

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9694 OF 2012

Smt.Premala D/o Nivruttirao Kamble
Age 55 years, Occ-Service
R/o C/o T.S.Gaikwad, Nideban Ves
Bhoi Galli, Udgir, Dist.latur

.. PETITIONER

Versus

- 1] The State of Maharashtra
Through its Secretary,
Higher & Technical Education
Department,
Mantralaya, Mumbai-32
- 2] The Dy.Director of Education
Latur Division, Latur
- 3] The Education Officer (Secondary)
Zilla Parishad, Latur
- 4] Shamlal Smrak Shikshan Sanstha
Udgir, through its President
Adv. Suposhpani Sadavijay Arya
R/o Station Road, Udgir
Dist.Latur
- 5] Shyamarya Kanya Vidyalaya
Udgir, Dist.Latur
Through its Head Master

.. RESPONDENTS

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Mr.Pradip Deshmukh h/f Mr.H.A.Joshi,Adv. for petitioner
Mrs.S.A.Dhumal,AGP for respondent nos. 1 to 3.
Mr.R.R.Karpe,Adv. For respondent nos.4 and 5.

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WRIT PETITION NO.655/2013

Smt.Premila d/o Nivruttirao Kamble
Age 55 yrs, Occ-Service
R/o C/o T.S.Gaikwad, Nideban Ves
Bhoi Galli, Udgir, Dist.Latur

..PETITIONER

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- 1] The State of Maharashtra
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- 4] Shamlal Smrak Shikshan Sanstha
Udgir, through its President
Adv. Suposhpani Sadavijay Arya
R/o Station Road, Udgir
Dist.Latur
- 5] Shyamarya Kanya Vidyalaya
Udgir, Dist.Latur
Through its Head Master
- 6] Shivaji Vidyalaya
Rohina, Tq. Chakur, Dist.Latur
Through its Head Master
- 7] Shamlal Memorial High School
Station Road, Udgir, Tq. Udgir
Dist.Latur
through its Head Master
- 8] Smt.T.K.Dnyate
Age 45 yrs, Occ-Service as

Asstt. Teacher,
R/o C/o Head Master
Shamlal Memorial High School
Station Road, Udgir, Tq. Udgir
Dist. Latur

- 9] Shri D.V. Bolegave
Age 30 yrs, Occ-Service As Asstt. Teacher
r/o c/o Shyama Kanya Vidyalaya,
Near Railway station, Udgir, Dist. Latur
Through its Head Master.

.. RESPONDENTS

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Mr. V.P. Golewar, Adv. For petitioner
Mrs. S.A. Dhumal, AGP for respondent State
Mr. N.B. Khandare, Adv. For respondent no.4
Mr. M.P. Gude, Adv. For respondent nos.5 to 7

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WRIT PETITION NO.3332/2014

Shyamlal Smarak Shikshan
Sanstha, Udgir, Through its
Vice-President
Vikram s/o Nilkantrao Sankaye
Age 33 years, Occ-Advocate
R/o Sahajeevan Colony,
Shellal Road, Udgir
District Latur

.. PETITIONER

Versus

- 1] The State of Maharashtra
Through its Secretary,
Higher & Technical Education
Department,
Mantralaya, Mumbai-32
- 2] The Dy. Director (Education)
Latur Division, Latur
- 3] The Education Officer (Secondary)

Zilla Parishad, Latur

- 4] Premla Nivruttirao Kamble
Age 55 years, Occ-Service
R/o C/o T.S.Gaikwad
Nideban Ves, Bhoigalli
Udgir, District Latur.
[Copy of Resp.No.1 and 2 be
served on the office of Govt.Pleader
High Court of Bombay
Bench at Aurangabad]

.. RESPONDENTS

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Mr.R.R.Karpe,Adv.for petitioner
Mrs.S.A.Dhumal,AGP for Respondent State
Mr.Pradip Deshmukh,Adv. For Respondent no.4.

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**CORAM : S. V. GANGAPURWALA &
V. L.ACHLIYA, JJ.
DATED : 27th FERUARY, 2015**

PER COURT :-

All these three Writ Petitions are based on similar set of facts and are interconnected, as such are decided together.

2] Writ Petition No.9694/2012 is filed seeking directions against respondent nos.3 and 4 to act upon the decision dated 29/5/2012 given by the Deputy Director of Education to appoint the petitioner therein as Head Mistress of Shyamarya Kanya Vidyalaya, Udgir so also challenging the order dated 10/5/2012 cancelling approval given to the petitioner as incharge Head Master.

3] Writ Petition No.3332/2014 is filed by the management challenging the order dated 10/5/2012 wherein directions are issued to appoint Smt.Kamble P.N. as Head Mistress. Whereas, Writ Petition No.655/2013 is filed by said Smt.Kamble challenging the

transfer order and the relieving order dated 14/1/2013.

4] Mr.Deshmukh, the learned counsel for the petitioner states that the petitioner is the seniormost teacher of Shyamarya Kanya Vidyalaya, Udgir. The same is the Girls School. As per Rule 3, sub-rule 4 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred as MEPS Rules for short) in case of Girls Secondary School, the seniormost lady teacher fulfilling the conditions laid down in clause (b) of sub-rule (1) and having satisfactory record of service has to be appointed as a Head of that school irrespective of her seniority vis-a-vis the male teachers. The learned counsel submits that as per seniority list placed on record, the petitioner i.e. Smt.Kamble is the seniormost teacher in the said Shyamarya Kanya Vidyalaya, Udgir, i.e. Girls School. The management of the said Girls School runs three schools. A common seniority list of all the three schools is also prepared and the petitioner is the seniormost. The petitioner is at Sr.No.14. The petitioner belongs to Scheduled Caste category and there is no one senior than the petitioner from women. According to the learned counsel, the management was duty bound to implement the order of the Deputy Director of Education. The learned counsel further submits that the petitioner was appointed as an incharge Head Mistress. However, the Education Officer, vide impugned order cancelled the said approval granted to the petitioner as an incharge Head Mistress. The same is illegal and does not stand to any reason. According to the learned counsel, theory of roaster is erroneous. It cannot be said that the said post is reserved for Scheduled Tribe Category. Even otherwise, there is no candidate from S.T. Category, who is eligible to be appointed as Head Master of the Girls School. The petitioner belongs to S.C. Category, is the seniormost and is only entitled to be appointed as Head Mistress.

5] The learned counsel further submits that even order of transfer issued to the petitioner is illegal and is tainted with malafides, the said order of transfer is issued only to deprive the petitioner of her legitimate right to be the Head Mistress of the Girls school. The same is also issued during pendency of Writ Petition No.9694/2012. The learned counsel further relies on the order dated 10/10/2012 passed in Writ Petition No.2161/2011. According to the learned counsel, the said transfer order is a mid-term transfer. It is also not permissible as per relevant Rules of the Secondary School Code read with MEPS Rules.

6] Mr.Karpe, learned counsel for the petitioner in Writ Petition No.3332/2014 submits that the roaster has been verified by the B.C.Cell. As per the verification by the B.C. Cell, the post of Head Master is reserved for a candidate from S.T. Category. The management runs three schools. The Head Masters in other two schools are already appointed and working and the post of Head Master in respondent-Shyamarya Kanya Vidyalaya is only vacant. As per the roaster, the said post has to be filled in from a S.T. Category. According to the learned counsel, as the petitioner does not belong to the S.T. Category, she could not have been appointed as Head Mistress. The order of the Deputy Director in that regard is erroneous. It is the discretion of the management to appoint appropriate candidate for the post of Head Master considering various issues such as seniority, roaster, performance, conduct, etc. The said Smt.Kamble had threatened on various occasions to the management with dire consequences upto the extent of appointment of Administrator if the order of Deputy Director is not implemented. The said teacher is habitual complainant and is also bad in performing her duties. Even threats were given by her of lodging

complaint under the Atrocities Act. Even letters were addressed to the National Commission of Scheduled Castes by said Smt.Kamble. The management had to reply to the same. Various complaints are filed with various authorities. Reservation policy has to be followed scrupulously. Earlier also post of the Head Master of the said Girls school was enjoyed by a person from Scheduled Caste category. Again a person from the said category could not have been appointed and now as per roaster, the said post is reserved for a person from S.T. Category, as such, the petitioner could not have been appointed. Even said Smt.Kamble was directed by the management to file appropriate case against the earlier Head Mistress Smt.Sabne on account of misappropriation, however, in vain. The petitioner is not entitled to be appointed as a Head Mistress.

7] The learned counsel further submits that the order of transfer has been issued considering the administrative exigencies and the same can not be said to be a mid-term transfer. According to the learned counsel, the petitioner had not joined the transferred place till today and thereby caused irreparable loss to 10th standard students and other classes. Till the decision of the promotion is taken by the authority, it was expected of the employee to serve the school but Smt.Kamble refused to do so. The transfer is effected at the time when the second Academic term is about to begin and the same is usual practice in the school. Except Smt. Kamble, all other employees who have been transferred had joined at transferred place and they have got their approval from the Education Officer also. The petitioner was relieved on the same date and the order of status quo will be of no avail in favour of the petitioner.

8] We have considered submissions canvassed by learned

counsel for respective parties. It is not disputed that the petitioner in Writ Petition No.9694/2012 is a teacher in the Shyamarya Kanya Vidyalaya, Udgir and the same is Secondary Girls School. Provisions of Rule 3 sub rule 4 of MEPS Rules would be relevant for consideration. The said Rule reads as under :

“3) Qualifications and appointment of

Head :-(1) A person to be appointed as the Head -

(a).....

(2).....

(3).....

(4) In the case of a girl's secondary school or Junior College of Education for Women, the senior most lady teacher fulfilling the conditions laid down in clause (b) of sub-rule (1) and having satisfactory record of service, shall be appointed as the Head of that school irrespective of her seniority vis-a-vis the male teachers.”

9] Perusal of the said Rule it is manifest that in the Girls Secondary school for women, the seniormost lady teacher fulfilling the conditions laid down in Clause (b) of sub-rule (1) and having satisfactory record of service shall be appointed as a head of that school irrespective of seniority vis-a-vis the male teacher. Qualification as laid down under Clause (b) of sub-rule (1) of Rule 3 is possessed by said Smt.Kamble. The same is an undisputed fact. It is also undisputed that amongst the ladies, Smt.Kamble is the seniormost teacher in the Girls school. Perusal of the seniority list it is manifest that there is no person from S.T. category above Smt.Kamble or any lady teacher from S.T. Category who could have been promoted as a Head Mistress in the said Girls school. As such reliance placed by learned counsel for management on the roaster is misplaced. Perusal of Rule 3(4) of the MEPS Rules it would squarely apply in the present case and even if the contention of the learned

counsel for the management is accepted that as per roaster said post was reserved for person from S.T. category, still there was no lady teacher from S.T. category available to be promoted as Head Mistress of the said Girls school. In light of that the order of the Deputy Director of Education directing the management to appoint Smt.Kamble cannot be faulted with. The previous Head Mistress Smt.Sabne retired on 31/12/2010 and thereafter, Smt.Kamble was appointed as an incharge Head Mistress and was officiating as an incharge Head Mistress. Vide order dated 25/9/2012, the said approval was cancelled only on the ground that management is not taking steps to appoint fulfilled Head Mistress. There was no reason for cancellation of the said approval and only because there is lapse on the part of the management to appoint fulfilled Head Mistress on the said school, the said order of the Education Officer cancelling the approval of Smt.Kamble as incharge Head Mistress is unsustainable. Smt.Kamble was appointed and working as incharge Head Mistress till the affidavit in reply is filed by the management in the Writ Petition. The management at no material point of time had even complained about the conduct, efficiency of Smt.Kamble. The said allegation seems to be after thought.

10] As far as the contention of transfer is concerned, it would appear that the said transfer is in the midst of the term and moreover, when the petitioner was working as an incharge Head Mistress, she was being transferred as Assistant Teacher in a Co-Ed. School i.e. of boys and girls. Certainly that was to affect right of Smt.Kamble to the post of Head Mistress that too after the order was passed by Deputy Director of Education. One thing can also be taken note that the order of Deputy Director of Education directing the management to appoint Smt.Kamble as Head Mistress on 10/5/2012 is challenged by the management by filing Writ Petition for the first time in November

2013 i.e. after lapse of one year and after issuing the order of transfer. The same does not appear to be bonafide. Prior to that, on 29/10/2012, Smt.Kamble had already filed Writ Petition seeking direction against the management to give effect to the order of Deputy Director dated 10/5/2012.

11] In light of the above, it is clear that said Smt.Kamble P.N. Is entitled to be appointed as Head Mistress. The order of Education Officer cancelling approval is also erroneous. Once it is held that Smt.Kamble is entitled to be appointed as Head Mistress after the retirement of the previous Head Mistress, the order of transfer deserves to be set aside. In light of above, we pass following order :

a] Writ Petition No.9694/12 is allowed. The order of the Education Officer cancelling approval of the petitioner therein as an Incharge Head Mistress is quashed and set aside. The respondent management shall appoint the petitioner as Head Mistress w.e.f. 1/6/2012 i.e. after the order is passed by the Deputy Director of Education and shall submit the proposal to the Education Officer for approval preferably within one month.

b] Writ Petition No.3332/2014 stands dismissed.

c] Writ Petition No.655/13 stands allowed. The order of transfer dated 14/1/2013 and the relieving order dated 14/1/2013 stands quashed and set aside, however, with no order as to costs.

V.L.ACHLIYA, J.

S. V. GANGAPURWALA, J.

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