

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7734 OF 2014

Maroti Nagorao Sonkamble .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Vivek J. Dhage, Advocate for the Petitioner.

Shri K. G. Patil, Addl. G. P. for Respondent Nos. 1 and 2.

Shri Yogesh B. Bolkar, Advocate for the Respondent No. 3.

Shri P. D. Bachate, Advocate for the Respondent No. 4.

**CORAM : S. V. GANGAPURWALA AND
V. L. ACHLIYA, JJ.**

DATE : 06TH JANUARY, 2015.

PER COURT :

. Mr. Dhage, the learned counsel submits that, the respondent/Education Officer could not have granted approval to the appointment of the respondent No. 4 as Head Master vide impugned order dated 19.08.2014 in as much as the respondent No. 4 way back in the year 2010 in writing had waived his claim for the post of Head Master. In view of Rule 3 of the M. E. P. S. Rules, now the respondent No. 4 cannot claim the post of Head Master. The petitioner is working as incharge Head Master since the year 2010. The petitioner had produced the xerox copy of the letter dated 05.04.2011 given by the respondent No. 4 in his own writing stating that, he is not interested to work as Head Master

of the school and has no objection to appoint another teacher as a Head Master. The fact is that, such a letter was given by the respondent No. 4 and the same has not been disputed by the respondents, even in the hearing before the Education Officer pursuant to which the impugned order has been passed. There is no letter produced on record by respondents stating that the respondent No. 4 is not interested in holding the post of Incharge Head Master. In absence of any such letter, the copy of communication produced by the petitioner has to be considered and relied upon. The learned counsel submits that, pursuance to the orders passed by this Court the hearing has been conducted by the Education Officer. According to the learned counsel what is to be seen is whether such a letter was given with free will and voluntarily and that is paramount consideration. For the said purpose the learned counsel relies on the judgment of this Court in a case of **Barshi Education Society, Barshi Vs. Ashok Ganesh Kulkarni and others** reported in **2004(3) Mh.L.J. 587**. The learned counsel submits that, the claim of the present respondent No. 4 cannot be considered for the post wherein the present petitioner is working as incharge head master and it is only the petitioner who can be promoted and the respondent No. 4 at the most can be considered only after the petitioner.

2. Mr. Bachate, the learned counsel for the respondent No. 4 submits that, at no material point of time the respondent No. 4 had made a statement in writing before the Education Officer

stating that he does not want to work on the post of Head Master. The respondent No. 4 had also given a detailed letter before the Education Officer in July 2014 laying down the total facts.

3. The learned counsel for the management also supports the arguments of the learned counsel for the respondent No. 4.

4. We have considered the submissions canvassed by the learned counsel for respective parties. It is not disputed that, senior most teacher has to be appointed as Head Master. The said rule can be deviated, if the senior most teacher makes statement in writing before the Education Officer on his own volition, with free will and voluntarily relinquishing his claim to the said post. Explanation to Rule 3 reads as under :

**The Maharashtra Employees of Private Schools
(Conditions of Service) Rules, 1981**

3. Qualifications and appointment of Head.

- (1)
- (2)
- (3)

Explanation.- For the purpose of this rule, the Management shall communicate the occurrence of vacancy of the Head to the senior-most qualified teacher having satisfactory record of service and ask him to submit his willingness for appointment to the post within a period of fifteen days from the date of receipt of the communication. The claim of the senior-most qualified teacher having satisfactory record of

service, for appointment to the post of Head, may be disregarded only if he, of his own free will, gives a statement in writing to the Education Officer that he has voluntarily relinquished his claim to the post. This shall not debar him from being considered for subsequent vacancies as and when they occur. Such a teacher shall record his statement in his own handwriting before the Education Officer within a period of fifteen days from the date of receipt of the communication as aforesaid and the Education Officer shall endorse it as having been recorded in his presence. A statement once duly made by such teacher before the Education Officer shall not be allowed to be withdrawn. In the event of the teacher failing to submit his willingness for appointment to the post or to give a statement to the Education Officer within a period of fifteen days, it shall be assumed that he has relinquished his claim on the said post :

5. Perusal of the said Rules, it is manifest that, to attract the said explanation, it is to be held that the senior most teacher has relinquished his claim. The statement by which he has relinquished his claim should be made in writing before the Education Officer. The statement is required to be recorded in writing before the Education Officer and the Education Officer shall endorse it of having recorded in his presence.

6. If a law requires a particular thing to be done in a particular manner, it is required to be in that manner only. We had asked the learned A. G. P. vide order dated 15th December, 2014 to produce the document dated 05.04.2011 copy of which is at Exhibit P - 5 (page 24). The learned A. G. P. on instructions

produced communication received to him from the Education Officer stating that no such statement at Exhibit-5 (Page-24) is appearing and is a part of record of the office of the Education Officer.

7. It would be clear that, no such statement has been made by the respondent No. 4 in writing before the Education Officer that he is not interested in the post of Head Master and no such endorsement from the Education Officer is taken.

8. In the light of the above, the copy produced by the incharge Head Master cannot be considered in as much as there is nothing to show that a copy of the said statement was at any point of time made before the Education Officer and copy of same was forwarded to the management. At least said communication produced on record does not depict that.

9. Considering the above, it would not be possible to consider the case of the petitioner. The writ petition as such is dismissed, however, with no order as to costs.

[V. L ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]