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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7702 OF 2007

Vyankat Baburao Bansode

...Petitioner

Versus

1. Shriwardhan Taluka Shikshan Prasarak and ...Respondents
Sahayak Mandal
2. Pandurang Baburao Satpute
3. Education Officer (Secondary) Zilla Parishad,
Alibag
4. State of Maharashtra

Mr. K. N. Kandekar for the Petitioner.

None for Respondent Nos. 1 and 2.

Ms. V.R. Raje, AGP for Respondent Nos. 3 and 4.

CORAM : M.M. SATHAYE, J.

DATE : 25th AUGUST, 2026

P.C. :

1. Invoking Articles 226 and 227 of the Constitution of India, the Petitioner is challenging the Judgment and order dated 25.04.2007 passed by Presiding Officer, School Tribunal, Pune ('the Tribunal' for short) in Appeal No. 62 of 2005. By the said impugned order, the Petitioner's appeal, challenging the alleged super-session by appointment of Respondent No. 2 as Headmaster, was dismissed.

BACKGROUND

2. Respondent No.1 is an educational institute. The Petitioner is holding qualification of A.T.D., G.D. Arts. The Petitioner belongs to Scheduled Caste Category. He was appointed by Respondent No. 1 in its school as Arts Teacher w.e.f. 14.06.1982 in a clear and permanent

vacancy initially on probation for 2 years. According to Petitioner, he completed the probation period in satisfactory manner.

3. The Respondent No. 2 is also an employee of Respondent No. 1-institute, who got appointed as assistant teacher on 15.12.1988. Admittedly, Respondent No. 2 also belongs to Schedule Caste category, holding better educational qualification of M.A.B.Ed.

4. According to Petitioner, he is senior to Respondent No. 2 and as such, the promotion of Respondent No. 2 to the post of Headmaster w.e.f. 05.07.2005 amounts to super-session and therefore Petitioner filed the said appeal Under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 ('the said Act' for short). The Petitioner prayed for setting aside the promotion of Respondent No. 2 and direction to the Respondent-institute to promote him as Headmaster with full consequential benefits.

5. Respondent Nos. 1 and 2 filed common written statement (Management adopting written statement filed by Respondent No. 2). According to them, Respondent No. 2 is also a candidate belonging to SC category, who is appointed on 15.12.1988. However, Respondent No. 2 is having educational qualification of M. A. B.Ed. and therefore, he was placed in category 'C' of Schedule 'F', following the guidelines under Rule 12 the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ('the said Rules' for short). They contended that appointment of Respondent No. 2 was duly approved by concerned Education Officer and Respondent No. 2 being senior most SC candidate, was legally promoted to the post of Headmaster and there is no super-session. They contended that Petitioner was not qualified with requisite experience and as such was not entitled to promotion.

6. The Respondent-Education Officer filed say before the

Tribunal, contending that the proposal of promotion of Respondent No. 2 has been approved in view of seniority list, however, the department would abide by the decision of the Tribunal.

7. Learned Tribunal after considering the appeal on merits, held that the Petitioner could not prove that while promoting Respondent No. 2 his claim has been superseded. It is further held that Petitioner is not entitled to be promoted as Headmaster in the place of Respondent No. 2. In these circumstances, the appeal was dismissed under impugned order dated 25.04.2007.

8. The Petitioner filed the present petition challenging the impugned order. It was admitted on 03.03.2008. Record shows that this Court has not granted any interim relief in favour of the Petitioner.

SUBMISSIONS

9. Learned counsel for the Petitioner relied upon a diploma certificate awarded to the Petitioner contending *inter alia* that he is holding G.D. Art diploma and therefore under relevant provision for Art Teachers [as provided under category 'C' , schedule 'F' of the said Rules], he being holder of diploma in G.D. Art is not required to complete 10 years service for the purpose of seniority. He relied on G.R.dated 25.11.1988 contending *inter alia* that for the purpose of inclusion of Art Teacher in category 'C' (Schedule 'F') for the purpose of seniority, according to said GR, it is not necessary to complete 10 years experience and since Petitioner is appointed on 14.06.1982, and Respondent No. 2 is appointed much later on 15.12.1988, his seniority ought to have been counted from the date of appointment and therefore, appointment of Respondent No. 2 w.e.f. 05.07.2005 amounts to super-session. He also submitted that since the Petitioner has been given 'trained graduate scale' from 13.06.1989, which is within 10 years of appointment, it shows that 10 year experience requirement does not

apply to him for seniority. He has relied on following judgments in support of his case.

(i) Vaijanath Tatyrao Shinde v/s. Secretary, Marathwada Shikshan Prasarak Mandal, Aurangabad & Ors. 2007(3) AIR Bom R 793.

(ii) Mrs. Gaur Pratibha (Ms. Thakur Pratima Jagatsingh) and Ors. v/s State of Maharashtra through Secretary, 2019(4) Bom C.R. 100.

10. Nobody appeared for Respondent Nos. 1 & 2. However, affidavit in reply is filed by Respondent No. 2 contending *inter alia* that Petitioner has educational qualification of S.S.C. Art who subsequently acquired G.D. Arts diploma. It is contented that Respondent No. 2 is appointed on 15.12.1988 in graduate scale as he was holding qualification of M. A. B.Ed. and was placed in 'C' category w.e.f. 15.12.1988. It is contented that his appointment is duly approved by the concerned Education Officer. Relying on Category 'C' of Schedule F, Respondent No. 2 has contented that for Petitioner, completion of 10 years is necessary and even as per said GR of 25.11.1988, the Petitioner could become eligible only after completing 10 years of experience, i.e. on 14.06.1992. Respondent No. 2 has prayed for dismissal of the petition.

11. Learned AGP appearing for the Respondent-State relied upon first affidavit-in-reply dated 15.12.2007. She contented that the Petitioner is an Assistant Teacher appointed w.e.f. 14.06.1982 and who was appointed as Special Teacher w.e.f. 13.06.1989 in graduate scale which was approved by the concerned Education Officer. She further submitted that Respondent No. 2 was appointed as Assistant Teacher w.e.f. 15.12.1988 in the graduate scale which has been approved by the

Education Officer on 04.03.1989. She pointed out that qualification of Respondent No. 2 is MA B.Ed. and he also belongs to Schedule Caste category and since there was one post vacant of Headmaster due to retirement of the earlier incumbent, Respondent No. 2 has been promoted as Headmaster and such promotion has been approved by the Education Officer. She submitted that as per the roster at relevant time, the backlog of Schedule Caste category for the post of Headmaster was duly filled by promoting Respondent No. 2. She contended that the Petitioner has been given trained graduate scale w.e.f. 13.06.1989 as per GR dated 25.11.1988. However, Respondent No. 2 has been appointed w.e.f. 15.12.1988 in the graduate scale and therefore, his seniority will be from 15.12.1988 in 'C' category.

12. Relying on additional affidavit-in-reply dated 13.08.2026 filed by Respondent No. 3-Education Officer, learned AGP contended that the diploma certificate relied upon by the Petitioner is a purely a diploma certificate issued by Government of Maharashtra for the students completing diploma courses. She submitted that the said certificate is not a degree certificate. It is pointed out that diploma is of 4 years and it is not equivalent to full degree course and to obtain degree in Arts, the person has to complete diploma course and thereafter apply for degree course in Art master. It is submitted that only after completion of Arts master course, that degree is given. It is submitted that contention of the Petitioner that G.D. Arts is equivalent to degree is misconceived. So far as GR dated 25.11.1988 is concerned, she pointed out that the said GR contemplates two situations where first situation applies to person who obtains G.D. Art certificate plus Art Master certificate and second situation is where person obtains diploma in Art like Petitioner, but he has to complete 10 years of experience to make him eligible to be considered in 'C' category for considering seniority. Lastly it is

submitted that the view taken by the Tribunal is correct and no interference is required.

REASONS AND CONCLUSION

13. I have considered the rival submissions and perused the record.

14. At the outset it is necessary to note that both the Petitioner and Respondent No. 2 belong to Scheduled Caste and therefore they are at par on that parameter.

15. Rule 12 of the said Rules read with Schedule 'F' category 'C' mandates the Management to prepare and maintain a seniority list of teaching staff including Headmaster in accordance with guidelines laid down in Schedule F. Clause 2 of Schedule F provides for guidelines for fixation of seniority of Teachers in secondary school (as in the present case) and it is contemplated that for the purpose of fixation of seniority of teachers the teacher should be categorized as Category A, B and C, where Category C deals with holders of various degrees and diplomas. The provision for Art Teachers in Category 'C' reads as under.

"Schedule 'F'

[See rule 12]

1. xxxx

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: xxxx

Category B: xxxx

Category C: Holders of -

XXXX

XXXX

For Art teachers - B.A./B.Sc./B.Com/B.F.A./ Diploma in G.D. Art with –
A.M. certificate/ A.M. Diploma/ Diploma in Art Education; OR
B.A./B.Sc./B.Com/B.F.A./ Diploma in G.D. Art, D.T.C./D.M./A.T.D., with
ten years' service.

XXXX”

(emphasis supplied)

16. The GR dated 25.11.1988 contemplates two situations for inclusion of name in category ‘C’ viz.

A) Degree from recognized university (including B.F.A. Arts degree) or G.D. Art diploma plus A.M. certificate or A.M. diploma holders teacher in secondary schools.

B) Degree from recognized university (including B.F.A. Art degree) or G.D. Art plus D.T.C. or (D.M.) A.T.D. holders with 10 years of experience, after completing D.T.C. (D.M.), A.T.D. respectively.

17. From the certificate relied upon by the Petitioner as well as a clear stand taken by the Respondent-Education Officer in additional affidavit, it is clear that the Petitioner is holding a diploma which is G.D. Art certificate. It is also clear that the said certificate is not a degree certificate. Learned Counsel for the Petitioner argued that the requirement of 10 years service as provided in Category ‘C’ is only limited to D.T.C./D.M./A.T.D. before comma and not for ‘diploma in G.D. Art’. Bare reading of the concerned provisions for Art teachers in category ‘C’ as reproduced above would indicate that various degree/diplomas in the list are provided with a common requirement of 10 years service requirement at the end of that sentence. In that view of

the matter, I am afraid the said argument cannot be accepted.

18. It is not in dispute that the Petitioner was appointed on 14.06.1982; therefore the 10 years experience/services would complete on 14.06.1992, which is after the appointment of Respondent No. 2 on 15.12.1988. Viewed in this light, seniority as given to Respondent No. 2 is legal and proper and can not be faulted.

19. There is one more way to look at the available material. Admittedly, Petitioner's appointment as Special Teacher w.e.f. 13.06.1989 in 'graduate scale' was approved by Education Officer on 05.03.1990. As against this, the Respondent No. 2 was appointed as Assistant Teacher w.e.f. 15.12.1988 (same scale), which has been approved by the Education Officer on 04.03.1989. Both these dates of appointment as well as approval in respect of Respondent No.2 are prior to the appointment of Petitioner as a Special Teacher in graduate scale. Therefore, even assuming that the Petitioner is eligible for graduate scale w.e.f. 13.06.1989, still his appointment as well as approval in that scale is after the appointment and approval of the Respondent No.2.

20. It is therefore clear that Petitioner's eligibility itself for the inclusion in category 'C' has started after the eligibility of Respondent No. 2.

21. In **Vaijanath Tatyrao Shinde (Supra)**, the Full Bench of this Court was considering absence of word "Trained" in Rule 3(1)(a)(ii), where it is held that, it is an unintended accidental omission and the same has to be supplemented by having recourse to the rule of construction. However, it is also clearly held in the said judgment that a candidate must possess 'requisite educational as well as training qualification' for consideration of promotion to the post of Headmaster. In the present case, the educational qualification (diploma in G.D. Arts

in the present case) provided under Category 'C' itself is qualified which mandatorily requires 10 years experience before he can be considered as eligible. In that view of the matter, it cannot be said that the seniority must be counted from the date of initial appointment. As such, though there is no dispute about the principle laid down in the said judgment of Full Bench, in the peculiar facts of this case, since the eligibility requirement itself is not met by the Petitioner, the case of seniority cannot be accepted. Hence, the said judgment would not advance the case of the Petitioner.

22. So far as reliance placed on **Mrs. Gaur Pratibha (Supra)** is concerned, it is clearly held as under.

“**118.** Once, secondary teachers enter a common category from different sources, how should their seniority be reckoned: is it from the date of their entering and continuously officiating or from the date of their acquiring qualification to reach that common category?

119. The seniority must be reckoned from the date they entered the desired category; that is, from the date they acquired the necessary qualification, but not from the date of their entry into service.”

(emphasis supplied)

Therefore, it is clear that the date they acquire necessary qualification is important and in the present case the date of acquiring qualification itself is extended with additional service of 10 years. Therefore, even this judgment will not help the Petitioner.

23. Viewed in the light of what is observed above, when the impugned order is perused, it is seen that the Tribunal has considered the concerned G.R. dated 25.11.1988 as well as G.R. by which the corrigendum dated 09.04.2003 was withdrawn. After the considering

the qualifications required, the Tribunal has held that the Petitioner who is G.D. Art/A.T.D. can claim to be placed in 'C' category only after 10 years of experience. The dates of joining service are considered. Qualification of Respondent No.2 and his eligibility for inclusion in 'C' category is also considered. Based on such consideration, a finding is recorded that the Petitioner cannot be considered as senior to Respondent No. 2 and as such, the act of management promoting Respondent No. 2 cannot be faulted.

24. In the aforesaid facts and circumstances and for reasons indicated above, the Tribunal has taken the most probable view. No perversity is found therein. There is no reason to interfere.

25. **Writ petition is dismissed. Rule is discharged.** No order as to costs.

26. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)