



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2103/2020

PETITIONER:

Dinesh s/o Chindhuji Kohale,
Aged about 57 years, Occu: Service,
R/o Katangi (Kala), Tah. and
District – Gonida.

...V E R S U S...

RESPONDENTS

- 1] The State of Maharashtra, through its Secretary, Department of Education, Mantralaya, Mumbai-32.
- 2] Deputy Director of Education, Nagpur Division, Nagpur.
- 3] The Education Officer (Secondary), Zilla Parishad, Gondia, Tah. and District Gondia.
- 4] The Education Officer (Secondary), Zilla Parishad, Bhandara, Tah. and District Bhandara.
- 5] Shri Sant Dnyaneshwar Shikshan Sanstha, Katurli, through its Secretary, R/o Katurli, Tah. Amgaon, District Gondia.
- 6] Shri Jagannath s/o Bhyaiyalal Katore, Aged about 57 years, R/o. C/o N.P. Lanjewar, at and Post Datora, Tah. and District Gondia.

Mrs. Deepa Charlewawr, counsel for petitioner.
Mr. S.M. Ukey, Additional G.P. for Respondent Nos. 1 to 4.
Mr. P.J. Jibhkate, counsel for respondent No.6.

CORAM : **AVINASH G. GHAROTE &**
URMILA JOSHI-PHALKE, JJ
DATE OF RESERVE : **21/08/2023**
DATE OF DECISION : **12/09/2023**

JUDGMENT : (PER : URMILA JOSHI-PHALKE,J.)

1. **Rule.** Rule made returnable forthwith. Heard finally with consent of the parties.

2. The petitioner has challenged the communication dated 28/05/2019 passed by respondent No.3 – Zilla Parishad, Gondia, by which the seniority benefit and the scale of senior gradation is denied to the present petitioner by considering his appointment as on 24/06/1991.

3. The petitioner claims that he was appointed by respondent No.5 on the post of Assistant Teacher by appointment order dated 24/06/1991. He was possessing qualification and therefore, he was appointed as Assistant Teacher for the period of one year i.e. from 24/06/1991 to 08/05/1992. Respondent No.5 issued an advertisement for filling up two posts of Assistant Teacher on 16/07/1993 from the Open Category. Since the petitioner was in service since 1991, he applied for the post of Assistant Teacher, in

pursuance of the advertisement dated 19/07/1993. Respondent No.5 appointed the petitioner vide appointment letter dated 21/06/1993. Initially, he was appointed on 'Probation' for a period of 21/06/1993 to 30/04/1994. Though the petitioner was in service since 1991, respondent No.5 sent a proposal to respondent No.4 for granting approval. On 26/06/1993, the respondent No.4 granted approval w.e.f. 26/06/1993. The petitioner had made several representations to the respondent Nos. 3 and 4 requests for granting approval to his services on the post of Assistant Teacher w.e.f. 24/06/1991.

4. As per the contention of the petitioner, respondent No.4 granted approval by ignoring his earlier service w.e.f. 26/06/1993. Respondent No.3 by its communication dated 06/07/2015 intimated the respondent No.5 that respondent No.3 has granted approval to the services of the petitioner w.e.f. 24/06/1991. The perusal of the said communication dated 06/07/2015 would reveal that respondent No.3 has made it clear that the period w.e.f. 24/06/1991 shall be considered for senior gradation and for the purpose of Promotion. The petitioner again made a representation to respondent No.3 and requested for the benefits of senior gradation w.e.f. 24/06/2015 as he has completed 24 years of service on 24/06/2015.

Instead of granting approval, the respondent No.3

intimated respondent No.6 and granted approval for his senior gradation w.e.f. 01/07/2015. The petitioner has challenged the appointment of respondent No.6 and his senior gradation by preferring the writ petition No. 601/2010, however, the said writ petition was dismissed. Again, the petitioner by representation, requested to appoint him on the post of Head Master. Being senior to respondent No.6 and also requested for benefits of senior gradation w.e.f. 24/06/2015, contending that he has completed 24 years of service, however, no decision was taken on his representation.

5. Respondent No.3 by its communication dated 20/04/2018 granted approval for the senior gradation of respondent No.6. Again petitioner has made a representation on 22/01/2019, requesting respondent Nos. 3 and 4 to appoint him on the post of Head Master as per the seniority, by considering his date of appointment as 24/06/1991 and also requested for granting pay scale of senior gradation. He also filed Writ Petition No. 2870/2019. Respondent No.3 communicate to him that approval to his post for a period of 24/06/1991 to 25/06/1995 was rejected, therefore, he had withdrawn the said writ petition with liberty to file a fresh. Thereafter, he has filed the present writ petition for seeking relief to quash and set aside the impugned order passed by respondent No.3- Zilla Parishad, Gondia dated 28/05/2019, by which the approval was rejected to his service for the

period of 24/06/1991 to 25/06/1995. He further claimed the seniority benefits by taking into consideration the date of appointment as from 24/06/1991.

6. In response to the notice, the respondents opposed the writ petition on the ground that the petitioner was claiming approval to his appointment from the date of his initial appointment i.e. from 24/06/1991 till 1995 to claim yearly benefit and also seniority to claim on the basis of Head Master. The petitioner has not challenged the order passed in writ petition No. 601/2010 and the same has attained finality. It is further contended by respondent No.3 that while exercising the power under Rule-12 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, respondent No.6 was declared as a senior to the petitioner vide order dated 13/12/2018. The petitioner has raised the challenge before this Court in Writ Petition No. 1242/2009 and this Court has quashed and set aside the order vide order dated 25/08/2009 and proceeding was remitted to respondent No.3 for fresh disposal in accordance with the law. Respondent No.3 after hearing declared the respondent No.6 senior to the petitioner vide order dated 23/11/2009. The petitioner has challenged the said order by preferring the writ petition No. 601/2010. The said writ petition was dismissed and the petitioner has not challenged the judgment passed in Writ Petition No. 601/2010. Thus, the finding recorded by this Court as to the

appointment of the present petitioner attains the finality. In view of that present writ petition is devoid of merits and liable to be set aside.

7. It is undisputed that the petitioner was appointed as a Physical Training Instructor on 24/06/1991 for a period of one academic session, and subsequently he was again appointed to the academic sessions 1992-1993, 1993-1994, and 1994-1995. It is further undisputed that these appointments were made without issuing any advertisement, without conducting any interviews, and without following the due procedure as required by the provision of Section 6 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'the Act of 1977'). Respondent No.6 was appointed as an Assistant Teacher on 15/06/1990 for one academic session. Thereafter, he was appointed for academic sessions 1991-1992, 1992-1993, 1993-1994 and 1994-1995. The appointment of respondent No.6 during above said period in academic sessions wherealso, without issuing any authority and without following the due procedure as required by Section 5 of the Act of 1977. Thereafter, respondent No.6 came to be appointed on 24/06/1995 after following due procedure as required by Section 5 of the Act of 1977. This appointment of respondent No.6 initially was on Probation. The present petitioner was appointed on 26/06/1995 as per the procedure prescribed under Section 5 of the Act of 1977. The

appointment of the petitioner initially was on probation. It is further reveals that the Education Officer by communication dated 30/03/1996 granted approval to the appointments of several employees working in the school run by respondent - 2 Society. The appointment of respondent No.6 was approved for the probation period w.e.f. 24/06/1995 and the appointment of the petitioner was approved for the probation period w.e.f. 26/06/1995, they both continued in their employment. Subsequently, respondent No.6 was promoted as the Head Master of the School and thereafter his services were terminated. The order of termination was challenged by him before the School Tribunal which came to be allowed and he was reinstated in service.

8. After the termination of the services of respondent No.6, the petitioner was given the charge of the post of Head Master of the School and the Education Officer granted approval to the petitioner as Officiating Head Master, subject to the decision of the appeal filed by the respondent No.3. Thus, it is undisputed that after the appeal is allowed by the School Tribunal, the respondent No.6 who has been working as the Head Master of the School and the Petitioner was working as a Physical Training Instructor.

9. The petitioner claims that he is senior to respondent No.3. The order of the Education Officer of 30/12/2008 concluded that respondent No.3 was senior to

the petitioner. The petitioner has challenged the said order by preferring the Writ Petition No. 1242/2009 which was partly allowed and the matter was remitted to the Education Officer for fresh decision. The Education Officer after the remand held that respondent No.6 is Senior to the Petitioner. The petitioner has challenged the said order also in writ petition No. 601/2010. The Education Officer has considered the date of appointment of respondent No.6 as 24/06/1995 and the date of appointment of the petitioner as 26/06/1995 which are the dates on which respondent No.6 and the petitioner were appointed by following the procedure prescribed under Section 5 of the Act of 1977.

10. It is undisputed that the Education Officer has granted approval to the appointment of respondent 6 as well as the petitioner w.e.f. 24/06/1995 and 26/06/1995 respectively. Admittedly, the petitioner has not raised any challenge to the said decision of the Education Officer till today. The petitioner has challenged the decision of granting seniority to respondent No.6 by preferring the Writ Petition No. 601/2010 wherein also, this Court held that the petitioner has not taken any exception to the decision of the Education Officer, granting approval to the appointment of the respondent No.6 w.e.f. 24/06/1995 and approving the appointment of the petitioner w.e.f. 26/06/1995.

11. It is further held by this Court that the earlier

appointment of the petitioner as well as respondent No.6 during the academic session 1990-1995 were made without following prescribed procedure and therefore, they have no sanctity in the eyes of the law. Thus, this Court has also considered the date of the appointment of the present writ petition as 24/06/1995, observing that the earlier appointment was not without following the prescribed procedure and therefore, it has no sanctity in the eyes of law. Undisputedly, the said order passed by this Court in Writ Petition No. 601/2010 has not been challenged by the present petitioner, and therefore, it attained finality.

12. The present writ petition is filed before this Court for claiming various relief on the basis of approval dated 06/07/2015. During the pendency of the writ petition, the respondent No.2 - Deputy Director of Education decided the validity and legality of the approval dated 06/07/2015 and thereby cancelled the approval. However, the petitioner has not challenged to the order dated 22/05/2018 and withdrawn the petition bearing No. 2870/2019. In the present petition also, the order of the Deputy Director of Education dated 22/05/2018 is not challenged by the petitioner. Thus, it is apparent that the order passed by this Court holding the appointment of the present petitioner on 26/06/1995 remained unchallenged and attained finality. Therefore, now in the present writ petition, the petitioner cannot again raise a similar issue to consider his date of

appointment as 24/06/1991 instead of 26/06/1995. So in the above circumstances, the observation of this Court considering the date of appointment of the present petitioner is 26/06/1995 is relevant and attains the finality. Therefore, now, the present writ petition has no merit to say that the date of appointment of the present petitioner is to be considered as 24/06/1995.

13. In view of the facts and circumstances, the present writ petition is devoid of merits and liable to be **dismissed**. In the circumstances, the parties to bear their own costs.

14. Rule discharged.

(URMILA JOSHI-PHALKE, J)

(AVINASH G. GHAROTE, J.)