

BOMBAY HIGH COURT

Baboolal Dalchand Maloniya

Vs.

Director of Municipal Administration Sachivalaya

Special Civil Appln. No. 216 of 1973

(Deshmukh and Dharmadhikari, JJ.)

20.11.1973

JUDGMENT

Dharmadhikari, J.

1. Petitioner Babulal Dalchand Maloniya was appointed as an Assistant Teacher in the Municipal Indian English Middle School, Saoner, on 2-7-1951. After the necessary training he was appointed on a regular scale from 5-4-1954 and was also confirmed in the said post with effect from 5-4-1954 itself. In the year 1957 the Indian English Middle School run by the Municipal Council was converted into a full-fledged High School and the petitioner was appointed as the Assistant Teacher in the same High School. In the year 1969, the petitioner was selected for training of B.Ed. course and he successfully passed the said examination in the year 1970. Thus, the petitioner was working as a trained Assistant Teacher in the Municipal High School. The third respondent to this petition, namely, Wasudeo Laxman Bharadwaj, was working as a Headmaster of the said High School. On 30-12-1972 respondent No. 3 Bharadwaj was to complete his age of 58 years, which is the age of superannuation according to the Municipal bye-laws. Therefore, the Municipal Council. Saoner served an order dated 31-12-1971 on Bharadwaj informing him that he will stand superannuated on 30-12-1972. Thus respondent No. 3 Bharadwaj was made to retire from service on 30-12-1972. Consequent upon his retirement, the petitioner was ordered to officiate in the post of Headmaster vide order dated 1-12-1972 issued by the Administrator of the Municipal Council, Saoner. Thereafter vide order dated 31-1-1973 the petitioner was appointed as the Headmaster in a substantive capacity. After receiving the notice dated 31-12-1971, the respondent No. 3 preferred an appeal before the Director of Municipal Administration with his representation-cum-appeal dt/-14-9-1972. The petitioner was not made a party to the said appeal, nor he was given any opportunity of being heard before an order was passed by the Director of Municipal Administration dated 12-2-1973 whereby respondent No. 3 Bharadwaj was directed to be reinstated as a Headmaster of the Municipal High School. After receiving this order of the Director, the Administrator of the Municipal Council,

Saoner issued an order dated 21-2-1973 reinstating respondent No. 3 Bharadwaj as a Headmaster in the Municipal High School with immediate effect. Consequent upon this order of reinstatement of respondent No. 3 Bharadwaj as the Headmaster, the Administrator of the Municipal Council, Saoner further ordered reversion of the petitioner to his original post of the Assistant Teacher. These orders have been challenged by the petitioner in this writ petition.

2. According to the petition, the order passed by the Director of Municipal Administration is without jurisdiction. It was also contended on behalf of the petitioner, that it was not open for the Director of the Municipal Administration to exercise any such powers or act contrary to the Government instructions. According to the petitioner, he was not given any opportunity of being heard before the said order was passed by the Director of the Municipal Administration, and therefore, the said order is contrary to the principles of natural justice. It was also submitted on behalf of the petitioner that the said order passed by the Director of the Municipal Administration resulted in reversion of the petitioner to the post of the Assistant Teacher, and therefore, has resulted in civil consequences. In any case, therefore, before passing of the said order it was obligatory on the part of the Director to give a reasonable opportunity to the petitioner of being heard. It was also contended on behalf of the petitioner that according to the Municipal bye-laws the age of retirement of all municipal employees is 58 years. The respondent No. 3 was an employee of Saoner Municipal Council, and therefore, according to the bye-laws of the Municipal Council, Saoner, it was not open for the Municipal Council to retain him in service after he attained the age of 58 years. It was then contended on behalf of the petitioner that the Director of the Municipal Administration committed an error, apparent on face of the record, in holding that the provisions of Secondary School Code, framed under the M.P. Secondary Education Act, 1951, were applicable to the teachers serving in the High School run by the Municipal Council. According to the petitioner, the provisions of the said School Code were not applicable to the schools run by the Municipal Council and the employees of the Municipal Council, including the teachers serving in the schools, were governed by the terms and conditions as incorporated in the Municipalities Act, Rules and Bye-laws framed thereunder. In the alternative it was also contended on behalf of the petitioner that even assuming that the provisions of the said Code framed under the said Act applied to the teachers serving in the Municipal Council, Saoner, including the respondent No. 3, respondent No. 3 Bharadwaj was not entitled to take advantage of the said Code, as no agreement was entered into between the Municipal Council and the respondent No. 3 as contemplated by Regulation 7 of Chapter XII of the School Code. According to the petitioner, the School Code framed under the M.P. Secondary Education Act, 1951 was in the nature of a bye-law framed by the Vidarbha Board of Secondary Education and in case of conflict between the said Regulation and the bye-laws of the Municipal Council, Saoner, the bye-laws framed under the Municipalities Act by the Municipal Council, Saoner should prevail. Therefore, in short, it was the contention of the petitioner that the conditions of service of the respondent No. 3 were governed by the provisions of the bye-laws framed by the Municipal Council, Saoner, and therefore, it was not open for the Municipal Council, Saoner, to retain the respondent No. 3 in service after the age of 58 years. Hence the

order passed by the Municipal Council retiring him from service after attaining the age of 58 years was perfectly legal. It was also contended on behalf of the petitioner that the order of retirement issued by the Municipal Council was not in the nature of penalty, and therefore it was not open for the Director of the Municipal Administration to entertain an appeal under any of the provisions of the Maharashtra Municipalities Act, 1965. The order passed by the Director of Municipal Administration is, therefore, without jurisdiction; and is illegal.

3. In reply to these contentions raised on behalf of the petitioner, respondent No. 3 Bharadwaj and respondent No. 2 Municipal Council, Saoner filed their returns. No appearance was put before this Court on behalf of the Director of Municipal Administration. In the return filed on behalf of the respondent No. 2 the Municipal Council, Saoner, it was contended that the Municipal Council, Saoner has power to frame the bye-laws for the purposes of prescribing service conditions of its employees and accordingly the bye-laws have been framed by the Municipal Council in this behalf with the approval of the Government. Under the relevant bye-laws the age of superannuation of the Municipal employees is 58 years. According to the Municipal Council Chapter XII of the Regulations of the Board of Secondary Education of Madhya Pradesh, which have been framed under the Madhya Pradesh Secondary Education Act, 1951 are not applicable to the teachers serving in the Municipal Council. It was also contended on behalf of the Municipal Council that the Saoner Municipal Council had not executed any agreement nor has taken any agreement in writing from either the petitioner or the respondent No. 3 as contemplated by the provisions of the said School Code. It is no doubt true that the Divisional Superintendent of Education Nagpur wanted that the teachers and the Headmaster of the Municipal High School should be made to sign an agreement of service in writing as per the said Regulations, but, according to the respondent No. 2, the Municipal Council, the Municipal Council has been always of the view that the said School Code did not govern the service conditions of the Headmaster and the teachers of the High School. In this view of the matter, no agreement of service has been executed by either the petitioner or the respondent No. 3, by any teacher at any time so far as the Municipal Council, Saoner, is concerned. Thus, in short, it is also the contention of the Municipal Council, Saoner that the provisions of the School Code were not applicable to the teachers working in the Municipal Council and their service conditions are governed by the bye-laws framed by the Saoner Municipal Council.

4. Respondent No. 3 Bharadwaj, however, resisted the various contentions raised on behalf of the petitioner. It was contended by him that the provisions of the School Code framed under the M.P. Secondary Education Act were applicable to the teachers working in the Municipal Council and the service conditions of the teachers were not governed by the bye-laws framed by the Municipal Council in this behalf. According to the respondent No. 3, Bharadwaj, Madhya Pradesh Secondary Education Act, 1951 was a special Act and in exercise of the powers conferred by the said Act the State Government had framed Regulations, including Chapter XII, known as the School Code. In pursuance of the provisions of the School Code, respondent No. 3 Bharadwaj had submitted Form of agreement to the Municipal Council in Form No. III and had

completed his part of the contract. According to Bharadwaj, the provisions of this School Code formed part and parcel of the terms and conditions of his service, the Municipal Council, Saoner committed an error in directing his retirement before he attained the age of 60 years. It was also contended on his behalf that the Director of the Municipal Administration has got an overall control over the Municipal Councils and hence he has jurisdiction to set aside the illegal action taken by the Municipal Council, Saoner, and therefore, the order passed by him is in accordance with law. It was also contended on behalf of the respondent No. 3 that in case of a conflict between the School Code and the Bye-laws of the Municipal Council, it is the School Code which will prevail. In any case, according to him, in view of the Government resolution dated 19-10-1971, sanctioning the pension scheme for the teachers, it is quite clear that the teachers who were in service of the Municipal Council on 31-3-1966 were entitled to continue in service till they attain the age of 60 years and as Bharadwaj, the respondent No. 3, was in service of the Municipal Council, Saoner in the year 1936, on 31-3-1966 and had exercised his option it was not open for the Municipal Council, Saoner to issue an order of his superannuation directing his retirement from 31st December, 1972.

5. In view of the controversy involved in this writ petition, it will be useful to refer to the relevant provisions of the Madhya Pradesh Secondary Education Act, 1951 and the Regulation framed thereunder. The Madhya Pradesh Secondary Education Act, 1951 was enacted to make a provision for establishment of a Board to regulate Secondary Education in Madhya Pradesh. After making various provisions for incorporation of the Board etc., vide Section 19 of the said Act, a provision was made conferring a power upon the Board to make Regulation for the purposes of carrying into effect the provisions of the Act. In particular and without prejudice to the generality of this power, a power was conferred upon the Board to frame Regulation providing for the conditions of recognition of institutions for the purposes of admission to the privileges of the Board and framing of a School Code to ensure a minimum standard of efficient and uniform management of the schools. By Section 20 of the said Act the Government was authorised to frame the first Regulations and it was further directed that the Regulations so made by the State Government, after previous publication, shall be deemed to have been made by the Board and continue in force until altered or modified by the Board. In exercise of this power the Regulations were framed by the State Government Chapter XI of the said Regulations dealt with the recognition of institutions by the Board. Vide Regulation No. 11 of the said Chapter it was made clear that every recognised school shall comply with the provisions of the School Code as laid down in Chapter XII of the Regulations. Vide Chapter XII of the said Regulation a School Code was framed by the State Government, in exercise of its powers under Section 20 of the M.P. Secondary Education Act, 1951.

6. To understand the nature and the scope of the said School Code it is necessary to reproduce the statement of objects and reasons of this Code, which is as under :

"The Code is framed in order to ensure a minimum standard of efficient and uniform

management of secondary schools recognised by the Secondary Education Board. It applies to all non-Government Secondary Schools. These schools are at present controlled and managed by Governing Bodies or Managing Committees with widely different constitutions and functions. The Code provides for the formation of a School Committee for secondary schools, and this shall be the only body answerable to the Board on behalf of the governing body or the founder-member or members as the case may be. The constitution of the School Committee proposed in the Code permits the representation of the governing body on it. The Code also regulates the appointment, salaries and conditions of service of teachers. At present there is no uniformity in these matters, which are trial to the well-being of secondary schools, and the result is that the staff in several schools is underpaid, and has no security of service. The Code finally tries to secure a tolerable financial stability for every institution by requiring that it shall have reserve fund. If private bodies, which are the biggest agency today in the field of secondary education, are to continue to promote and maintain more secondary schools, it is essential that they should be allowed to do so only if minimum financial stability is guaranteed for present and future schools conducted by them. The Code is, therefore, intended to secure the attainment of the following three objectives in all non-Government secondary schools :-

- (i) minimum standard of uniform efficient management;
- (ii) minimum scales of salaries for teachers and satisfactory service conditions for them;
- and
- (iii) a minimum financial stability."

Although the statement of objects and reasons leading to the passing of the Code cannot be looked into as a direct aid to the construction, yet it can be used for a limited purpose for finding out the purpose for which this Code was made. For properly understanding the true meaning and import of the Code as such, it is necessary to gather as to what was the intention of the Government behind the framing of the Code itself. As observed by this Court in *Smt. Radhabai v. State of Maharashtra*¹, the statement of objects and reasons of the Statute may and does often furnish valuable historical material in ascertaining the reasons which induce the Legislature to enact a Statute. For determining the true scope of the Code, it will be necessary to take into account the history behind the framing of this Code, the reasons which led to its framing, the mischief which is intended to suppress and the remedy provided by the Code for curing the mischief, in our opinion, the statement of objects and reasons affords useful assistance in this behalf. From this statement of objects and reasons it is quite deal that before framing of the School Code the schools were controlled and managed by Governing Bodies or the Managing Committees with widely different constitutions and functions, and therefore, it was intended to provide for the formation of a School Committee for the Secondary School and this Committee shall be the only body answerable to the Board on behalf of the governing body or the founder-member or members as the case may be. Before the framing of the Code there was no uniformity in the matters relating to the appointments, salaries and conditions of service of the teachers and

as a result of this the staff in the several schools was underpaid and had no security of service. The Code also tried to secure a tolerable financial stability for every institution by requiring that it should have reserve fund etc. In short, the Code was therefore, intended to secure the attainment of the objectives, namely, minimum standard of uniform efficient management, minimum scales of salaries for teachers and satisfactory service conditions for them and minimum financial stability. From this statement of objects and reasons it is quite clear that the framers of the Code had in their mind the situation then existing in the various private schools which had no financial stability and wherein the staff was underpaid and had no security of service etc. This was the mischief which the framers of the Code intended to suppress and remedy and for this purpose the said Code was framed. So far as the teachers working in the Secondary Schools run by the Municipal Council were concerned their service conditions were governed by the provisions of the C.P. and Berar Municipalities Act and the Rules and Bye-laws framed thereunder. The Saoner Municipality was the Municipality constituted under the C.P. and Berar Municipalities Act, 1922. The said Municipalities Act made specific provisions regarding appointments, duties and conditions of service of the servants of the Municipal Council. Under the C.P. and Berar Municipalities Act, 1922 the State Government was authorised to make rules under the Act prescribing the qualifications of the candidates etc. In exercise of this power, the State Government had framed Rules known as Municipal Officers and Servants Recruitment Rules. By these Rules the State Government had also laid down the educational and other qualifications of a candidate for the post of a teacher

¹1969 Mah LJ 933 : (AIR 1970 Bom 232) (FB)

in the High Schools. The Recruitment Rules further provided that the Municipal Committees may make an appointment for any of these posts, including the post of a teacher, either by direct recruitment or by recruitment of an officer or an official already in Municipal service. By Rule 9 of these Rules, the Municipal Committee was enjoined to invite applications by notice to be published in the Committee's office and in one or more leading newspapers and constitute a Selection Committee for the purpose of selecting candidates. The provisions were also made for selection, appointment and confirmation. No. 3, Bharadwaj, in support of his contention has relied upon the pension scheme framed by the Government vide Government Resolution dated 15th August 1971, known as the Pension Scheme for the teaching staff in the Secondary Schools run by the Municipal Council or the Corporation and which is duly adopted by the Saoner Municipal Council. It is not contended by Shri Masodkar that by virtue of this Government resolution or adoption of the said Pension Scheme, an additional right has been conferred upon respondent No. 3 Bharadwaj to continue in service till he attains the age of 60 years. According to Shri Masodkar, the effect of adoption of this Pension Scheme by the Municipal Council is to protect the rights already conferred upon a teacher by the School Code. In our opinion, there is no substance in this contention of Shri Masodkar. In the view which we have taken, that the provisions of the School Code were not applicable to the teachers serving in the schools run by the Municipal Council, the question of protecting any such right will not arise. Even otherwise merely because the Pension Scheme has been adopted by the Municipal Council, it cannot be said that bye-law framed by the Municipal Council automatically stood altered or amended. This

is further clear from the contentions raised on behalf of the Municipal Council in its retutation Act, 1951, the respondent No. 3 is entitled to continue in service till he attains the age of 60 years. According to Shri Masodkar, this letter should be construed to be an order issued by the Director of Municipal Administration in exercise of his power under Section 76(2)(b) of the Maharashtra Municipalities Act, 1965.

13. It is not necessary for us to consider this contention of Shri Masodkar, in view of the fact that the alleged letter was written on behalf of the Director of Municipal Administration on 17-3-1973, much after the actual retirement of respondent No. 3 Bharadwaj. Respondent No. 3 Bharadwaj stood retired from the Municipal service with effect from 31-12-1972. The letter written by the Director of Municipal Administration on 17-3-1973 can have no retrospective effect, and therefore, in any case as far as the facts and circumstances of the present case are concerned, in our opinion, such a letter is not relevant for deciding the controversy involved in this writ petition.

14. On the contrary as per instructions issued by the Government vide its letter No. SSN/3064-34764-G dated 17-4-1964 and addressed to the Deputy Director of Education, Nagpur the Government has clarified the position that in case of conflict between the service conditions of teachers serving in secondary schools managed by the Municipal Committee governed by the Statute and the service conditions of the teachers laid down in the grant-in-aid Code for secondary-schools, the former will prevail. The petitioner has also filed an Annexure-E, another letter issued by the Government of Maharashtra Education and Social Welfare Department, dated 25-1-1965 addressed to the President, Municipal Council, Deulgaon Raja, district Buldana, wherein the Under-Secretary to the Government of Maharashtra, Education and Social Welfare Department had informed the President of Municipal Committee, Deulgaon Raja thaal High School, Saoner initially in officiating capacity by order dated 1-12-1972. However, subsequently by an order dated 31-1-1973 he was appointed as a headmaster in the Municipal High School, Saoner with effect from 1-2-1973 in a substantive capacity. Not only this, as a result of the order passed by the Director of Municipal Administration dated 12-2-1973 he was reverted from the post of the headmaster to his original post of the Assistant Teacher with immediate effect. It cannot be disputed, that this reversion, resulted in loss of the emoluments and status so far as the petitioner is concerned. The order passed by the Director of the Municipal Administration directing the reinstatement of respondent No. 3 Bharadwaj and the consequential reversion of the petitioner from the post of the headmaster to the post of an Assistant Teacher had resulted in civil consequences, and therefore, in our opinion, the petitioner was aggrieved by the said orders passed by the Director of the Municipal Administration as well as the Administrator, Municipal Council, Saoner, and had, therefore, locus standi to file the present writ petition.

17. The whole controversy involved in this writ petition can also to be looked into from another perspective. After the formation of the State of Maharashtra a new Code for recognition of grant-in-aid to Secondary School was framed. From the introductory note appended to this Code,

which is now known as Secondary Schools Code, it is quite clear that before the State reorganization, Vidarbha and Marathwada area of the Ex-Madhya Pradesh and Ex-Hyderabad State respectively and the former States of Saurashtra and Kutch had in their own areas different rules governing recognition of (and) grant-in-aid to non-Government secondary schools. The practices and conventions followed in this connection in these different areas were not uniform. Therefore, in order to bring a uniformity in the matter, an Integration Committee for Secondary Education was appointed by the then Government of Bombay in 1958. This Committee, inter alia was asked to examine the different Education Codes and administrative practices then in force at the secondary stage and to make proposals for the introduction of a unified system of secondary education and pattern of assistance to non-Government secondary schools. This Committee submitted its report in 1959. Even though it did not make any specific recommendations with regard to the Grant-in-aid Code, it did make certain suggestions in this respect. Therefore, in December, 1960, the Government of Maharashtra appointed a Committee consisting of officials and non-officials. It was entrusted with the work of suggesting a unified Code for the consideration of Government. The Committee, after due deliberations prepared a revised Draft Code and submitted the same to Government in August, 1961. The present school Code is mainly based on the draft prepared by that Committee and was introduced as a common Code for the recognition of and Grant-in-aid to non-Government secondary schools throughout the State. The said Code came into force with effect from the year 1963-64. Therefore, after the framing of the said Secondary Schools Code by the Government of Maharashtra, it was the said Code which governed all non-Government secondary schools. After this the Maharashtra Secondary Education Boards Act was enacted by the State Legislature. This Act was enacted to make a provision for establishment of a State Board and a Divisional Board to regulate certain matters pertaining to the education in State of Maharashtra. By Section 40 of the Maharashtra Secondary Education Boards Act, 1965, the M.P. Secondary Education Act, 1951 stood repealed and even the Vidarbha Board of Secondary Education constituted thereunder stood dissolved. Section 40, which is a repealing and saving section only saved the properties, rights and interest of the erstwhile dissolved Boards. Section 40(2)(g) and (h) also accorded protection to the officers and servants of the State Government as well as the dissolved Boards and protected their conditions of service which were applicable to them immediately before the appointed day. No provision was made in this Act to save any of the regulations framed under the M.P. Secondary Education Act, 1951, including the School Code framed under the said Act. This seems to us to be obvious. As already stated hereinbefore, even prior to the enactment of the Maharashtra Secondary Education Boards Act, 1965 the State Government had framed an independent Secondary Schools Code for the purposes of recognition of (and) grant-in-aid to the secondary schools. As observed by the Supreme Court in *State of Maharashtra v. Lok Shikshan Sansthan*², the provisions of this Code were in the nature of executive and administrative instructions. It is clear from the introductory note appended to the new Schools Code that it was framed by the State Government to bring about uniformity in all matters which are provided by the said Code. The said Code was in vogue in the whole State of Maharashtra even before the Maharashtra Secondary Education Boards Act, 1965 came into force and Madhya Pradesh Secondary

Education Act, 1951 was repealed.

18. In this view of the matter it was contended by Shri Madkholkar, the learned counsel for the petitioner, that in view of the repeal of the Madhya Pradesh Secondary Education Act, 1951, the School Code framed under the said Act also stood automatically repealed and as there is no saving clause, saving either the old School Code or any of the Regulations framed under the M.P. Secondary Education Act, 1951, it cannot be said that even in spite of the repeal of the said Act, the old Secondary School Code framed under the M.P. Secondary Education Act, 1951 will govern the terms and conditions of service of the teachers serving in any of the secondary schools in general and the High Schools managed by the Municipal Councils in particular.

19. However, in the view which we have taken already it is not necessary for us to probe into this question in detail and to decide it in this writ petition. Since we have already held that the conditions of service of the respondent No. 3, who was the headmaster of the Municipal High School, Saoner, were governed by the bye-laws framed by the Municipal Council, Saoner under the Municipalities Act and not by the School Code framed under the M.P. Secondary Education Act, 1951, it is not necessary for us to decide other contentions raised by the petitioner in this petition, because, in our opinion he is entitled to succeed in this petition on this ground alone.

20. In the result, therefore, the writ petition filed by the petitioner is allowed and the order passed by the Director of the Municipal Administration dated 12-2-1973, incorporated in Annexure-H, is hereby quashed and set aside, Consequently, the order passed by the Municipal Council, Saoner dated 21-3-1973 ordering reinstatement of respondent No. 3 Bharadwaj and reverting the petitioner to his original post of Assistant Teacher with immediate effect is also hereby quashed and set aside. However, in the circumstances of the case there will be no order as to costs.

Writ petition allowed.

²(AIR 1973 SC 588)