand on the documents so produced, pass an appropriate order as per law.

11. Considering the fact that the Education Officer was directed to decide the issue by order dated 25 March 2011, and reconsideration is become necessary because of lack of particulars in the impugned order, the Education Officer will give priority to the disposal of the representations of the Petitioners.

12 **Rule** is made absolute in the above terms. The parties shall appear before the Education Officer on 7 March 2016.

(N.M.Jamdar, J.)