

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

WRIT PETITION NO. 2199/2021

(IFTEKHAR AHMAD NOOR AHMAD **VERSUS** STATE OF MAHARASHTRA & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri Amol Deshpande, counsel for the petitioner.
 Shri A.A. Madiwale, Assistant Government Pleader for the R-1 to 3.
 Mrs. Radhika G. Bajaj, counsel for the R-4.
 Shri N.G. Moharir, counsel for the R-5.

CORAM : A. S. CHANDURKAR AND MRS.VRUSHALI V. JOSHI, JJ.

DATE : JANUARY 31, 2023.

Heard.

The petitioner was appointed as an untrained Assistant Teacher on 01.07.1988. He continued in employment pursuant to a fresh order of appointment dated 25.06.1989. His initial appointment was approved on 06.08.1992. The petitioner's services were terminated on 28.06.1993 and he challenged the same by filing an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, 'the Act of 1977') before the School Tribunal. During pendency of those proceedings the petitioner obtained training qualification - B.Ed. on 08.07.1994. The School Tribunal allowed his appeal on 17.01.1996 directing reinstatement with continuity in service.

The respondent no.4 who acquired training qualification – B.Ed. on 29.07.1994 came to be appointed as an Assistant Teacher on 01.08.1994.

The dispute sought to be raised by the petitioner is with regard to the fixation of *inter se* seniority between himself and the respondent no.4 in view of the order dated 13.05.2021 that was passed by the Education Officer (Secondary). While holding the respondent no.4 to be senior in service it has been held that the initial appointment of the respondent no.4 was on 01.08.1994 coupled with the fact that he had acquired B.Ed. qualification on 29.07.1994. The petitioner is shown to have been appointed on 20.11.1997 having acquired B.Ed. qualification on 08.07.1994. According to the petitioner he having been

initially appointed on 01.07.1988, albeit as an untrained Assistant Teacher, since he had acquired training qualification on 08.07.1994 prior to the same being acquired by the respondent no.4 on 29.07.1994 he ought to be treated as senior to the respondent no.4. In other words, the petitioner having already acquired the training qualification prior to the respondent no.4 he could not be treated to be junior to the respondent no.4. On the other hand, it is the case of the respondent no.4 that notwithstanding the order of reinstatement and continuity in service passed by the School Tribunal on 17.01.1996 the petitioner accepted his fresh appointment from 20.11.1997 without any protest and thus joined services after the respondent no.4.

On hearing the learned counsel for the parties the position on record indicates that despite the fact that the appeal preferred by the petitioner challenging the order of termination was allowed on 17.01.1996 and the services of the petitioner were directed to be reinstated with continuity, the petitioner accepted a fresh order of appointment dated 20.11.1997 without any protest. In paragraph 8 of the counter reply filed on behalf of the petitioner it has been stated as under :-

“8. As far as submissions that the petitioner had never challenged the fresh appointment order as well as approval granted thereto, it is submitted that there are many things out of the record which constrained the petitioner to accept the fresh order and act on the dictum of the management.”

It is thus clear that the petitioner did not enforce the order passed by the School Tribunal in his favour on 17.01.1996 and instead accepted a fresh order of appointment on 20.11.1997. Further his fresh appointment was duly approved by the Education Officer (Secondary) on 31.03.1998. It is in this view of the matter that in the seniority list as prepared, the respondent no.4 having been appointed on 01.08.1994 is shown to be senior to the petitioner who was appointed on 20.11.1997. The conduct of the petitioner of accepting fresh order of appointment without any protest on 20.11.1997 precludes him from raising any grievance in that regard at this late stage to urge that his initial appointment from 01.07.1988 be taken into consideration.

Though the learned counsel for the petitioner sought to rely upon the decisions in *Atmaram Raghunath Pashte Versus The Chairman, Alyani-Gegaon-Nandval, Ashnoli Shikshan Sanstha & Others* [2003(5) Mh.L.J. 451], *Gaur Pratibha (Thakur Pratima Jagatsingh) & Others Versus State of Maharashtra & Others* [2019(4) BCR 100] and *Madhavi Versus Chagan & Others* [2020(14) SCALE 306] to seek a declaration that the petitioner was senior to the respondent no.4, we find that the petitioner having been appointed subsequent to the respondent no.4 who was appointed on 01.08.1994 as a trained Assistant Teacher, the petitioner cannot claim to be senior to the respondent no.4. The fact that the petitioner acquired the training qualification prior to the respondent no.4 is of no avail since the petitioner was appointed after the appointment of the respondent no.4 was made.

For aforesaid reasons, we do not find that there is any error committed by the Education Officer (Secondary) in adjudicating the respondent no.4 to be senior to the petitioner. The writ petition is thus dismissed leaving the parties to bear their own costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)

APTE