

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

WRIT PETITION (L) NO.95 OF 2006

Mrs.Pushpa Avinash Barsay Petitioner

versus

State of Maharashtra & ors. Respondents

Shri M.M.Vashi for petitioner.

Ms.Iman K. Calcuttawala for respondents 1 & 2.

Ms.Nandini Menon for respondents 3 and 4.

CORAM : KSHITIJ R. VYAS, C.J. &
S.C.DHARMADHIKARI, J.

DATE : 28th February 2006

PC :

1. Heard Shri Vashi for petitioner, learned AGP for respondents 1 and 2 and Ms.Menon for respondents 3 and 4.

2. Shri Vashi states that respondent no.5 is served with a copy of the petition. He undertakes to file an affidavit proving service of the petition and the annexures thereto on respondent no.5 within one week from today.

3. The petitioner is aggrieved by an order passed by the Education Inspector and communicated vide Exhibit-F, page 22 to the Headmistress of respondent no.3 to this effect that petitioner cannot be held to be senior to respondent no.5. The placement of respondent no.5 above the petitioner in the seniority list, therefore, requires no interference.

4. Shri Vashi has invited our attention to the service record of the petitioner as well as respondent no.5 and he submits that in terms of Rule 12 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 r/w Schedule-F thereto, the placement of petitioner ought to be above respondent no.5. The petitioner has acquired the educational qualifications as on the date of appointment, whereas, respondent no.5 improved upon her initial qualifications in the year 1987. He submits that the principle culled out from Rule 12 is that continuous officiation or length of service, is not the sole criteria for determining the seniority and educational qualifications would also govern the principle of seniority. Bachelor of Arts (B.A.) is a qualification which has been acquired by respondent no.5 in 1987, and

therefore, her appointment on 22nd July 1975, i.e. earlier than the petitioner, is of no consequence. He places reliance upon the Rules as well as Schedule-F and notes below the same. He also relies upon a Division Bench decision of this Court reported in 1989-Mh.L.J.-951 (Saramma Varghese Vs. Secretary/ President, S.I.C.E.S. Society).

5. To this petition, a reply affidavit has been filed on behalf of the Management and it is contended by the management that the seniority list is prepared and maintained in accordance with the Rules and as per the directions of the Department of Education. In this case, it is contended that respondent no.5 completed ten years of qualifying service along with necessary qualifications, and, therefore, she moved from Category-E to Category-C in accordance with the Schedule and Rules referred to above. In terms of a Government Circular referred to in paragraph 6 of the affidavit in reply, the placement of the petitioner below fifth respondent is, therefore, in accordance with law. The management has taken care to point out the record with regard to both teachers. The management does not dispute the position that inter-se seniority has to be fixed

by the Education Inspector. However, it is justifying it's act because no objection was raised on an earlier occasion by the petitioner to the placement.

6. In our view, by a cryptic order, the Education Inspector has sought to communicate that the petitioner being originally appointed as Trained Non Graduate Teacher and working in the said post from her date of appointment till 12th June 1992, and it is thereafter she was absorbed in the scale of pay of a Trained Graduate, that is how she has been placed in the seniority list and her seniority be taken accordingly.

7. In the Division Bench decision reported in 1989-Mh.L.J.-951, this Court has categorically held that higher pay scale is not relevant for the purposes of fixation of seniority of teachers. A teacher with B.A; B.Ed. qualification, wherever he teaches, will take his place as per his date of appointment and continuous officiation. All these aspects are not taken into consideration by the Education Officer. Therefore, the conclusion of the Education Inspector in the communication referred to above, cannot be sustained.

7. At the threshold we made it clear that it is not for this Court to go into the factual aspects. Shri Vashi submits that interest of justice would be subserved if the matter is remanded to Education Inspector for a decision afresh after hearing both teachers and that is the only relief that he has pressed in the petition.

8. We see no prejudice to the parties, including the management, being caused, if the above course of action is adopted. Accordingly, the communication dated 26th December 2005 is quashed and set aside. The matter is remitted to respondent no.2 for a decision afresh. He shall do so after hearing all affected parties. He should pass a reasoned order and decide the issue in accordance with law. Respondent no.3 to complete the aforesaid exercise within a period of three months from today. All contentions of both teachers (petitioner and respondent no.5) as well as of the management on merits of the controversy are expressly kept open. Petition disposed of.

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(CHIEF JUSTICE)

(S.C.DHARMADHIKARI, J.)