

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

WRIT PETITION NO.1190 OF 2023

Soniya Lalsingh Yadav
Aged about 33 years,
Occ. Asstt. Teacher,
R/o PNo. 13, Narmada Housing Society,
Nagpur, Dist. Nagpur. **PETITIONER**

...VERSUS...

1. State of Maharashtra, through its
Secretary, Department of Education,
Mantralaya, Mumbai-32.
2. The Education Officer (Sec.),
Zilla Parishad, Nagpur.
3. Brothers of St. Martin,
Borgaon, Katol Road,
Nagpur Tah. And Dist.
Nagpur through its Secretary.
4. St. Martin Hindi High School,
through its Headmaster
Borgaon Katol Road, Nagpur
Tah. And Dist. Nagpur.
5. Ku. Archana d/o Shalikram Lokhande
Aged about 51 years,
Occ. Private, R/o Plot No.21,
Barde Layout, Gorewada Road,
Nagpur, Dist. Nagpur. **RESPONDENTS**

Mr. P. P. Thakare, Advocate for Petitioner.
Mr. M. K. Pathan, AGP for Respondents 1 and 2/State.
Mr. V. N. Patre, Advocate for Respondent 4.
Mr. A. B. Moon, Advocate for Respondent 5.

CORAM: **ROHIT B. DEO AND M. W. CHANDWANI, JJ.**
DATE: **14th JULY, 2023.**

ORAL JUDGMENT: **(PER ROHIT B. DEO, J.)**

Heard. Rule. Rule made returnable forthwith by consent of the learned counsels for the parties.

2. The short question involved in the petition is whether, in terms of the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short the MEPS Rules) who, amongst the petitioner Mrs. Soniya Yadav and respondent 5 Ms. Archana Lokhande, is senior.

3. The issue arises in the context of the order dated 16.01.2023 rendered by the Education Officer (Secondary), Zilla Parishad, Nagpur which holds that respondent 5 – Ms. Archana Lokhande is senior to the petitioner Mrs. Soniya Yadav.

4. The order impugned is rendered after the authority heard the stakeholders as directed by the High Court vide order dated 12.01.2023 in Writ Petition 7145/2022. Writ Petition 7145/2022 was preferred by the petitioner Soniya Yadav assailing

the communication-cum-order dated 11.08.2022 issued by the Education Officer that the salary grants as regards Mrs. Soniya Yadav is stopped and that instead of Ms. Archana Lokhande, Mrs. Soniya Yadav be considered surplus from April, 2018. The High Court noted that the said order was passed without hearing Mrs. Soniya Yadav and allowed the petition partially by remitting the matter to the Education Officer.

5. The first submission which is canvassed by the learned counsel for the petitioner Mr. Thakare is that the petitioner is senior to Ms. Archana Lokhande, and the finding recorded by the Education Officer to that extent is obviously wrong.

6. Mr. Pathan, the learned AGP has invited our attention to the provisions of Schedule 'F' to the Rules and particularly to Note 3 which provides that in the case of teachers whose date of continuous appointment in one and the same category is common, the teacher who is senior by age will be treated as senior.

7. The appointment of the petitioner and respondent 5 is approved by the Education Officer by common order dated 28.11.2013. The date of appointment of both the petitioner and

respondent 5 is recorded as 01.07.2012. Admittedly, respondent 5 is elder to the petitioner, and in view of the provisions of Note 3 to Schedule 'F', it is respondent 5 who is senior.

8. Faced with such obstacle, Mr. Thakare would argue that the date of appointment of respondent 5 is wrongly recorded, and that she was not in service as on 01.07.2012 when the petitioner was appointed. We have noted the said submission only as a courtesy to the learned counsel. The petitioner did have access to the common order of approval. Petitioner has not averred or alleged at any point in time in immediate proximity that respondent 5 is not appointed along with her on 01.07.2012. In any event, we cannot go behind the order of approval after a decade. Another desperate attempt which is made by Mr. Thakare is to tell us that in some affidavit or the other the Education Officer has stated that respondent 5 Ms. Archana Lokhande was not appointed in sanctioned post. If there is such statement in any affidavit filed on behalf of the Education Officer, in any proceedings, we reject the statement out-rightly. Having approved the appointment of the respondent 5 a decade ago, we cannot hear the Education Officer suggesting that respondent 5 was not appointed in sanctioned post. We inquired from the learned AGP

Mr. Pathan whether it is the stand of the Education Officer that respondent 5 was appointed in post which was not sanctioned. Mr. Pathan fairly states that the stand of the Education Officer in the present matter is not that respondent 5 was appointed in post which was not sanctioned, rather, the stand is that both the petitioner and respondent 5 were appointed against unaided posts.

9. The other submission canvassed by Mr. Thakare is that petitioner is shown senior to respondent 5 in the seniority list published in the year 2019-20 and respondent 5 ought to have taken recourse to the provisions of Rule 12 of the Rules. Assuming that such remedy was available or is available, we are not inclined to give much importance to the place in the seniority list. We have examined the statutory provisions, and we are more than satisfied that it is respondent 5 who is senior to the petitioner. In any event, the inquiry which is contemplated under Rule 12 is as a fact conducted, albeit in a different context and for different reasons, by the Education Officer before he passed the order impugned.

10. We are not inclined to look into the submission canvassed by the learned counsel Mr. Thakare that as a fact there

is workload available for both the petitioner and respondent 5. We neither have the data before us nor the expertise to evaluate the data in order to test the findings recorded by the Education Department, after examining the record *inter alia* the workload, and substituting our view for that of the Education Officer.

11. At this stage, Mr Thakare would reiterate that there is workload available for both the petitioner and respondent 5. The management is not appearing though served. Surprisingly, Mr. Patre who appears for the Head Master who is an ordinary employee is quick to support Mr. Thakare. Mr. Patre has gone to the extent of suggesting that if the petitioner is continued then the salary will be paid by the management. We would have expected Mr. Patre to restrict the submission to his brief and not to give suggestions on what the management, who have not engaged him, can do, much less a suggestion that the management can pay the salary from its own pocket.

12. In any event, we have seen the staff justification, which provide for one post of Head Master and four teachers. It is obvious that there cannot be a fifth teacher. We need not dilate on the submission of Mr. Thakare any further.

13. The petition is dismissed.

(M. W. CHANDWANI, J.)

(ROHIT B. DEO, J.)

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