

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.6547/2012

Ashok s/o Madhavrao Suryawanshi,
age 59 yrs., occu.service (Retd.),
r/o Mohadi (Pra.Dangari),
Tq. & Dist.Dhule.

...Petitioner...

Versus

- 1] The State of Maharashtra,
Through Secretary,
Education Department, Mantralaya,
Mumbai.
- 2] The Deputy Director of Education,
Nashik Division, Nashik.
- 3] The Education Officer (Secondary),
Zilla Parishad, Dhule.
- 4] Shikshan Prasarak Mandal,
Mohadi (Pra.Dangari),
Tq. & Dist.Dhule.
Through its Chairman
Vijay Gulabrao Patil,
age 45 yrs., occu.agri.,
r/o Mohadi (Pra.Dangari)
Tq. & Dist.Dhule.
- 5] Nutan Higher Secondary School,
Mohadi (Pra.Dangari)
Tq. & Dist.Dhule.
Through its Incharge Head Master
Nagraj Pandurang Chavan,
age 48 yrs., occu.service,
Mohadi (Pra.Dangari)
Tq. & Dist.Dhule.

...Respondents...

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Shri Amol S. Sawant, Advocate for petitioner.
Shri S.G. Karlekar, AGP for respondent nos.1 to 3.
Shri A.D. Pawar, Advocate for respondent no.4.
Respondent no.5 served.

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**CORAM: MOHIT S. SHAH, CJ &
RAVINDRA V. GHUGE, J.**

DATE: 24.03.2015

ORAL JUDGMENT (Per Chief Justice):

- 1] Heard learned counsel appearing for the parties.
- 2] Rule. Rule is made returnable forthwith and the petition is taken up for final disposal with the consent of learned counsel appearing for the parties.
- 3] By this petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction to the respondent no.3 – Education Officer (Secondary), Zilla Parishad, Dhule, to grant approval to the appointment of the petitioner on the post of Head Master of Nutan Higher Secondary School, Mohadi (Pra. Dangari) Tq. & Dist.Dhule. The petitioner has also prayed for consequential benefits including the retiral benefits on the basis that the petitioner retired from

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the post of Head Master of the above school.

4] In the school in question, the then Head Master was due for retirement on superannuation on 31.5.2009. Therefore, by a letter dated 7.5.2009, the outgoing Head Master informed the Education Officer (Secondary), Zilla Parishad, Dhule, that the post of Head Master in the above school was going to fall vacant with effect from 1.6.2009. The outgoing Head Master further informed the Education Officer by above letter dated 7.5.2009 that the petitioner was the senior most teacher in the school and, therefore, the outgoing Head Master recommended that the charge of the post of Head Master be given to the petitioner with effect from 1.6.2009. Accordingly, by order dated 2.6.2009 of the Education Officer (Secondary), Zilla Parishad, Dhule, the charge of the post of Head Master was given to the petitioner.

5] It is the case of the petitioner that on the ground of disputes pending amongst the claimants, who contended that they were entitled to be in the management of the school, before the Charity Commissioner, Dhule, who passed final order dated 20.9.2013, in the

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interregnum, the management did not take necessary steps for formally filling in the post of Head Master under Rule 3 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. However, in the mean time, the petitioner requested the Deputy Director of Education, Nashik, by letter dated 25.8.2011 that the approval be granted to his appointment as the Head Master of the school as the petitioner was the senior most teacher in the school and the petitioner was looking after all the financial and administrative affairs of the school with effect from 1.6.2009. In response to the said letter dated 25.8.2011, the Deputy Director of Education, Nashik, called upon the Education Officer (Secondary), Zilla Parishad, Dhule, to submit a report. However, it appears that no further development took place on the basis of said communication, but the petitioner himself retired on superannuation on 31.5.2012. Thereafter, according to the petitioner, the disputes amongst the two factions of the management came to an end. In this petition filed in the year 2012, the petitioner has, therefore, prayed for the aforesaid reliefs.

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6] It appears that the management of the school subsequently came to be added as respondent no.4. It is contended in the affidavit in reply filed on behalf of the respondent no.4 by Shri Vijay Gulabrao Patil that the Change Report by the answering respondent was filed on 3.7.2006 for the period 2006-2011 and that Change Report came to be allowed by the order dated 20.9.2013 of the Charity Commissioner, Dhule. It is, therefore, submitted that the disputes in the management were resolved before the post of Head Master fell vacant on 1.6.2009. However, the respondent no.4 has not given any explanation in the affidavit in reply as to why no steps were taken by the management for filling in the post of Head Master under Rule 3 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules.

7] Learned AGP for the respondent nos.1 to 3 submits that since no order appointing the petitioner as Head Master was issued, the question of granting approval to such appointment would not arise.

8] Having heard the learned counsel for the parties, we are of the view that though a formal order

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appointing the petitioner as Head Master does not appear to have been issued by the management, the undisputed facts are as under :-

i] The post of Head Master did fall vacant on and with effect from 1.6.2009.

ii] The petitioner was the senior most teacher in the school.

iii] The petitioner is eligible for appointment as Head Master of the school as per the requirements of Rule 3(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

iv] Under Rule 3(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, the management is required to fill up the post of Head Master by appointing the senior most member of the teaching staff in accordance with the guidelines laid down in Schedule F from amongst those employed in the school, provided the senior most qualified teacher having satisfactory record of service is willing to be appointed on the post of Head Master.

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9] In view of above statutory provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, even in absence of any order of the school management, the senior most qualified teacher in the school having satisfactory record of service is entitled to be appointed as Head Master of the school. Neither the management nor the respondent – authorities have given any reasons in their affidavits for not considering the petitioner's claim for appointment as Head Master of Nutan Higher Secondary School, Mohadi (Pra.Dangari) Tq. & Dist.Dhule.

10] In view of above, we are of the view that the petitioner is entitled to the relief that the petitioner's case be considered in accordance with the provisions of Rule 3 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

11] In the result, the petition is allowed in terms of the following directions :-

[A] The respondent no.4 – school management shall send the proposal under Rule 3 of the Maharashtra Employees of Private Schools

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(Conditions of Service) Rules, 1981, in respect of appointment to the post of Head Master in the school for the period from 1.6.2009 to 31.5.2012.

[B] Upon receiving such a proposal from the school management, the Education Officer (Secondary), Zilla Parishad, Dhule, shall take necessary decision on such proposal within four weeks from the date of receipt of the proposal.

[C] In case the respondents appoint the petitioner as Head Master on above school for the above period, the respondents shall thereafter prepare the pension papers of the petitioner on the basis of such decision within three months after the decision of the Education Officer (Secondary), Zilla Parishad, Dhule and release the petitioner's retiral benefits on that basis.

[D] Since the petitioner is presently receiving pension on the basis that he has retired as an Assistant Teacher on 31.5.2012, in case the petitioner is found entitled to be promoted as Head Master of the school for the above period, the arrears, difference of pension and other retiral

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benefits shall be paid to the petitioner on that basis.

12] Rule is made absolute accordingly. There shall be no order as to costs.

(RAVINDRA V. GHUGE, J.)

CHIEF JUSTICE