

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5023 OF 1999

Subhash S/o. Jyotiram Wagh,
Age : 43 years, Occu : Service,
Assistant Teacher,
Sau. Sumantai Girdhar Patil,
Madhyamik Vidyalaya,
Bhadgaon, Tq. : Bhadgaon,
Dist. : Jalgaon.

...Petitioner.

Versus

1. Pachora Taluka Sahakari Shikshan
Sanstha Ltd., Pachora,
Dist. : Jalgaon,
through its Secretary.
2. The Chairman,
Co-ordination Committee,
Pachora Taluka Sahakari Shikshan
Sanstha, Ltd., Pachora,
Dist. : Jalgaon.
3. The Principal,
Junior College,
New English School,
Bhadgaon, Dist. : Jalgaon.
4. Smt. Shalini Suresh Khedkar,
Age : Major, Occu : Service,
Assistant Head Mistress,
Sau. Sumantai Girdhar Patil
Madhyamik Vidyalaya,
Bhadgaon, Dist. : Jalgaon.
5. The Education Officer (Secondary),
Zilla Parishad, Jalgaon.
6. The Dy. Director of Education,
Nashik Division, Nashik.
7. The State of Maharashtra.

...Respondents.

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Advocate for Petitioner : Shri Barlinge S.R.
Advocate for Respondent 4 : Shri Kute R.L.
h/f Shri Dhorde R.N.
AGP for Respondent 5 to 7 : Shri Bhagat N.T.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: May 09, 2017

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ORAL JUDGMENT :-

1. The petitioner is aggrieved by the judgment dated 10.3.1997, by which, Jalgaon Appeal No.15 of 1996 filed by the petitioner herein has been dismissed.

2. I have heard the learned counsel for the respective sides at length.

3. There is no dispute that the petitioner had acquired the qualification of M.Com. and Diploma in Higher Education (DHE). He was appointed as an Assistant Teacher on 5.7.1982, was promoted as an Assistant Head Master (AHM) on 31.5.1995 and his proposal for approval was forwarded on 13.10.1995. The Education Department of the State, refused to grant approval by order dated 13.11.1995, concluding that the petitioner cannot be appointed as an Assistant Head Master as he does not possess the requisite qualification of B.Ed. along with graduation and D.H.E. is not equivalent to B.Ed.

4. In a judgment delivered by a School Tribunal, dated 30.11.1992 in the matter of S.S.Kalkhatgi Vs. Hill Range High School and Jr. College, it was held that DHE is recognised as being equivalent to B.Ed. The said judgment was challenged in Writ Petition No.2751 of 1992 before the learned Division Bench of this Court at its Principal Seat. The learned Division Bench, in a short judgment, has observed in paragraph Nos.1 to 4 as under:-

"1. Heard counsel for the parties. The School Tribunal vide its order dated 30th September, 1992 set aside the termination order dated 26th May, 1988 in respect of the respondent No.1 and directed that he be reinstated to his original post forthwith. The School Tribunal also directed to pay the back wages from the date of termination till the date of reinstatement of the respondent No.1.

2. The dispute in this writ petition relates to the termination of the services of the respondent No.1 pursuant to the order dated 26th May, 1988. As on today, the Administrator has been appointed in respect of the writ petitioner School. The Administrator has not challenged the impugned order but the School has challenged the said order. The School Tribunal has considered the rival contentions raised by the parties and reached the conclusion that the respondent NO.1 was a qualified teacher and his services could not have been terminated on the ground that he is not a qualified and permanent teacher. The School Tribunal also held that the management failed and neglected to produce the relevant documents relating to the subjects taught by the

respondent No.1 during the academic years 1978 to 1987. According to the respondent NO.1, he was serving in the Junior College of the Hill Range High School. The writ petitioner withheld the documents. In the circumstances adverse inference must follow against the petitioner.

3. *It was urged by the learned counsel for the petitioner that the respondent No.1 was not qualified in terms of Schedule B2(1)(i) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Rules, 1981. Shri Vashi drew our attention to the Government Resolution dated 18th August 1975 in which the diploma obtained by the respondent No.1 was treated as recognised qualification for a qualified teacher teaching to classes XI and XII. The learned counsel for the petitioner urged that the said Government Resolution cannot override the provisions of Act and Rules. We are unable to agree with this submission. The respondent No.1 has been in service of the Writ petitioner from 1973 till his services were terminated on 26th May, 1988. He is M.Sc. (Second Class) with diploma in Higher education. Schedule B-2(1)(i) and 6 permits the Government to recognise diploma equivalent to B.Ed. degree. The Government vide its Resolution dated 18th August, 1975 recognised the diploma of the respondent No.1 equivalent to the B.Ed. degree course. The School Tribunal has given cogent and sound reasons while passing the impugned order. No interference in exercise of writ jurisdiction under Article 226 of the Constitution of India is called for.*

4. *Writ Petition to stand summarily rejected. The learned counsel for the petitioner applies for stay of the operation of the order for a period of six weeks. Application rejected. The*

learned counsel for the petitioner further applies for leave to appeal to the Supreme Court. Application rejected."

5. Rule 3(1)(b) of the MEPS Rules, 1981 reads as under:-

" 3. Qualifications and appointment of Head.

(1) A person to be appointed as the Head -

(a)

(b) of a secondary school including night school or a Junior College of Education shall be a graduate possessing Bachelor's degree in teaching or education of a statutory University or any other qualification recognised by Government as equivalent thereto and possessing not less than five years', total full-time teaching experience after graduation in a secondary school or a Junior College of Education out of which at least two years' experience shall be after acquiring Bachelor's degree in teaching or education:

Provided that, in the case of a person to be appointed as the Head of a night secondary school -

(i) he shall not be the one who is holding the post of the Head or Assistant Head of a day school, and

(ii) the experience laid down in clause (b) of sub-rule (1) may be as a part-time teacher."

6. Learned counsel for the respondent / management specifically states that they had no objection to the appointment of the petitioner as an AHM as he was qualified and there was no legal impediment, but for the decision of the Education Department dated 31.11.1995, refusing to grant approval, which required the respondent management to revert the petitioner on 28.11.1995 as an Assistant Teacher. It was this order of reversion that was assailed before the School Tribunal.

7. Learned AGP strenuously supports the judgment on the basis of the affidavit filed by the concerned Deputy Education Officer Shri Sampatrao Laxmanrao Bagul.

8. Having considered the submissions of the learned Advocates for the respective sides, the Rules and the Government Resolution applicable and the judgment of the learned Division Bench in Hill Range case (supra), I find that the School Tribunal has fallen in a patent error in rejecting the appeal of the petitioner. It is observed by the School Tribunal in the impugned judgment as under:-

" Admittedly, appellant is a DHE. Honourable High Court in Writ Petition No.2751 of 1992, while considering the qualification of DHE treated it equivalent to B.Ed. But in that case, the employee was terminated by management holding him as a non trained teacher, though he was posses

DHE. Resting on the circular dated 18.8.1975 Honourable High Court held that qualification of DHE is equivalent to B.Ed. Even I consider that judgment in Nasik Appeal No.19/1995, where appellant of that case was terminated on the ground of not acquiring train graduation. Therefore, I treat DHE qualification as equivalent to B.Ed. for the continue of service. But before us is a different case, where appellant wants to acquire post of Assistant Head Master on the qualification of DHE."

9. In my view, the School Tribunal has totally misdirected itself and has delivered a perverse and erroneous judgment. The said judgment, therefore, deserves to be quashed and set aside and Jalgaon Appeal No. 15 of 1995 filed by the petitioner deserves to be allowed.

10. In the light of the above, this petition is allowed. The impugned judgment dated 10.3.1997 stands quashed and set aside and Jalgaon Appeal No.15 of 1995 stands allowed. The impugned order of reversion dated 28.11.1995 stands quashed and set aside.

11. Since the petitioner has already attained the age of superannuation, he shall be deemed to be an Assistant Head Master till the date of his superannuation. The respondent management shall forward his proposal for recalculation of his pension and payment of difference of salary from 28.11.1995 till his date of

superannuation, to the Education Officer within six weeks from today. The concerned Education Officer (S), Zilla Parishad, Jalgaon and consequentially the Deputy Director of Education, Nasik shall follow the due procedure and clear the said proposal for re-fixation and recalculation of the pension, which the petitioner would have earned as AHM on his retirement. Accordingly, his pension shall be re-fixed within a period of eight weeks from receiving the proposal from the management. Difference in pension amount shall be paid within the period of six weeks thereafter.

12. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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