

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8332 OF 2013

1, Jankibai Apte Balikashram
Ahmednagar, through its
Chairman Shri Sharad
Narayan Rachcha, age 70 years,
Occ. Nil, R/o Tophkhana,
Near Delhi Gate, Ahmednagar.

2. Sau. Arati Anant Thorat,
Age 55 years, Occ. Service
presently working a Headmistress,
Maniktai Karanjikar High School,
Ahmednagar, R/o T-4, Ahilyangari,
Pipeline Road, Savedi,
Ahmednagar.

..Petitioners

Versus

1. Sau. Manda Baban Pol,
Age 56 years, Occ. Service,
R/o Station Road, Ahmednagar,
Tq. and Dist. Ahmednagar.

2. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar,
District Ahmednagar.

..Respondents

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Advocate for Petitioners : Shri Chavan S.K. h/f Shri Tikle A.L.
AGP for Respondent 1 : Smt. Shelke S.D.
Advocate for Respondent 2 : Shri Kakade A.N.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 05, 2015

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioners are aggrieved by the judgment and order dated 23.8.2013 delivered by the School Tribunal, Solapur in Appeal No.107 of 2007 filed by the first respondent herein. The said appeal was allowed and the petitioner No.1 was directed to promote the first respondent as the Headmistress from 1.12.2007.

5. The basic grievance of the petitioner and which is quite valid is that the first respondent had preferred the appeal questioning the promotion of respondent No.3 Sau. Smita Jaywant Deshmukh as the Headmistress of the Maniktai Karandikar Madhyamik and Ucchamadhyamik Girls Vidyalaya, Ahmednagar. During the pendency of the appeal Smt. Deshmukh had retired. The added respondent No.5 Smt. Thorat, who is petitioner No.2 herein was appointed as the Headmistress in accordance with the seniority list declared by the Education Officer under Rule 12(1) of the the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

6. Shri Chavan, learned Advocate, therefore, points out that petitioner No.2 was added as the fifth respondent in the Appeal with the leave of the Tribunal. However, all the pleadings in the Appeal were directed towards Smt. Deshmukh. Similarly, prayer clause "B" specifically was for seeking

relief against Smt. Deshmukh. He, therefore, submits that there was neither any pleading nor any prayer against Smt. Thorat. The Tribunal has travelled beyond the appeal and has set aside the promotion of Smt. Thorat as the Headmistress, despite there being no challenge to her appointment or prayer against her.

7. Though Shri Kakade learned Advocate has strenuously tried to defend the impugned order, the fact remains that there were no pleadings against Smt. Thorat. There was no prayer in the Appeal vide which the first respondent could have sought the quashing of the appointment of Smt. Thorat. The School Tribunal, in these circumstances, therefore, could not have set aside the appointment of Smt. Thorat as the Headmistress.

8. Shri Kakade, therefore, submits that the first respondent deserves to get an opportunity to call in question the appointment of petitioner No.2 as the Headmistress of the said school, which has impinged the rights of the first respondent. He, therefore, submits that the first respondent be granted the liberty to file a fresh appeal, so as to challenge the appointment of petitioner No.2 as the Headmistress.

9. In the light of the above submissions and the fact situation as discussed above, the impugned judgment dated 23.8.2013 is quashed and set aside. Shri Kakade, learned Advocate submits that as Smt. Deshmukh has retired and the appellant has no cause of action against Smt. Deshmukh, she may prefer filing of a fresh appeal as she has a cause of

action and grievance against petitioner No.2. In the event the said appeal is filed, the Tribunal be directed to decide the said expeditiously. The appeal No.107 of 2007 is dismissed.

10. As such, this petition is allowed in the above terms. In the event the first respondent prefers a fresh challenge by instituting an appeal, the Tribunal may decide the same expeditiously on its own merits and taking into account that the first respondent would be superannuating in August 2016.

11. Rule is accordingly made partly absolute. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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