

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 7113 OF 2015**

Shantaram Dhondu Ahire

...Petitioner

Vs.

The Education Officer (Secondary),
Zilla Parishad, Nashik and others

...Respondents

*Mr. Tushar Sonawane for the Petitioner.**Ms. Kirti Kulkarni, AGP, for Respondent No.1.**Mr. N.V. Bandiwadkar, for Respondent No.3.***CORAM: S. J. KATHAWALLA, J.****DATE: 10th October, 2017****P.C.:**

1. The Petitioner has by the above Writ Petition impugned the order dated 30th May, 2014 passed by Respondent No.1 – Education Officer (Secondary), Zilla Parishad, Nashik whereby Respondent No. 3 has been held as senior to the Petitioner. The said order is passed by the Respondent No. 1 in exercise of the power under Rule 12 of the M.E.P.S. Rules 1981 (said Rules).

2. The Petitioner was appointed as a Teacher in Rachana Vidyalaya on 1st August, 1986. At the time of his appointment, his qualification was H.S.C. D.Ed. Therefore, on 1st August, 1986 the Petitioner was not qualified for

appointment in the post of Assistant Teacher in the secondary school. He passed B.A. on 12th September, 1990 and thereafter B.Ed. in 1996. Thus, it is clear that the initial appointment of the Petitioner was as an untrained teacher.

3. Respondent No.3 was appointed as an Assistant Teacher in the Respondent No. 4 School on 21st June,1991 and at that time itself had the qualification of B.A. B.Ed. Thus on the date of initial appointment itself, Respondent No. 3 was appointed as a trained graduate teacher and entered Category C of Schedule-F. She was also paid salary in the pay scale applicable to trained graduate teachers from the date of initial appointment.

4. Respondent No. 7, Smt. Gangurde, was appointed on 20th June, 1988. Her qualification at the time of her appointment was H.S.C. D.Ed. She passed B.A. on 12th September, 1990 and B.Ed. in the year 2006.

5. In the seniority list prepared in the year 2013, Respondent No. 3 was shown below the Petitioner and the Respondent No.7. Respondent No. 3 therefore made representations to the management and after exchange of certain correspondence, the management sought guidance from the Education Officer on the issue as to whether the Petitioner and Respondent No. 7 would rank senior to Respondent No. 3 on the basis of having passed B.A. on 12th September, 1990. Pursuant thereto, the Education Officer issued notice to all the

parties and gave them personal hearing on 6th May, 2014. At the said hearing the Petitioner, the representative of the Management, Respondent No.3 and Respondent No. 7 were present. The Education Officer by his order dated 30th May, 2014, held that the appointment of Respondent No. 3 in B.A. B.Ed. scale had been made from 21st June, 1991 when she had the said qualifications. On the other hand, the Petitioner and Respondent No. 7 were appointed in D.Ed. scale on the basis of qualification of H.S.C. D.Ed. and later on they passed B.A and B.Ed. Respondent No. 1 therefore held that the Respondent No. 3 is senior to the Petitioner.

6. Though the order was passed by Respondent No. 1 on 30th May, 2014, the same was not challenged by the management or the Petitioner or Respondent No.7. The Petitioner filed the present petition impugning the order passed by Respondent No. 1 dated 30th May, 2014 only on 30th January, 2015.

7. It is submitted on behalf of the Petitioner that he was appointed as a trained undergraduate teacher on 1st August, 1986 when he was H.S.C. D.Ed. He passed B.A. on 12th September, 1990. Since his qualifications were B.A. D.Ed. on 12th September, 1990, as per Schedule-F he entered Category-C on 12th September, 1990. According to him, he therefore ranked senior to Respondent No.3 because his seniority has to be counted from the date of his initial

appointment on 1st August, 1986. The contention of the Petitioner is wholly misconceived. In order to claim entry in Category-C on the basis of qualifications of B.A. D.Ed. the concerned teacher is required to render 10 years of service from the date of initial appointment. In the present case, the Petitioner was appointed on 1st August, 1986 and he would complete ten years on 1st August, 1996. Therefore, on the basis of qualification of B.A. D.Ed. the Petitioner can claim to have entered category-C only on 1st August, 1996 and not prior thereto viz. on 12th September, 1990 when he passed B.A. However, the Petitioner can also enter Category C of Schedule F immediately upon obtaining the qualification B.A. B.Ed. which he did in the year 1996. As against this, Respondent No. 3 had already entered in Category-C of Schedule-F from the date of her appointment i.e. on and from 21st June, 1991. The Petitioner cannot contend that his seniority has to be considered from the date of his appointment as untrained teacher on 1st August, 1986, when admittedly his qualification was H.S.C. D.Ed. and was until 1996 not qualified to enter in Category C of Schedule 'F'. Therefore, the claim of the Petitioner before Respondent No. 1 that he is senior to Respondent No. 3 was correctly rejected by Respondent No.1. The same claim is made by the Petitioner before this Court in the present Writ Petition which cannot be accepted. In fact, the Division Bench of this Court in the case of *Anjali Jayant*

*Khati vs. Bal Mandir Sanstha and others*¹ has made the position in this regard very clear. The relevant portion from paragraph 11 of the said decision is reproduced hereunder:

*“Date of continuous appointment is not the only criteria for fixation of seniority. Seniority has to be fixed according to Rules laid down in Schedule ‘F’ to the Maharashtra Employees of Private Schools Rules. The present petitioners fall in Category ‘C’ since all of them as on the date of fixation of seniority in 1992 were trained teachers. However, while fixing the seniority the date of acquisition of B, Ed. Qualification would also become material. Unless one acquires or possesses such qualifications as B.Ed. or professional qualification one cannot go up in the ladder. If a teacher is a graduate but does not hold training or professional qualification he cannot fall in Category ‘C’. He may enter ‘C’ category the day he acquires training or professional qualification. The ladder is in descending order. Here it must be borne in mind that a trained teacher would be put above untrained teacher though length of service wise the untrained teacher may be senior
..... ”*

8. Since the order passed by Respondent No. 1 is in conformity with the M.E.P.S. Rules 1981 and the issue raised in the Writ Petition is already answered by a decision of the Division Bench of this Court, the question of any

¹ 2009(1) B.C.R. 2006

interference by this Court under Articles 226 and/or 227 of the Constitution of India does not arise and the above Writ Petition is dismissed.

(S.J. KATHAWALLA, J.)