

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2984 OF 2000
WITH
CIVIL APPLICATION NO. 6654 OF 2015

Sant Gadge Baba Shikshan Prasarak Mandal,
Office at 15, Shahajinagar, Degloor
Through its Secretary
Ramesh Digambarrao Deshmukh
Age 42 years, Occ. Secretary

...Petitioner

versus

1. The State of Maharashtra
(Copy to be served on the
Government Pleader, High Court
Building, at Aurangabad)
2. The Education Officer (Secondary)
Zilla Parishad, Nanded
3. Shri Rajaram Narayanrao Gajbhare
Age major, Occ. Head Master
R/o. Yeshwant Sadan, Police Colony
Near the Office of DYSP, Degloor
Degloor, District Nanded
4. Narsing s/o Nagorao Hippergekar
Age major, Occ. Service
serving as Head Master
Satna High School, Degloor
District Nanded
5. Arjun s/o Marutirao Udgire
Age major, Occ. Service
serving as head Master,
Madneshwar Vidyalaya, Loni
Tq. Degloor, Degloor,
District Nanded
6. Vithal Gangaram Jadhav
Age major, Occ. Service
serving as Head Master
Saint Gadge Baba Panchapura

High School, Degloor
District Nanded

...Respondents

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Mr. P.D. Bachate, advocate for the petitioner
Mr. D.R. Korde, A.G.P. for respondent Nos. 1 and 2
Mr. P.R. Katneshwarkar, advocate for respondent No.3
Mr. S.V. Natu, advocate for intervenor (C.A. NO. 6654 of 2015)

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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

**Date of Reserving
the Judgment : 26.06.2015**

**Date of pronouncing
the Judgment : 22.07.2015**

JUDGMENT (PER V.K. JADHAV, J.) :-

Brief facts giving rise to the present writ petition are as follows:-

1. The petitioner is an educational society, which runs five secondary schools in Degloor Taluka of Nanded District. Respondent No.3, who was then working as teacher in the school run by the petitioner, by filing writ petition No. 976 of 1985 had raised a grievance regarding *interse* seniority and promotion to the post of Head Master in the secondary school run by the petitioner management. Pursuant to the directions given by this Court, while disposing of the writ petition No. 976 of 1985, respondent No.2 Education Officer redrew the seniority list of Assistant Teachers

working under the petitioner management as on 8.7.1982 in different secondary schools run by it and held that the respondent No.3 herein (petitioner in writ petition No. 976 of 1985) was senior to respondent Nos. 4, 5 and 6 and was entitled for promotion to the post of Head Master w.e.f. 22.5.1974. Since Respondent No.3 had attained the age of superannuation on 31.8.1999 respondent No.2 Education Officer directed the petitioner/management to pay difference in salary to respondent No.3 herein for the period commencing from 22.5.1974. In addition, the respondent/Education Officer also directed recovery from other respondents.

2. Being aggrieved by the same, the petitioner management has preferred present writ petition and the respondent Nos. 4 to 6 had preferred writ petition No. 1042, 1043 and 1049 of 2000, respectively. This Court, by common order dated 7.3.2003 in the said writ petitions upheld the seniority drawn by the Education Officer and further held that the respondent No.3 herein was wrongly denied the promotion to the post of Head Master. Though this Court has held in the said common order that the petitioner management is required to pay difference of salary to respondent No.3 for the period stated in the order passed by the Education Officer, set aside the order passed by the Education Officer directing recovery from salary of respondent Nos. 4, 5 and 6. This Court has thus partly allowed the aforesaid

three writ petitions and disposed of them accordingly.

3. So far as the present writ petition preferred by the petitioner management is concerned, by order dated 3.4.2003, this Court also disposed of the same for the reasons stated in the judgment pronounced in writ petition Nos. 1042, 1043 and 1049 of 2000, in terms of the directions given therein.

4. Being aggrieved by the same, the present petitioner management and the respondent Nos. 4 to 6 had preferred Civil Appeal No. 5703-5706 before the Hon'ble Apex Court. The Hon'ble Apex Court by order dated 6.4.2010 in the aforesaid appeals, set aside the directions contained in the common impugned judgment and order dated 7.3.2003 in the aforesaid three petitions i.e. writ petition No. 1042, 1043 and 1039 of 2000 to the extent that the petitioner management is to bear the differential amount towards salary of Head Master Rajaram Narayanrao Gajbhare (respondent No.3 herein) and also set aside the separate impugned judgment and order dated 7.3.2003 in the present writ petition No. 2984 of 2000 and remanded the matter back to this Court for fresh consideration on the point as mentioned in para 4 of the judgment, in accordance with law. The Hon'ble Apex Court has also granted liberty to the present petitioner management to raise all contentions that are

available in law.

5. This Court has disposed of the writ petition Nos. 1042, 1043 and 1049 of 2000 with observation that so far as objection of seniority is concerned, the same has attained finality. So far as question of recovery of differential amount as directed by the Education Officer vide order dated 20.1.2000 is concerned, the same has also attained finality in view of the judgment of the Apex Court. In view of the same, this Court has allowed the aforesaid three writ petitions to the extent of order claiming recovery of differential amount and quashed and set aside the order passed by the Education Officer dated 20.1.2000 to that extent.

6. Learned counsel for the petitioner submits that the impugned order passed by the respondent Education Officer is bad in law for the reasons that the respondent Nos. 4 to 6 have been directly appointed as Head Masters, whereas respondent No.3 was appointed as Assistant Teacher. According to the learned counsel, the Education Officer failed to consider this very aspect and by treating the respondent No.3 at par with respondent Nos. 4 and 5 revised the seniority list. Learned counsel further submits that respondent No.3 has raised his grievance only after publication of seniority list by the petitioner management on 8.7.1982, which was

prepared as per Maharashtra Employees of private schools (Condition of Service) Regulation Rules, 1981. The name of respondent No.3 was rightly shown at Sr. No. 8 as an Assistant Teacher and the names of respondent Nos. 4 to 6 were in clause "A" category i.e. of Head masters. Respondent No.4 was promoted on the post of Head Master, whereas respondent Nos. 5 and 6 were appointed as Head Masters during the period from 1974 to 1978. Respondent No.3 had never raised any objection nor preferred any appeal. Respondent No.3 has filed writ petition No. 976 of 1985 only on the ground that his claim for the post of Head Master from reserved category was not considered. Respondent No.3 referred and relied upon the Government Resolution dated 17.9.1980. Learned counsel further submits that after applicability of the roster in the year 1995, on the very first occasion when the post of Head Master become vacant, respondent No.3 was considered and was appointed as Head Master. Thus, there is no question of applicability of roster prior to the said Government Resolution dated 17.9.1980. Learned counsel thus finally submits that the impugned order passed by the Education Officer directing the petitioner management to pay difference in salary to the respondent No.3 from 22.5.1974 till his promotion to the post of Head Master in the year 1995, is bad in law and the same is liable to be set aside.

7. Learned counsel for respondent No.3 submits that the petitioner management has not prepared draft seniority list even prior to 8.7.1982. It was incumbent upon the petitioner management to prepare integrated draft seniority list of all the Assistant Teachers working in various schools run by the petitioner management with a view to invite objections thereto and finalize the same in the light of the objections raised thereunder. The learned counsel further submits that even though respondent No.3 was shown in the seniority list at Sr. No.2, the petitioner management appointed respondent Nos. 4 to 6 directly without following seniority list and procedure laid down in the Rules, holding the field. The learned counsel further submits that respondent Nos. 4 and 5 were fresh graduates at the time of their respective appointments as Head Masters. They were neither trained nor they had completed minimum five years of service. Learned counsel further submits that even Deputy Director of Education has not relaxed the condition of minimum five years experience of their appointment to the post of Head Master. Even though respondent No.3 was possessing five years teaching experience and was a trained employee, he was not promoted to the post of Head Master. Learned counsel further submits that the petitioner management had not considered the objection raised by respondent No.3 and finalized the seniority list on 25.2.1984. Respondent No.3 had submitted various representations

to the petitioner management and finally approached this Court by way of filing writ petition No. 976 of 1985. Learned counsel further submits that the respondent No.2 Education Officer heard all concerned parties and completed enquiry as directed by this Court in the aforesaid writ petition No. 976 of 1985. Learned counsel lastly submits that the impugned order passed by the Education Officer is legal, proper and in tune with the directions given by this Court in writ petition No. 976 of 1985 and thus the present writ petition is liable to be dismissed with costs.

8. We have also heard the learned A.G.P. for respondent No. 1 and 2 and learned counsel for the intervenor.

9. So far as the issue of seniority as decided by the respondent No.2 Education Officer as on 8.7.1982, this Court while disposing of writ petition Nos. 1042, 1043 and 1049 of 2000 has observed that the aspect of seniority has attained the finality. Thus, the issue regarding *interse* seniority as decided by the respondent Education Officer does not call for any interference in the present writ petition.

10. Undoubtedly, respondent Nos. 4 to 6 were appointed to the post of Head Masters prior to coming into force the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act,

1977, which was brought into force w.e.f. 16.3.1978. Consequently, we require to refer to the provisions of Secondary School Code, which were applicable at that time. So far as the orders passed by the authorities under the provisions of Secondary School Code are concerned, the Hon'ble Supreme Court in the case of ***State of Maharashtra vs. Lok Shikshan Sanstha, reported in AIR 1973 SC 588*** held that these directions were enforceable under Article 226 of the Constitution of India, though Secondary School Code is not statutory in character. The Reference can also be made to the decision of the Supreme Court in the case of ***Francis John vs. Director of Education, Goa, reported in AIR 1990 SC 423***, the decision of the Division Bench of this Court in the case of ***Kobad Jahangir vs. Farukh Sidheva, reported in 1990 Mh.L.J. 883*** and the decision of Full Bench of this Court in the case of ***Shikshan Prasarak Mandal vs. State of Maharashtra and others, reported in 2009 (6) Bom.C.R. 1***, wherein it is reiterated that the contravention of the Rules of the secondary School Code can be challenged before the High Court.

11. In view of the provisions of Rule 61.1 of Secondary School Code, respondent Nos.4 to 6 were not qualified to be appointed to the post of Head Masters. Rule 61.1 of the Secondary School Code reads as under:-

“61.1 (a) The person to be appointed as the Head of School shall be a graduate possessing prescribed training qualification (B.T./B.Ed., or its equivalent), with at least five years of total teaching experience, after graduation, in a recognized secondary school or schools, out of which, experience of at least two years should be post-training experience.

(b) If a Management desires to appoint a person who does not possess the prescribed teaching experience as mentioned in clause (a) above, it may approach the Deputy Director of the Region, for relaxing his requirement. The Deputy Director may, after recording his reason in writing, grant the relaxation at his discretion. The appointment of such persons as Head of the school may be made by the management only if such relaxation is granted, the person so appointed will not be held eligible for the Head Master's scale till he satisfies the conditions laid down in clause (a) above, He will be eligible for the scale of a teacher only.”

12. From the bare reading of above quoted provisions, it is clear that the person to be appointed as head of the school shall be graduate with at least five years of total teaching experience. Out of said experience, at least two years should be the post of teaching experience. The management may appoint a person who not does possess the prescribed teaching experience as above, with the prior permission of the Deputy Director of Education for relaxing the said

requirement. The Deputy Director of Education may, after recording the reasons, grant relaxation at his discretion. It is clearly stated in clause (b) of the aforesaid Rule 61.1 as above, that the appointment of such person, as Head of the school may be made by the management only if such relaxation is granted.

13. Furthermore, as per the provisions of Rule 61.2 of Secondary School Code, the management of the school is bound to fill up the post of Head of the school by appointing the senior most teacher from among those employees in the school. The claim of the senior most qualified teacher can be disregarded only if such senior most qualified teacher on his own free will gives a statement in writing to the Education Officer about his voluntarily relinquishment of the claim to the said post. Such statement of the teacher concerned shall also be recorded in handwriting of the said teacher himself before the Education Officer, who shall endorse it as having been recorded in his presence. Here, in this case, no such contingencies have occurred for rejecting the claim of respondent No.3 for being appointed to the post of Head Master. However, the management can fill up the post of Head of the School with prior permission of the Deputy Director of Education, if suitable teacher is not available to fill up the post. The management, in that case can advertise the post, select the candidate and appoint the said candidate as Head, who is

suitable, qualified and experienced person fulfilling the provisions of clause (b) of Rule 61.1.

14. In the case in hand, respondent No.4 came to be appointed as Head master on 1.4.1972 though he has obtained B. Ed. qualification on 22.5.1972. He did not possess the post B. Ed. experience of two years. Similarly, respondent No.5 came to be appointed to the post of Head Master w.e.f. 30.7.1974 whereas he obtained B. Ed. qualification on 10.9.1974 and he also did not possess the post B. Ed. experience of two years. Respondent No.6 though had completed his B. Ed. in the year 1974, he was temporarily appointed on the post of Assistant Head master in October, 1975 and remained unemployed thereafter for some time. He was appointed to the post of Head Master on 21.6.1976. He also did not possess the post B. Ed. experience of two years. It thus appears that their appointments to the post of Head Masters were illegal and contrary to the provisions of Secondary School Code, as stated above. This Court has considered these aspects while deciding the writ petition No. 976 of 1985. It is to be noted here that the petitioner management has not challenged the judgment and order passed by this Court in writ petition No. 976 of 1985, at any point of time.

15. It is thus clear that respondent Nos.4 to 6 did not meet the

requirements of above mentioned Rules of Secondary School Code and their appointments to the post of Head Masters were *per se* illegal. Respondent No.3 was wrongly denied the promotion to the post of Head Master though he was senior most and suitable candidate, fulfilling all requirements of provisions of above stated Rules. Respondent No.3 had passed his B. Sc. Examination in the year 1965 and was appointed as Assistant Teacher by the petitioner management on 21.6.1966. He had obtained B.Ed. degree on 22.5.1972. Respondent No.3 is senior to respondent Nos. 4 to 6 in all respects. Respondent No.3 was entitled for promotion to the post of Head Master w.e.f. 22.5.1974. Respondent No.3 had attained the age of superannuation on 31.8.1999. The petitioner management appointed respondent Nos. 4 to 6 as Head Masters with total disregard to the provisions of Secondary School Code. In our considered opinion, the respondent No.2 Education Officer, has rightly directed to treat the deem date of promotion of respondent No.3 to the post of Head Master as on 22.5.1974 and further directed the management to pay difference in the salary to the respondent No.3 from 22.5.1974 till 30.9.1995 i.e. the date on which respondent No.3 was promoted as Head Master. The State cannot be saddled with liability to pay the amount which is the result of the illegality committed by the management. In view of this, there is no substance in the writ petition. The writ petition is liable to be dismissed. Hence,

we pass the following order:-

O R D E R

- I) Writ petition is dismissed. Rule discharged.
- II) In the circumstances, there shall be no order as to costs.
- III) In view of disposal of Writ Petition, nothing survives in Civil Application and the same is also disposed of accordingly.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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