

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3593 OF 2007

1. Chinchni Tarapur Education Society's
English Medium School, MIDC, Boisar.
and 2 ors. Petitioners

V/s

1. Mrs. Surekha Shirish Dogmane
2. Mrs. Vibhuti Muzumdar
3. Education Officer (Secondary),
Zilla Parishad, Thane. Respondents

Mr. M.B.Mehere for the petitioners.

Mr. R.S.Apte for Mr.M.S.Karnik for the Resp.No.1.

Mr. A.M.Khandekar for the Resp.No.2.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 30TH NOVEMBER, 2007.

ORAL JUDGMENT:

1. This petition challenges the judgment and order of the School Tribunal delivered on 23.3.2007. The School Tribunal has passed this order in Appeal No. 1 of 2007 filed by the respondent No.1 herein. The Tribunal allowed the appeal by setting aside the order of supersession, promoting the respondent No.2 herein to the post of headmistress from 12.6.2005.

2. The respondent No.1 was appointed as an un-trained teacher on 12.9.1992 in the secondary section of the school run by the Chinchani Tarapur Education Society. She continued to work as an Assistant Teacher in the school. When the post of the headmistress fell vacant, she was not appointed to that post and instead respondent No.2 was appointed as a headmistress. According to the respondent No.1, she secured her B.Ed. degree in the year 1994. However, this degree was not recognised as it was obtained from the Annamalai University. She, therefore, secured the B.Ed. degree from Yashwantrao Chavan Open University on 4.6.2003. The respondent No.1 claims that she was appointed initially as a primary school teacher with the petitioner institution on and from 12.6.1992. She was then asked to work in the secondary section from 2.9.2002. The respondent No.1 claims that she was the senior-most Assistant Teacher when the post of headmistress fell vacant and, therefore, was entitled to be appointed to that post. The respondent No.2 admittedly joined service on 3.7.2002. When respondent No.2 entered service with the petitioners, she was already qualified with the M.A., B.Ed. degrees having secured these degrees in 1981 and 1985, respectively. However, the petitioners chose to appoint her in the primary section instead of the secondary section for

reasons best known to them. The respondent No.2 was teaching Classes 5 to 7 in the school. Despite this, the petitioners appointed her as the headmistress which gave the respondent No.1 a cause of action to institute an appeal before the School Tribunal, claiming that she was superseded.

3. Significantly, respondent No.2 did not appear before the School Tribunal at all nor did she file any written statement though she was arraigned as one of the respondents to the appeal preferred by respondent No.1. The management i.e. the petitioners herein filed their written statement contending that the respondent No.2 was entitled to the post of headmistress as she was qualified with the M.A., B.Ed. degrees prior to the requisite qualifications being obtained by respondent No.1. It was contended that, when the respondent No.2 joined service, she had the necessary qualifications which respondent No.1 had obtained only on 4.6.2003. It was pleaded that the petitioners had appointed respondent No.2 in accordance with the M.E.P.S. Act and the rules framed thereunder.

4. It appears that the respondent No.1, being aggrieved by the appointment of the respondent No.2 to the post of headmistress, had also approached the Education Officer

for fixing the seniority of herself and the respondent No.2, inter se. The Education Officer, by his order dated 28.12.2006, came to the conclusion that the petitioners had wrongly appointed respondent No.2 to the post of headmistress, when she joined the secondary section of the school only on 10.8.2004 i.e. after the respondent No.1 acquired the requisite qualifications for being appointed as the headmistress of the school. The petitioners have pleaded in their written statement that the education officer had not heard them before passing the aforesaid order and they had therefore not implemented the order dated 28.12.2006 of the Education Officer.

5. The School Tribunal, on the basis of the report of the Education Officer, held that the respondent No.1 had entered into the zone of consideration for being appointed to the post of headmistress only on 10.8.2004, whereas the respondent No.1 was senior to her having acquired the requisite qualifications on 4.6.2003. The School Tribunal held that, in view of the provisions of Category "C" of Schedule "F" of the M.E.P.S. Act, the respondent No.1 was entitled to be appointed to the post of headmistress. The School Tribunal relied on the judgments of this Court in the case of **Pramod Devaram Bhangale v/s State of Maharashtra & ors.**, reported in

2006 (5) Mh.L.J. 110.

6. Being aggrieved by the order of the School Tribunal, the petitioners have preferred the present writ petition.

7. Mr.Mehere, the learned advocate for the petitioners submits that the School Tribunal fell in error in deciding the issue on the basis of the date of appointment of the respondent No.2 as recorded by the Education Officer. He submits that when the Inspector from the Education Department visited the school, no intimation was given to the petitioners in advance and, therefore, they were not aware of the record inspected or the noting which the Inspector had made. According to the learned advocate, therefore, the entire dispute should be referred again to the Education Officer who would be able to fix the seniority between the respondent No.1 and respondent No.2. In my opinion, this submission cannot be accepted as what has been challenged in the present petition is the order dated 23.3.2007 of the School Tribunal in Appeal No.1 of 2007. The order passed by the Education Officer has not been challenged in the present petition. Therefore, the submission of the learned advocate that the order of the Education Officer should be set aside, is without merit.

This petition is confined only to the order dated 23.3.2007 passed in the appeal filed by the respondent No.1.

8. It is then contended by the learned advocate for the petitioners that the School Tribunal has erred in not following the judgments of the Full Bench of this Court in the case of **Jayshree Sunil Chavan v/s State of Maharashtra & ors.**, reported in 2000 (3) Mah.L.J. 605 and of the Division Bench of this Court (Aurangabad Bench) in the case of **Kondiba Dattarao Mirashe v/s State of Maharashtra & ors.**, reported in Mah. Education Cases 174. Besides these, he relies on the judgment of this Court in **Ramchandra Pandurang Dalal v/s Municipal Council, Pavni & ors.**, reported in 2006 (6) Mh.L.J. 227. He further submits that the School Tribunal has erred in taking the date of entry into Category "C" Schedule "F" of the respondent No.2 as 10.8.2004 when in fact she entered Category "C" on 30.6.2002 when she was appointed to the school. According to the learned advocate, the seniority of respondent Nos.1 and 2 must be fixed on the date when the two candidates acquired the requisite qualifications for being appointed as the headmistress. He submits that since the respondent No.2 was qualified for the post even before she joined the school, she was rightly appointed by the petitioners as

the headmistress of the school. The learned advocate then submits that respondent No.2 was asked to teach Classes 5 to 7 and her name was incorporated in the muster roll for the primary section only in order to utilize the funds made available by the Government for the primary section. He submits that since the funds for the secondary section were inadequate because of a lesser strength of pupils in the school, the petitioners had shown respondent No.2 in the list of primary school teachers for administrative convenience. He concedes that the secondary section of the school consisted of Classes 8 to 10, while the primary section included Classes 1 to 7. The learned advocate also places reliance on the judgment in the case of **Anjuman Khairul Islam v/s Zulekha Mazhar Hussain (Mrs.) & ors., reported in 2001 II C.L.R. 531** in support of his submissions.

9. The learned advocate appearing for the respondent No.1 submits that the School Tribunal has relied on the report of the Education Officer in which it has been mentioned that the respondent No.1 was working as a primary school teacher upto 9.8.2004. It was only on 10.8.2004 that respondent No.2 started working in the secondary section of the school. The learned advocate then submits that when the petitioners had appointed respondent No.2 to teach Classes 5 to 7 is not disputed,

then respondent No.2 cannot claim to have entered the secondary section when she joined service on 30.7.2002. He submits that the seniority of an Assistant Teacher has to be reckoned from the date that she acquires the requisite qualification. According to the learned advocate, when the post of headmistress fell vacant, both, respondent Nos.1 and 2 were in the zone of consideration, the respondent No.1 had entered it i.e. Category "C" of Schedule "F" much earlier i.e. on 2.9.2002 and therefore the petitioners ought to have appointed her as the headmistress. He further submits that assuming the degree obtained by the respondent No.1 from the Annamalai University was not approved by the Government of Maharashtra, respondent No.1 had also secured the B.Ed. Degree from the Yashwantrao Chavan Open University on 4.6.2003 on which date respondent No.2 was not in Category "C". The learned advocate, therefore, submits that the School Tribunal has committed no error in setting aside the appointment of respondent No.2 to the post of headmistress. He further submits that the documents produced by the petitioners and respondent No.1 on record disclose that respondent No.2 was teaching in the primary section of the school upto the academic year 2002-2003. The muster roll which was also produced, according to the learned advocate, reveals that the petitioners had included the name of

respondent No.2 in the primary section and not the secondary section. He, therefore, submits that the order of the School Tribunal must be upheld by dismissing the present petition.

10. Respondent No.2 contested this petition though she had not appeared before the School Tribunal. The submissions of the learned advocate for the petitioners were adopted by the learned advocate for the respondent No.2 who in fact had appeared for the petitioners before the School Tribunal. The learned advocate submits that the seniority of respondent No.2 must be reckoned from the date that she was appointed in service, as she was already qualified for being appointed to the post of headmistress when she entered in service.

11. The vexed issue of fixing the seniority of teachers is no longer res integra. There is a catena of judgments which indicate how the seniority of Assistant Teachers is to be fixed. Most of the judgments relied on by the learned advocates indicate that the seniority of the teacher must be fixed from the date she acquired the qualification as a trained teacher in the secondary section. Schedule "F" Note-3 of the M.E.P.S. Act stipulates 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. The seniority would thus have to be reckoned from the date respondent Nos.1 and 2 achieved the requisite qualifications and were eligible for being appointed as headmistress. It is no doubt true that respondent No.2 was qualified earlier since she secured the M.A. degree in 1985 and B.Ed. degree in 1981. However, the evidence on record indicates that respondent No.2 was teaching Classes 5 to 7 which, according to the learned advocate for the petitioners, form a part of the primary section. Therefore, it must be held that respondent No.2 was employed to teach in the primary section, contrary to her letter of appointment. She had taken no exception to this inconsistency on the part of the petitioners. She continued to teach in the primary section i.e. Classes 5 to 7, till she was absorbed in the secondary section on 10.8.2004. This date has been ascertained by the Inspector deputed by the Education Officer to the petitioners' school. The affidavit of the Education Officer, which is on record, indicates that although the Education Officer had called upon the management to explain the irregularities in running the school in breach of the provisions of the M.E.P.S. Act and Rules framed thereunder, the management did not care to respond. A grievance is made by the learned advocate

for the petitioners that the affidavit was filed by the Education Officer on the date when the appeal before the School Tribunal was reserved for judgement thus causing the petitioners grave prejudice. This contention is without merit. When the School Tribunal accepted the affidavit of the Education Officer, the petitioners were given an opportunity to reply to the same and to advance arguments in respect of that affidavit. However, it appears that the petitioners did not bother to avail of this opportunity.

12. In the case of **State of Maharashtra & ors. v/s Tukaram Tryambak Chaudhari & ors.**, reported in JT 2007 (3) SC 523, the Supreme Court has held thus :-

"20. We have carefully considered the submissions made on behalf of the respective parties. Having particular regard to the fact that though standards 5 to 7 were attached to both primary schools as well as secondary schools, these classes in fact, represented the middle schools for which different standards were being followed.

21. Conscious of such disparity in respect of teachers who are similarly situated but were treated differently on account of their being attached to primary schools and/or secondary schools, the State Government resolved to eliminate such differences and to make provisions for trained graduate teachers to be upgraded to a higher scale to the extent of 25% of the posts. the said Resolution consciously refers to in service graduate primary teachers who were eligible for appointment to the posts in the increased pay-scale. In fact, one of the conditions for

appointment of in service graduate primary teachers to the converted post carrying the higher pay-scale was that such teacher should have obtained a degree in Arts or Science and had also obtained a degree in education namely, B.Ed. While adopting the aforesaid Resolution, the Government was, therefore, fully aware of the fact that there were graduate teachers teaching in standards 5 to 7 in the primary schools. This fact was also referred to by the Division Bench of the High Court in its judgment under appeal. It has been mentioned that one of the contentions raised on behalf of writ petitioners was that in terms of Government Resolution dated 26th October, 1982, the petitioners were entitled to be appointed and continued as trained teachers in B.Ed. scale.

22. As has been pointed out by Mr.Apte, the said Government Resolution does not appear to have been brought to the notice of the Full Bench which rendered its decision on the reference made to it on the basis of the Maharashtra Rules of 1981 in respect whereof conflicting views had been taken with regard to the eligibility of a graduate, also holding the B.Ed. degree to be appointed in a primary school. The Resolution of 1979 was dealing with a situation which was prior to the enactment of the said Rules and which contemplated the existence and appointment of graduate teachers in primary schools."

Thus, Classes 5 to 7 may be attached either to the primary school or to the secondary school run by any institution. In the present case, admittedly, when the respondent No.2 was appointed, she was asked to teach in Classes 5 to 7. The learned advocate for the petitioners has conceded that Classes 5 to 7 were attached to the primary school of the petitioners. Therefore, respondent No.2 was a teacher in the primary

section of the school and not in the secondary school, when she was appointed on 30.6.2002. There is a controversy as to whether respondent No.2 was appointed to the secondary section on 30.7.2002 or on 10.8.2004. If she was appointed to the secondary school on 30.7.2002, then she would be senior to respondent No.1 who acquired the B.Ed. degree from the recognised university on 4.6.2003. However, when the learned advocate for the petitioners has conceded that the secondary section of the school consisted of Classes 8 to 10, it is obvious that the primary section includes Classes 1 to 7. The petitioners, therefore, have illegally and incorrectly fixed the seniority of respondent Nos.1 and 2, inter se. The respondent No.1 had acquired the requisite qualification on 4.6.2003 and, therefore, was senior to respondent No.2. She was entitled to be appointed as the headmistress instead of respondent No.2 who entered the secondary section only on 10.8.2004 as found by the Education Officer.

13. In my view, therefore, there is no error of law much less an error apparent on the face of the record, committed by the School Tribunal. There is no need to interfere with the order of the School Tribunal.

14. Petition dismissed. Rule discharged with costs to

respondent No.1.

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