

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2287 OF 2004

The President,	]	
Bhima Shikshan Prasarak Mandal	]	
Takali Sikandar, Sanchalit Karmayogi,	]	
Purv-Prathamik and Prathamik	]	
Vidyalaya, Mohol, Dist. Solapur.	]	Petitioner

Vs.

Anita Anil Kulkarni & Ors.	]	Respondents
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Mr. R.A. Naik i/b Mr. Umesh Mankapure, for petitioner.

Mr. Ajay Joshi, for respondents No.1 and 2.

Mr. Vrushali Penkar i/b Bhushan A. Walimbe, for respondent No.2.

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CORAM : R.G. KETKAR, J.

DATE : 13th JULY, 2017.

P.C.

Heard Mr. Naik, learned Counsel for petitioner, Mr. Joshi, learned Counsel for respondent No.1 and Ms. Penkar, learned Counsel for respondent No.2 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner hereinafter referred to as 'Management' has challenged the judgment and order dated 30th June,

2003 passed by the learned Presiding Officer, Additional School Tribunal for Pune Region at Solapur [for short 'Tribunal'] in Appeal No. 32 of 2002. By that order, the Tribunal allowed the appeal preferred by the first respondent and set aside otherwise termination dated 28th February, 2002. The Tribunal ordered that first respondent shall be treated as 'un-trained teacher' still she completes D.Ed. Qualification. She will be entitled to trained teachers scale after completion of D.Ed. [either regular or postal]. Respondent No.1 shall be deemed to be in continuous service from the date of recognition of the School till the date of otherwise termination and thereby, till her reinstatement by virtue of the impugned order. Respondent No.1 will be entitled to all consequential benefits including yearly increment, pay fixation benefits, pensionary benefits, leave and back wages from 1st March, 2002 still she is reinstated in the School.

3. In support of this Petition, Mr. Naik submitted that respondent No.1 was appointed as 'Assistant Teacher' on 23rd September, 1992. Respondent No.1 was having qualification of B.A+Montessory Course. Respondent No.1 was not having degree in D.Ed. He relied upon Government Resolution dated 25th October, 2000 which lay down that basic qualification for appointment on the post of 'Assistant Teacher' [primary] is D.Ed. Respondent No.1 does not have this qualification. Respondent No.1 remained absent. He also relied upon decision of Full Bench of this Court in the case of **Vaijanath Tatyrao Shinde Vs. Secretary & Ors, 2006 (6) Bom. C.R. 804** and in particular, paragraphs 7 and 9 thereof. In paragraph 6, Full Bench after

considering the provisions of Maharashtra Employees of Private Schools [Conditions of Service] Regulation Act, 1977 [for short 'Act'] as also Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 [for short 'Rules'] observed thus:

7.The learned Counsel appearing on behalf of the petitioner submits that Rule 3(1) (a) (ii) does not prescribe, that a person to be appointed as Head in any other primary school shall be the seniormost trained teacher but on the contrary, it prescribes the criteria of seniormost teacher. Taking support from the omission of the word trained in Rule 3(1) (a) (ii), it is submitted that the rule does not postulate appointment of a seniormost trained teacher as a Head, but permits appointment of the seniormost teacher and if this be so, then it cannot be claimed that the training qualification is a sine qua non for appointment of a primary school teachers and hence, seniority should be reckoned having regard to the initial date of appointment and continuous officiation.

Though in the first blush, the submission appears to be impressive, on a closure scrutiny, the same does not hold good. Rule 3, which is a provision in the subordinate piece of legislation, will have to be interpreted in consonance with other provisions contained in the Rules and such construction need to be in harmony with the parent statute. Section 5 of the M.E.P.S Act in no uncertain terms direct that the Management shall fill in the permanent vacancy or the temporary vacancy by appointment of a person duly qualified. Rule 6 is the crucial rule laying down qualifications of teachers and it provides that the minimum qualifications for the post of teachers shall be as specified in Schedule 'B',. Clause I of Scheduled B, which deals with qualifications of primary school teachers, specifically prescribe qualification of S.S.C and D.Ed. (for any other equivalent diploma mentioned therein). The definition of trained teacher

in Rule 2(1) (k) refers to a teacher who has secured professional certificate or diploma or degree recognized by the Department which qualifies him for a teaching post. All the provisions, if read in harmony, school teacher who is not having qualification as prescribed under Schedule B, meaning thereby, possessing minimum educational and training qualification.

9. In this view of the matter, we hold that for a valid appointment of a primary school teacher, a person must possess educational so also the training/teaching qualification. No person can be legally appointed who does not hold training qualification. Hence, service rendered as an untrained teacher will not qualify for being counted to determine seniority”.

4. Mr. Joshi reiterated the submissions advanced before the Tribunal and in particular paragraph 8. He also relied upon decision in the case of **Shailaja Ashok Walase Vs. State of Maharashtra, 1999 (1) Mh. L. J. 291** Mr. Joshi was not in a position to counter this submission.

5. I have considered rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. I have already extracted paragraphs 7 and 9 of the Full Bench Decision. A perusal of above extracted paragraphs shows that requisite qualification for appointment in primary section as 'Assistant Teacher' is D.Ed. It is not disputed that respondent No.1 does not possess this qualification. In view thereof, it cannot be said that respondent No.1 was duly qualified for appointment on the post of 'Assistant Teacher' in primary Section. Hence, impugned order cannot be sustained and is set

aside. Appeal No. 32 of 2002 preferred by respondent No.1 stands dismissed. Rule is made absolute in terms of prayer clause (b) with no order as to costs. Order accordingly.

[R.G. KETKAR, J.]