

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5813 OF 2024

Padmakar Ananda Pachpande

...*Petitioner*

:: *Versus* :

1. The State of Maharashtra, through
the Secretary, School Education Department
2. The Education Officer, (Secondary)
Zilla Parishad, Thane
3. Smt. Radhikabai Meghe Memorial
Shikshan Sanstha, through its
President/Secretary
4. Smt. Radhikabai Meghe Vidyalaya
Through its Head Master
5. Madhukar Kishan Sangle,
Assistant Teacher

...*Respondents*

Mr. N.V. Bandiwadekar, Senior Advocate with *Mr. Vinayak Kumbhar, Mr. Rajendra B. Khaire and Mr. Aniket S. Phapale i/by. Ashwini N. Bandiwadekar, for the Petitioner.*

Ms. Kavita N. Solunke, AGP for Respondent Nos. 1 and 2-State.

Mr. Rahul Oak, through VC with *Ms. Divya Wadekar* for Respondent Nos. 3 and 4-Management.

Ms. Pranjali Sule, for Respondent No. 5.

CORAM : SANDEEP V. MARNE, J.

Dated : 20 January 2025.

P.C. :

- 1) **Rule.** Rule made returnable forthwith. With the consent of the learned counsel appearing for the parties, petition is taken up for hearing and final disposal.

2) The challenge in the present petition is to the order dated 23 March 2024 passed by the Education Officer (Secondary), Zilla Parishad, Thane holding that Respondent No.5 is senior to the Petitioner in the seniority list of Assistant Teachers with further direction to grant him promotion in accordance with his seniority over the Petitioner.

3) Briefly stated, facts of the case are that, the Petitioner came to be appointed as Assistant Teacher in the aided Secondary School of Respondent No.3-Management on 6 December 1993. His services were terminated orally on 13 June 1996. It appears that on the same day i.e. 13 June 1996, Respondent No.5 came to be appointed in the School as Assistant Teacher. Petitioner challenged his termination before the School Tribunal by filing Appeal No.177/1997. Petitioner's Appeal came to be allowed by the School Tribunal on 20 April 2001 directing the Management to reinstate the petitioner as Assistant teacher with all consequential benefits including continuity of service and backwages. The order passed by the School Tribunal was challenged by the Management before this Court by filing Writ Petition No.4433/2001. However during the pendency of the petition, the disputes were settled and consent minutes were filed before this Court on 24 September 2001 under which the Management agreed to reinstate the Petitioner into service with all consequential benefits w.e.f 6 December 1993 but without backwages. The Management also agreed to send proposal of the Petitioner for approval to the Education Officer. The Management also agreed that such propose was for release of salary w.e.f. 30 April 1996. Petitioner agreed not to claim backwages in the event the same are not sanctioned by the Education Officer w.e.f 30 April 1996. This is how Petitioner came to be reinstated in service and as agreed in the consent terms his service book was prepared reflecting his date of

initial appointment as '*6 December 1993*'. A proposal was sent for grant of approval to the appointment of the Petitioner which came to be sanctioned by the Education Officer on 7 November 2001 granting approval to his appointment from 28 September 2001 with a remark that the same was being done as per the order of the Court and against the vacant post created by retirement of Smt. Hira Naryan Nalge. It appears that though the approval was sent for grant of appointment retrospectively from 30 April 1996, such approval was granted by the Education Officer from 28 September 2001.

4) It appears that in the seniority list prepared from time to time, the Petitioner was always shown senior to Respondent No.5 who was appointed on 13 June 1996. However, it appears that approval to the appointment of Respondent No.5 came to be granted w.e.f. 13 June 1996 vide order dated 15 February 1997. Therefore, the dispute arose between the Petitioner and Respondent No.5 about seniority. It appears that in the seniority list as on 1 January 2024, while Petitioner continued to remain above Respondent No.5, his date of approval was shown as '*28 September 2001*' as against the date of '*13 June 1996*' being reflected against Respondent No.5. Petitioner therefore made representations.

5) It appears that the Head Master of the School retired on 31 December 2023 and accordingly Petitioner was granted signing rights by the Management w.e.f. 1 January 2024 and a proposal to that effect was sent to the Education Officer. However, Respondent No.5 took objection to the said proposal vide letters dated 21 December 2023 and 28 December 2023. On account of objection being raised by Respondent No.5, the Education Officer conducted hearing on 8 January 2024 and after hearing both the sides, the Education Officer adjudged Respondent No.5 to be senior over the Petitioner on the strength of

grant of approval to him w.e.f 13 June 1996 as against grant of approval to the Petitioner w.e.f. 28 September 2001. The Petitioner is aggrieved by the order dated 23 March 2024 passed by the Education Officer and has accordingly filed the present petition.

6) I have heard Mr. Bandiwadekar, the learned Sr.Counsel appearing for Petitioner, Ms. Sule the learned counsel appearing for Respondent No.5, Mr. Oak the learned counsel appearing for Respondent Nos.3 and 4-Management and Ms. Solunke, the learned AGP appearing for Respondent No.1-State.

7) After having considered the submissions canvassed by the learned counsel appearing for the parties, the short issue that arises for consideration is whether the date of grant of approval to the appointment of Teachers would govern their seniority or whether their seniority is to be determined from the dates of their initial appointments.

8) In the present case, there is no dispute to the position that the date of initial appointment of the Petitioner is '*6 December 1993*', whereas that of Respondent No.5 is '*13 June 1996*'. However, when it comes to the date of approval, Petitioner's appointment is approved w.e.f. 28 September 2001, whereas the approval has been granted to the appointment of Respondent No.5 from day one i.e. w.e.f. 13 June 1996. It is on the basis of prior approval granted to the appointment of Respondent No.5 that the Education Officer has adjudged him to be senior over the Petitioner.

9) Rule 12 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 deals with maintenance of seniority lists and provides thus:

“ Seniority List.

- Every Management shall prepare and maintain seniority list of the teaching staff including Head Master and Assistant Head Master and non-teaching staff in the School in accordance with the guidelines laid down in Schedule "F". The seniority list so prepared shall be circulated amongst the members of the staff concerned and their signatures for having received a copy of the list shall be obtained. Any subsequent change made in the seniority list from time to time shall also be brought to the notice of the members of the staff concerned and their signatures for having noted the change shall be obtained.

(2) Objections, if any, to the seniority list or to the changes therein shall be duly taken into consideration by the Management.

(3) Disputes, if any, in the matter of inter se seniority shall be referred to the Education Officer for his decision.”

10) The guidelines prescribed in Schedule-F to the Rules deal with fixation of seniority of teachers in Primary schools, Secondary Schools, Colleges etc. So far as fixation of seniority list of the Secondary School teachers are concerned, para-2 of Schedule-F provides for categorisation of various teachers in Category-A to Category-H. The seniority list of Assistant Teachers is to be maintained in Category-C. Note-1 to Schedule-F provides that seniority list shall be maintained category wise in which the teacher is appointed and is holding the requisite educational qualification and professional qualification for the post Note-5 *inter-alia* provides that length of continuous service rendered by persons in a particular cadre in a school shall be taken into consideration for the purpose of seniority and promotion. Note-5 of Schedule-F to the rules reads thus:

“Note 5 : Where a management runs more than one school and where Junior College classes are or are not attached to any one or more of such schools, the seniority list for a particular cadre shall be a combined seniority list of all persons in that cadre working in all the schools (excluding night schools, if any), or Junior College classes attached to schools of the Management. The total continuous service rendered by the persons in a particular cadre in any school or Junior College class shall be taken into consideration for the purpose of seniority and for the purpose of promotion.”

11) Ms. Sule, the learned counsel appearing for Respondent No.5 would submit that Note-5 of Schedule-F would have no application to the facts and circumstances of the present case as Note-5 of Schedule-F essentially deals with the issue of maintenance of seniority where the Management runs more than one school. In my view, however though the First Part of Note-5 deals with seniority of teachers of common Management running several schools, the Second Part of Note-5 would apply to all the Teachers in Secondary Schools. This is because unlike, Part-I which specifically prescribes the manner of preparation of seniority list for primary schools, there is no other umbrella provision in part-2 prescribing the manner in which seniority list of various teachers in Categories-A to H is to be maintained. Note-5 of Schedule-F is the only provision which throws light on the manner in which the seniority list of Secondary School teachers is to be maintained. In my view, therefore seniority list of Assistant Teachers must be prepared by taking into consideration their total continuous service.

12) There is nothing in Rule-12 read with Schedule-F to the rules which provides that seniority list of Assistant Teachers is to be maintained with reference to the dates of approval. As rightly pointed out by Mr. Bandiwadkar, approval by the Education Officer is referable only to the payment of salary as per government grant. The approval otherwise is irrelevant for the purpose of maintenance of seniority. Once approvals are granted to two teachers, they would fall in one homo-genic class for the purpose of preparation of seniority list. A teacher whose appointment is yet to be approved may not be able to compare himself with another teacher in the matter of seniority whose services have been approved. However, once approval is received to appointment of both the teachers, their seniority will then have to be

determined not with reference to the date of grant of approval but with reference to the dates of their initial appointment. Once approval is received in respect of the appointment of two teachers, the second part of Note-5 of Schedule-F would kick in and continuous officiation would become the principle for determination of their seniority.

13) In the present case, therefore the date of grant of approval to the appointment of Petitioner and Respondent No.5 are totally irrelevant and their seniority will have to be determined with reference to the dates of initial appointments. The Education Officer has completely misdirected itself in directing maintenance of seniority with reference to the date of grant of approval, which in my view is not germane to the issue of maintenance of seniority.

14) Ms. Sule would submit that the initial appointment of the Petitioner was not regular and was not effected by following due process of law. That, he was merely engaged as a temporary teacher and did not have the right to continue on the post. She would submit that Respondent No.5, on the other hand, was appointed against a reserved category post after issuance of advertisement and after due approval for filling up the vacant post. She would therefore submit that mere irregular temporary appointment granted in favour of the Petitioner prior to the appointment of Respondent No.5 would not *ipso-facto* entitle him to march over Respondent No.5 in the matter of seniority. I am unable to agree. Firstly, this issue of irregular appointment of Petitioner was never raised before the Education Officer. The Education Officer has nowhere held that there is any defect in the initial appointment of the Petitioner. The Enquiry Officer has called out the contentions raised by Respondent No.5 in his letter dated 19 December 2023 addressed to the Education Officer. It appears that the contention of alleged irregularity in the appointment of the

Petitioner was not even raised before the Enquiry Officer. Therefore, Respondent No.5 cannot now be permitted to raise grounds which were never raised before the Enquiry Officer.

15) The conspectus of the above discussion is that Petitioner would rank senior to Respondent No.5 on the basis of date of his entry into service (*6 December 1993*). Having joined the services on 13 June 1996, Respondent No.5 is not entitled to steal a march over the Petitioner merely on the strength of receipt of prior approval. Petitioner's approval got derailed only on account of his illegal termination and immediately upon his reinstatement post settlement, he received approval to his appointment. Infact, if the services of the Petitioner were not to be terminated, he could have received approval atleast from 13 June 1996. Therefore, on this ground also, Respondent No.5 cannot seek to take the benefit of wrong committed by the Management in terminating the services of the Petitioner for claiming seniority over him. The petition accordingly succeeds and I proceed to pass the following order:

(i) The order dated 23 March 2024 passed by the Education Officer, (Secondary) Zilla Parishad, Thane is set aside.

(ii) It is declared that the Petitioner is senior to Respondent No.5 in the seniority list of Assistant Teachers.

(iii) The Management shall proceed to send a proposal for appointment of Petitioner on the post of Head-Master.

(iv) Considering the fact that the Petitioner is retiring from service on attaining the age of superannuation on 28 February 2025, the Management shall send a proposal for his promotion

as Head-Master within a period of 2 weeks and the Education Officer shall take a decision thereon within a period of 2 weeks thereafter.

16) With the above directions, the Writ Petition is **allowed**. Rule is made absolute. There shall be no order as to costs.

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[SANDEEP V. MARNE, J.]