

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 3494 OF 2023

Ansari Ahmed Mohammed Yusuf

... Petitioner

V/s.

The State of Maharashtra through
Education Department

... Respondent

Mr. A.A. Maniyar with Mr. M.A. Ansari for the Petitioner
Mr. Abhay Patki, Addl. G.P. for the Respondent Nos. 1 to 4
Mr. A.G. Kothari for Respondent Nos. 5 and 6

***CORAM : NITIN JAMDAR &
M.M. SATHAYE, JJ.***

DATE : 07 FEBRUARY 2024

P.C. :-

The Petitioner has challenged the order passed by the Respondent No.3 – Deputy Director of Education, dated 13 October 2023, in respect of eligibility of the Respondent No.6, who is working as a Head in the School run by the Respondent No.5 – Institution.

2. The Petitioner is currently working in the school run by the Respondent No.5 at Kurla. The Petitioner had joined the

services in the school run by the Respondent No.5 – Institution in the year 1994. On 9 September 2016 the order of appointment came to be issued in respect of the Respondent No.6 giving effect too the appointment from 1 June 2015 as a Head of the school.

3. It is the contention of the Petitioner that the Respondent No.6 was not qualified as per the stipulation contained in Rule 3(1) (b) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 for not having the two years experience. This contention of the Petitioner was examined by the Deputy Director of Education who negatived the same. Hence the Petitioner has filed the present Petition.

4. Heard the learned Counsel for the parties.

5. The learned Counsel for the Petitioner contends that the Deputy Director has invoked the power of relaxation under Section 3(2) of the Rules and the conditions stated in Rule 3(2) do not exist and therefore, not only the Respondent No.6 is not qualified but the impugned order passed by the Deputy Director proceeds on erroneous basis.

6. The moot question is the eligibility of the Respondent No. 6 to be appointed as Head of the school by order dated 9 September 2016 with effect from 1 June 2015. There is a debate before us as to whether the concerned school is a secondary school or

a primary school. In para 3 of the Petition it is stated by the Petitioner as under :-

“3. The Petitioner states that in the year 2015 the post of Head Teacher of the said school has become vacant. The Management of the said school has published an advertisement in Urdu daily news papers “INQUILAB” inviting applications from the potential candidates for the post of Head Teacher in the said school having qualified B.A./B.Sc./H.Sc./D.Ed. with minimum five years of teaching experience in a recognized Urdu Primary/Upper Primary School. Hereto annexed and marked as “Exhibit ‘A’” is the photocopy of advertisement published in INQUILAB news paper on 27 February 2015 along with its typed copy.”

Exhibit ‘A’ which is the advertisement referred to in this Para is annexed to the Petition states that the Head teacher is required for the aided Urdu Upper Primary School.

7. In the reply affidavit, the Respondent Nos. 5 and 6 have stated in paragraph 9 as under :-

“9. Without prejudice to the above, I say and submit that the Primary School comprises of Std. I to IV, Upper Primary comprises of Std. V to VII and Secondary School is from Std. VIII to X. I say that Smt. Mulla Fatima Babalal Sayera holding HSC, (February 2003) D.Ed., (November 2006), B.A., (July 2014) has been appointed as Headmistress/Head Teacher of the Upper Primary School w.e.f. 1 June 2015 and accordingly Approval has been granted w.e.f. 1 June 2015. I say that

Mrs. Anjum Mohd. Aslam Shaikh has been appointed as Head Teacher of the Primary School vide Order dated 6 November 2012 and granted approval vide Order No. AOSE/aid/5242 dated Nil of the Municipal Corporation of Greater Mumbai. I say that Mr. Shaikh Mohd. Farhan Ibrahim has been appointed as Headmaster of the Secondary School vide Order dated 31 July 2017 and granted approval vide Order dated 4 September 2017 of the Education Department Secondary Section, Government of Maharashtra.”

The Respondent No.5 has stated that there are Primary, Upper Primary and Secondary Schools and each of them have different Heads.

8. Considering the pleadings of both the Petitioner and the Respondent No.5, it is clear that the appointment of the Respondent No.5 at the relevant time was in the Upper Primary School. That being the position, it is not Rule 3(1)(b) that is applicable but Rule 3(1)(a) which relates to the Primary Schools.

9. Rule 3(1)(a) was amended on 22 June 2017 and prior to its substitution by the new clause, the earlier Clause reads thus :-

*“(a)(i) of a primary school having an enrollment of students above 200 or having Standards I to VII shall be the seniormost trained teacher who has put in not less than five years’ service, and
(ii) of any other primary school shall be the seniormost trained teacher in the school.”*

This Clause does not state anything regarding a qualification of two years' experience which, according to the Petitioner, the Respondent No.6 lacks. The Respondent No.6 has placed on record that the Respondent No.6 has a D.Ed. qualification.

10. That being the position, we do not find that the appointment of the Respondent No.6 is invalid on the ground that the Respondent No.6 was ineligible. Once that conclusion is reached, even though the impugned order of the Deputy Director may have proceeded on the different terms, no interference is called for in the writ jurisdiction.

11. The Writ Petition is accordingly rejected.

M.M. SATHAYE, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

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by JYOTI
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