

SUPREME COURT OF INDIA

Ku.Bhawana

Vs.

State of Maharashtra

C.A.No.11934 of 2018

(Ashok Bhushan and Ajay Rastogi,JJ.,)

04.01.2019

JUDGMENT

Ajay Rastogi, J.,

SLP(C)No.28527 of 2016

1. The dispute in this appeal pertains to the inter se seniority of the appellant vis-a-vis 5th respondent, who were appointed as Assistant Teacher in Secondary School and their services are governed by the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter being referred to as “Rules 1981”). Smt. Sindhutai Poreddiwar, Gogaon, Distt. Gadchiroli, with effect from 15th July, 1994 vide order of appointment dated

2. The brief facts that culled out in a nut shell are that the appellant was appointed as Rest. (untrained) Teacher in High 27th June, 1994. Her appointment was purely on temporary basis for a period from 15th July, 1994 to 7th May, 1995 on the terms & conditions as laid down in Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules of 1981 framed thereunder. She qualified her B.Ed examination and became a trained teacher on 19th September, 1997. At the same time, the impleaded 5th respondent was appointed as trained Assistant Teacher vide order of appointment dated 13th August, 1997. On the date of appointment, he was holder of the qualification of B.A., B.Ed. and was a trained teacher under the Scheme of Rules, 1981. At one point of time, the appellant was placed senior to the 5th respondent in the category of Assistant Teacher that gave a cause of grievance to the 5th respondent. If there is any grievance to the teaching/non-teaching staff in reference to inter se seniority, such dispute has to be adjudicated by the Education Officer as provided under Rule 12(3) of the Scheme of Rules, 1981.

3. The Competent Authority adverted to the rival claims of the parties and observed in its order dated 31st March, 2003 holding that the 5th respondent was appointed on 13th August, 1997 as a trained teacher holding the qualification of B.A. B.Ed. and at the time of entry into service, he was in category table ‘C’. At the same time, the appellant although was appointed

as Assistant Teacher (untrained) with effect from 15th July, 1994 but she qualified her B.Ed on 19th September, 1997 and became member of category table 'C' only on acquiring qualification of B.Ed. and accordingly the 5th Respondent became senior to the appellant in category 'C' to Schedule 'F' annexed to Rule 12 of Rules, 1981. It was upheld by the High Court under the impugned judgment which is a subject matter before us.

4. Learned counsel for the appellant submits that practically inter se seniority is not an issue in the present matter although raised before the High Court but her grievance primarily is regarding salary escalation which is extended to the graduates as defined in Rule 2(j) annexed to Schedule 'B' to the Rules, 1981. Learned counsel further submits that the 5th respondent being a temporary teacher cannot claim seniority until stood confirmed and seniority could not have been claimed by him over the appellant before becoming member of the Rules, 1981. Learned counsel further submits that under the scheme of Rules, seniority is determined on the basis of longer officiation of service in the cadre, her later acquiring the qualification of B.Ed and become a trained Assistant Teacher would not take away her right of seniority envisaged under Rule 12 of Rules, 1981.

5. Per contra, learned counsel for the respondent, on the other hand, submits that 5th respondent was initially appointed as a trained teacher and the appellant acquired the B.Ed. qualification later and became a member of Category 'C' of Schedule 'F' annexed to Rule 12 and this fact has been noticed by the competent authority while determining the inter se seniority of the appellant vis-a-vis the 5th respondent and confirmed by the High Court on dismissal of the writ petition and needs no further interference.

6. We heard the learned counsel for the parties and with their assistance perused the materials on record.

7. Before adverting to the question raised for consideration, it will be apposite to take a glance of the scheme of Rules, 1981.

8. The Rules of 1981 has been framed in exercise of the powers conferred by sub-sections (1) and (2) of Section 16 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. Rule 2(j) defines "trained graduate" and 2(k) defines "trained teacher" and qualification of the teachers has been prescribed under Rule 6 read with Schedule 'B' and the appointment of teaching staff is made in terms of the procedure prescribed under Rule 9 and their seniority is being determined in terms of Rule 12 read with the guidelines laid down in schedule 'F' annexed to the scheme of Rules, 1981. The dispute in reference to inter se seniority is to be resolved by the Education Officer as referred to under Rule 12(3) of Rules, 1981. The extract with reference to rules along with Schedule 'F' annexed to Rule 12 of the Rules, 1981 relevant for the purpose is reproduced as under:-

"12. 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.

Schedule 'F'

1. Guidelines for fixation of seniority of teachers in the primary schools. - The seniority of primary school teachers in Primary Schools shall be based on the date of joining service and continuous officiation.

2. Guidelines for fixation of seniority of teachers in the secondary schools Junior Colleges of Education and Junior College classes attached to secondary schools and Senior Colleges. - For the purpose of fixation of seniority of teachers in the secondary schools. Junior Colleges of Education and Junior College classes attached to Secondary Schools the teachers should be categorised as follows :

Category A : Heads of Secondary schools having an enrolment of students above 500 and Principals of Junior Colleges of Education having more than four Divisions on the basis of the dates of their appointments to the respective posts.

Category B : Heads of secondary schools having an enrolment of students of 500 and below, Principals of Junior Colleges of Education having four or less Divisions and Assistant Heads of Secondary schools having more than 20 classes on the basis of the dates of their appointments to the respective posts.

Category C : Holders of - M. A. /M. Sc./M. Com., B.T./B. Ed., or its equivalent; or B. A./B. Sc./B. Com., B. T./B. Ed., or its equivalent; or B. A./B. Sc./B. Com. Dip. T. (old two years course); or [B. A./B. Sc./B. Com., S. T. C. /Dip. Ed./Dip. T. (one year course) with 10 years post-S. T. C. etc. service.

[B. A. or its equivalent plus Senior Hindi Shikshak Sanad with five years service; or Junior Hindi Shikshak with ten years service [after obtaining both academic and training qualifications.]]

Category D : Holders of-

B. A., B. Sc./B.Com./S. T. C./Dip. Ed. (one year course) [Senior or Junior Hindi Shikshak Sanad] or its equivalent.

[Explanation. - On and after the date of publication of this notification in the Official Gazette and without affecting the promotion made until that date, the inter se seniority of teachers with qualification Senior Hindi Shikshak Sanad or Junior Hindi Shikshak Sanad in service should be fixed in Category 'C' with reference to the date of their acquiring both the qualifications i.e. B.A. or its equivalent and the Senior (5 years) or Junior Hindi Shikshak Sanad (10 years) as the case may be by the teachers concerned.]

Category E : Holders of - S. S. C., S. T. C./Dip. Ed./Dip. T. (one year course) [Senior or Junior Hindi Shikshak Sanad] or its equivalent.

Category F : Untrained Graduates or holders of equivalent qualification.

Category G : Untrained Matriculates or holders of equivalent qualification.

Category H : All teachers other than those mentioned in categories A to G.

Note 1 : For the purpose of categories C, D, and E teachers with S. T. C., T. D., Jr. P. T. C. Dip, T., Dip. Ed. (post S.S.C. one year course) qualifications appointed on or after 1st October 1970 shall be considered as untrained and their seniority shall be fixed in the 'F' or 'G' category of untrained teachers as the case may be.

Note 2 : The following training qualifications which can be secured two years after S.S.C. Examination shall be considered as training qualification for the purpose of seniority even after 1st October 1970 -

(1) D. Ed. (2 years).

(2) T. D. (Bombay University).

(3) Dip. Ed. (Nagpur University).

Note 3 : 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.

Note 4 : The categories mentioned above represent the ladder of seniority and have been mentioned in descending order.

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.

Note 6 : The seniority of the (coaching staff in night school shall be maintained separately.

Note 7 : Where one of schools is a Girls' school and where the Management desires to maintain a separate seniority list of teachers in that school, the management shall resolve accordingly and forward a copy of the resolution to the Education Officer or, as the case may be, the Deputy Director of Education. Such a decision shall not, however, be revocable at any time in future. Further, where the Management decides to do so the candidates to be appointed to the teaching posts shall be given a clear understanding to the effect that they shall not have any claim on the promotional posts in other schools run by the same Management. The services of the members of the teaching staff in such a school shall not be permanently transferable to any other school and vice versa. The temporary transfer of services of the members of the teaching staff in such a school shall also be with the prior permission of the Education Officer or, as the case may be, the Deputy Director of Education.

Note 8 : Where a Management runs one or more secondary schools and a Junior College of Education, then notwithstanding the fact that trained graduate teachers in Junior College of Education are in a higher scale of pay, a combined seniority list of all teachers, in both the types of Institutions shall be maintained in such schools and Junior College of Education in accordance with the guidelines laid down in paragraph 2 of this schedule. This seniority list shall form the basis for purpose of promotion to the posts of Head Masters and Assistant Head Masters in secondary school (s) and Principal (s) of Junior College of Education.

Note 9 : In the case of permanent teachers having a break or breaks in service (physical or otherwise i.e. owing to part-time service interposed) between two spans of full-time service under the same management, after being made permanent but prior to the 1st July 1970 and who may not have changed the cadre after the period of break, the Management shall condone the break (s) for period(s) not exceeding three years for the purpose of seniority by commuting retrospectively the period of absence. If the period exceeds three years and if the teachers had worked on part-time basis, the Management shall also give credit for Period (s) of part time service to the extent of half the total period, for the purpose of seniority only. Each type of such breaks shall not exceed three in number during the career of a teacher and seniority so gained shall not entitle the teacher for retrospective promotion.

Note 10 : The seniority of secondary school teachers in Vidarbha Region who were permanent on the 31st December 1965 and whose seniority was determined as per the provisions contained in the Madhya Pradesh Secondary Education Act, 1951 and the rules made thereunder shall not be disturbed. If any teacher among such teachers, improves his qualifications and thereby switches over to higher category, these guidelines of seniority shall apply so far as the determination of his seniority in the higher category is concerned.”

9. The Scheme of the Rules, 1981 of which reference has been made clearly envisages that the teaching staff holding qualification mentioned in Sub-section (i) to (iv) of Clause 1 of Item II in Schedule 'B' are considered trained teachers and the seniority of teachers in primary Schools and teachers in the Secondary Schools, Junior College of Education and Junior College attached to Secondary Schools are being determined in terms of the guidelines laid down for fixation of seniority of teachers in Schedule 'F' annexed to Rule 12 of Rules, 1981. As regards fixation of seniority in the primary school is concerned, it is based on the date of joining service and continuance officiation. At the same time, fixation of seniority in the secondary schools, junior colleges of education and junior college classes attached to secondary schools and senior colleges, it has been graded into separate categories commencing from A-H, and as regards category 'A and B' are concerned, the seniority is determined on the basis of the date of appointment to the respective posts and those who are holders of various qualifications falling in categories C to H, their seniority is determined on the basis of total service rendered by the person in a particular cadre in school or junior college of education for the purpose of seniority and for promotion as indicated under Note 5, the rule making authority was conscious of this fact giving preference in descending order to the holders of category 'C, D, E or F', as the case may be, as indicated in Note 4. As a consequence thereof, a person who is a member of category 'F' or 'G', as the case may be, would in no manner can rank senior to the teaching staff who is member of category 'C', 'D' or 'E' based on their continuous service rendered in the category to which the person belongs.

10. Indisputedly, the 5th respondent was holding the qualification of B.A. B.Ed. at the time of his initial appointment dated 13th August, 1997 and became a member of category 'C'. At the same time, the appellant though appointed on 27th June, 1994 as an untrained teacher, having acquired the training qualification i.e. B.Ed. on 19th September, 1997 and became a member of category 'C' after entry of the 5th respondent into service as a trained teacher, could not have claimed seniority in category 'C' over the 5th respondent prior to acquiring professional qualification(B.Ed) as envisaged under the Scheme of Rules, 1981 as trained teacher and this what was considered by the authority who examined the inter se seniority of the appellant vis-a-vis 5th respondent under the Rules, 1981 and confirmed by the High Court on dismissal of the writ petition preferred by the appellant.

11. The submission of the appellant regarding salary escalation to trained graduates against 25% quota was neither raised before the competent authority nor before the High Court. It may not be advisable for us to examine at this stage and leave it to authority competent if raised to examine it independently in accordance with law.

12. Further submission made by the appellant in reference to nature of appointment as a trained/untrained teacher for the purpose of the determination of inter se seniority being insignificant is without substance for the reason that appointments are made of the teaching staff strictly in terms of rule 9 of the Rules, 1981 and their seniority is determined under Rule 12 read with the guidelines annexed to Schedule 'F' to the Rules, which envisages total continuous service rendered by the person in that particular cadre in any school or college, as

the case may be, which may be a relevant consideration for the purpose of seniority and for promotion and later confirmation or becoming permanent in the cadre of teaching staff may not be the decisive factor for the purposes of determination of seniority of the teaching staff in the cadre under the scheme of Rules, 1981.

13. Indisputedly, in the instant case, the appellant was entered into service as an untrained teacher falling in category 'F' and the 5th respondent was a trained teacher falling in category 'C' at the time of entry into service and the appellant became a trained teacher on qualifying B.Ed examination after entry of the 5th respondent into service on 19th September, 1997. The 5th respondent was a member of category 'C' at the very inception of appointment and the appellant became a member of category 'C' later on acquiring the B.Ed. qualification which indisputedly she acquired after entry of the 5th respondent into service. As such, she could not have claimed seniority over the 5th respondent in category 'C' of Schedule F annexed to Rule 12 of Rules, 1981, this what has been held by the High Court under the impugned judgment.

14. We, therefore, find no substance in this appeal and the same is accordingly dismissed.